

IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

U.S. BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
FILED

JAN 22 1987

MOLLIE C. JONES, CLERK  
*L. Jones*

IN RE:

BANKRUPTCY CASE

W. J. RUNYON & SON, INC.

NO. 8600304WC

ORDER ON "ACCOUNTING AND PETITION FOR PAYMENT  
OF COMMISSIONS, FEES AND EXPENSES" FILED BY  
SUPERIOR AUCTIONEERS AND MARKETING, INC.

THIS MATTER came on for hearing on "Accounting and Petition for Payment of Commissions, Fees and Expenses" filed by Superior Auctioneers and Marketing, Inc.; Objection thereto filed by Credit Alliance Corporation; and Response filed by W. J. Runyon & Son, Inc. After reviewing the facts and considering the same, the Court finds that Superior Auctioneers and Marketing, Inc.'s Petition is well taken and should be granted and Credit Alliance Corporation's Objection should be overruled. The Court further finds that the request for expenses made by W. J. Runyon & Son, Inc. in its Response is well taken and should be granted.

On April 3, 1986, W. J. Runyon & Son, Inc. (Debtor) filed an application to sell assets free and clear of liens and encumbrances (Exhibit "A"). Note the Debtor's application in paragraph number 4 and the

last unnumbered paragraph provides that all costs of conducting the sale and repairing, painting, and otherwise fixing up the equipment should be considered a cost of sale and deducted from the proceeds of the sale. Written notice (Exhibit "B"), which also provided for repairs and costs of the sale to be deducted from the sales proceeds, was issued and two creditors, Crocker National Bank and Tallulah State Bank & Trust Company, filed objections to the sale. The Debtor and the two creditors resolved their differences and an Order approving the sale of assets was entered by this Court on July 28, 1986 (Exhibit "C").

It is important to note two paragraphs in the July 28th Order which require that after the conclusion of the sale, the Debtor and auctioneer shall file applications with the Court for payment of any compensation and reimbursement of expenses. Paragraph number 7 of the Order provides,

That within ten (10) days after said auction sale, the debtor and the auctioneer shall make application with this Court for reimbursement of all expenses necessarily incurred in connection with said auction sale pursuant to the auction sale agreement, which application shall include copies of invoices and evidence of payment of said expenses.

Paragraph number 8 of the Order provides,

That within ten (10) days after the conclusion of said auction sale,

the auctioneer shall make application for payment of:

- a. All sales taxes; and
- b. A commission to be paid for the gross receipts (excluding sales taxes) of the auction sale as set forth in the auction sale agreement.

An auction sales agreement was attached as an exhibit to the July 28th Order purporting to be substantially the form of the auction sales agreement the Debtor would execute after the Court approved the sale of assets. Paragraph numbered Roman numeral VII of the agreement provides that the Debtor has the responsibility of delivering the equipment to the auction site with mounted attachments, operating batteries, and adequate fuel; and in sufficient time for "make-ready" preparation and inspection by prospective purchasers. The provisions further provide that all costs incurred by the Debtor necessary to comply with the delivery requirements shall be reimbursed from the proceeds of the sale, subject to approval of this Court. Paragraph numbered Roman numeral VIII of the agreement provides that the auctioneer shall supervise and manage all the "make-ready" repairs and cosmetic work done to enhance the sale of the equipment and maximize the net dollar return from the sale. Again, the agreement provides that all expenditures made by the auctioneer for

supervisory assistance and "make-ready" preparations shall be deducted from the sale proceeds of the auction, subject to approval of this Court.

Thus, the Court finds that on October 24, 1986, Superior Auctioneers and Marketing, Inc. (Superior) filed its petition for accounting and payment of commissions, fees and expenses seeking Court approval as required by the July 28th Order. The Debtor filed a response to Superior's Petition and requested the Court's approval for reimbursement of the Debtor's expenses in relation to the auction sale, also in accordance with the July 28th Order.

Credit Alliance Corporation, a creditor of the bankrupt debtor, filed an Objection to Superior's Petition. The actual auction sales agreement (Exhibit "D") was executed on August 11, 1986, and was attached to Superior's Petition as an exhibit. Credit Alliance claims in their objection that before the auctioneer made repairs and cosmetic work to enhance the value of the equipment, the sales agreement required the auctioneer to receive prior authorization and court approval. Credit Alliance also objected on the date of hearing to the Debtor's request for reimbursement expenses for the same reasoning in that the sales agreement required the Debtor to obtain prior court approval before making any expenditures. Credit

Alliance further objected that the sales agreement required the auctioneer to solicit bids for "make-ready" work and that Superior had paid for mechanic work and repainting of the equipment without taking bids.

This Court finds that paragraphs numbered Roman numerals VII and VIII of the executed sales agreement are substantially identical to the same numbered paragraphs in the proposed sales agreement attached to the July 28th Order. Neither the proposed agreement attached to the Order of July 28, 1986, or the executed agreement dated August 11, 1986, required additional court approval prior to incurring costs and expenses relating to the delivery of the equipment and "make-ready" preparations. They only require that additional court approval must be obtained for the expenditures which have been made before they can be deducted from the sales proceeds and the Auctioneer and Debtor reimbursed. Furthermore, as noted earlier, the July 28th Order specifically provides for the auctioneer and debtor to make application to this Court for its approval of all compensation and expense incurred in connection with said sales agreement.

It would be impractical to expect Superior and the Debtor to appear before this Court each time it was discovered that a new part was needed for repair or a piece of equipment required repainting. Also, if all

fees and expenses were approved prior to the sale of the equipment, there would be no need for Superior and the Debtor to now request court approval as the July 28th Order requires. Thus, the Court finds that Superior's petition and the Debtor's response were both in compliance with the executed sales agreement and the July 28th Order. Superior and the Debtor are presenting to the Court a final account of fees and expenses and requesting examination and approval by this Court.

Credit Alliance cites three cases in its Proposed Conclusion of Law to establish with the Court the standard for review in which fees and expenses may be charged against a secured creditor's collateral. In re Revere Cooper & Brass, Inc., 60 B.R. 892 (Bkrtcy. S.D. N.Y., 1986); In re Bob Gursett Golf Shoppes, Inc., 50 B.R. 598 (Bkrtcy. Va., 1985); In re West Post Road Properties Corp., 44 B.R. 244 (Bkrtcy. N.Y., 1984). After reviewing the case law cited, the Court finds that the statutory authority for expenses charged against a secured creditor's collateral is found in section 506(c) of the Bankruptcy Code and that "Particular charges must meet a three-prong test to determine their propriety in that the expenses must be (1) necessary to preserve or dispose of the property; (2) of benefit to the secured creditor; and (3) reasonable." In re Bob Gursett Golf Shoppes, Inc., 50 B.R. 598, 602 (Bkrtcy. Va., 1985). The Court also

finds that it has the discretion to determine when and how much recovery shall be allowed from a secured party. First Western Savings and Loan Association v. Anderson, 252 F.2d 544, 547 (9th Circuit, 1958).

After considering the evidence presented at trial and reviewing all documents and pleadings, this Court finds that the fees and expenses requested in Superior's Petition and the expenses requested by the Debtor are appropriate and should be allowed to be deducted from the sale proceeds of the equipment. Testimony showed that the work done and expenses incurred were necessary for the proper disposal of the property and were beneficial to the creditor in that all expenses enhanced the value of the equipment and were in an effort to realize the highest potential sales price. The Court further finds that following an accounting of all fees and expenses requested by Superior and the Debtor, the fees and expenses were reasonable under the circumstances of this case and in keeping with the Order of this Court dated July 28th.

Credit Alliance made objection to the fact that Superior did not properly solicit bids for work contracted out, specifically \$41,000.00 paid to a mechanic (Tucker Richardson) and \$26,000.00 paid to repaint the equipment (Burris Paint). After considering the circumstances, the Court finds that although no

formal bid procedure was followed, nevertheless, the amounts paid to the mechanics and painters were reasonable and necessary, were of benefit to the secured creditor and the estate, and were in keeping with the customary prices within the trade. Thus, the Court finds that no harm resulted from Superior's failure to fully comply with the sales agreement and concludes that this objection should be overruled.

Subsequent to the hearing held, Superior made request to the Court for approval of interest being paid on its money being held by the Wells Fargo Bank from the date of the original hearing and also for approval of \$1,650 as attorneys fees for the representation of Superior in this case.

The Court finds that although the July 28th Order provides for the sale proceeds to be placed in an interest bearing account, the auction sales agreement specifically denies interest to be paid to Superior. The paragraph numbered Roman numeral VIII of the proposed sales agreement and executed sales agreement provides that "Auctioneer will advance funds, interest free, for such make-ready expenditures; and will deduct the actual costs of same from the proceeds of the auction, subject to approval of the Bankruptcy Court." (emphasis added). Thus, the Court concludes that Superior's request is not well taken and it shall not



be allowed interest from the date of the hearing. However, the Court does find that Superior may recoup any interest that their money accrues from the date of entry of this Order approving payment until the date the money is actually paid.

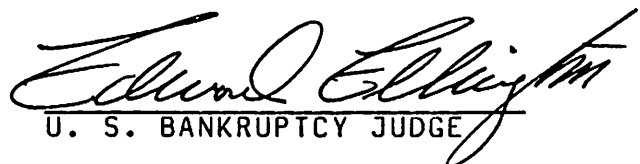
The Court will reserve ruling on approval of attorney fees for the representation of Superior in this action. Superior shall be allowed 15 days from the date of the entry of this Order in which to submit a memorandum to the Court containing specific code sections and case law in which a creditor such as Superior is allowed attorneys fees under the circumstances of this case. Superior shall submit a copy of its memorandum to the other parties in interest, at which time the other parties shall be allowed 10 days in which to file a response with the Court. The memorandum shall be sent to the Honorable T. Calvin Wells and Honorable Richard A. Montague, Jr., c/o Wells, Moore, Simmons & Stubblefield, P. O. Box 1970, Jackson, MS 39215; Honorable Luke Dove and Honorable Marlane Chill, P. O. Drawer 2427, Jackson, MS 39205; Honorable David W. Ellis and Honorable William M. Bost, c/o Ellis, Braddock, Bost & Robinson, Ltd., 704 First National Bank Building, Vicksburg, MS 39180; and Honorable Marcus M. Wilson, c/o Bennett, Lotterhos, Sulser & Geno, P. O. Box 98, Jackson, MS 39205. Any

response shall be sent to the Honorable John T. Sanders, IV, c/o Ihfe & Miller, 9846 Lorene, San Antonio, TX 78216.

IT IS, THEREFORE, ORDERED that Superior Auctioneers and Marketing, Inc. shall be paid the sum of \$125,935.05, plus interest that has accrued on said sum since the date of the entry of this Order, for the payment of commissions, fees and expenses and that Wells Fargo Bank, San Francisco, California, is ordered and authorized to deliver said sum from Account #6075-851519 styled "W. J. Runyon & Son, Inc., Special Account" to Superior Auctioneers and Marketing, Inc.

IT IS FURTHER ORDERED that W. J. Runyon & Son, Inc., Debtor-in-Possession, shall be paid the sum of \$22,444.62, plus interest that has accrued on said sum since the date of the entry of this Order, for the reimbursement of expenses and that Wells Fargo Bank, San Francisco, California, is ordered and authorized to deliver said sum from Account #6075-851519 styled "W. J. Runyon & Son, Inc., Special Account" to W. J. Runyon & Son, Inc.

SO ORDERED this the 22 day of Jaquary, 1987.

  
U. S. BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

IN RE: W. J. RUNYON & SON, INC.,  
DEBTOR

CHAPTER 11 PROCEEDING

CASE NO. 8600304WC

APPLICATION TO SELL ASSETS OF THE DEBTOR  
FREE AND CLEAR OF LIENS AND ENCUMBERANCES

NOW COMES W. J. Runyon & Son, Inc., "Debtor" by and through his undersigned attorney and respectively requests authorization of this Honorable Court to sell certain assets free and clear of liens and encumbrances, pursuant to §363 of the United States Bankruptcy Code "Code", and in support thereof would show unto the Court as follows:

1. Debtor voluntarily filed a petition under Chapter 11 of the Code on February 18, 1986, and has been managing its affairs and property since such time as a Debtor-in-Possession.

2. In the exercise of reasonable business judgment, Debtor has concluded that it is in the best interest of the estate that Debtor reduce the scope of its operations and that it is not necessary to retain the assets described in the attached exhibits. Debtor may desire to retain certain of the items of equipment and reserves the right to withdraw some of the equipment or vehicles from the sale. In addition, certain creditors, hereinafter identified, claim a security interest in

some or all of the equipment on the attached exhibits. These creditors have made it known to the undersigned as well as to the Court that they are concerned about the necessity of selling this equipment immediately in order to achieve the best price and to avoid further depreciation of the value of the assets. Debtor may desire to negotiate a lease with respect to some of the equipment if such seems more advantageous to the estate.

3. In addition, Debtor owns certain real estate in Harrison County, Mississippi, which is not necessary to the reorganization and which should be disposed of as promptly as possible for the best price available. Appraisals have been made but are not complete at this point and the Debtor would request that the Court grant it forty-five (45) days to attempt to sell the property for the appraised values and without further permission of the Court.

4. Debtor further proposes that it would be to the advantage of all parties concerned to have Debtor marshall the assets described in the attached exhibits clean, paint and repair as necessary all the equipment, place it in one specific place, retain an auctioneer and advertise the sale of this equipment in a businesslike and prompt manner. Debtor would propose that the cost of repairing and cleaning up and maintaining the equipment and moving it to a storage facility and protecting it at the facility should be considered a cost of sale and deducted from the sale proceeds.

5. Attached as Exhibit "A" is a list of equipment in which Crocker National Bank claims an interest as a secured creditor. Attached as Exhibit "B" is a list of equipment in which Credit Alliance Corporation claims an interest as a secured creditor. Attached as Exhibit "C" through "H" are descriptions of real estate in which Credit Alliance claims an interest as a secured creditor.

6. The ability to dispose of this equipment, free and clear of liens, will assist in the proper reorganization of the Debtor and the confirmation of the plan. Disposing of this equipment, and applying the proceeds to the secured debts, if any, as their interest may appear, will help relieve Debtor from the responsibility of paying interest pursuant to the Court Order of March 17, 1986. It is Debtor's desire and it so moves that liens and administrative expenses should be applied to the proceeds of this sale in the same priority as they may bear against the assets of the Debtor. To that end, this sale shall be free and clear of liens.

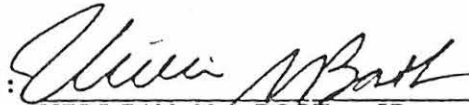
7. Debtor would ask this Court to set this matter for hearing on a day certain on at least twenty (20) days notice in order that Debtor may make its plan to conduct the sale in an orderly and businesslike fashion.

WHEREFORE, Debtor asks the Court to set this matter for hearing and at the hearing, approve the sale of all the assets described in the attached exhibits pursuant to §363 of the Code

as hereinabove set forth, said sale to be free and clear of liens, and the same to be on a cash basis, that the liens and administrative expenses incurred herein shall apply against the proceeds of the sale in the same priority as against the assets, if any, and that all costs of conducting the sale and repairing, painting, and otherwise fixing up the equipment should be considered a cost of sale and deducted from the proceeds of the sale. Debtor will report the results of any sale immediately. Debtor reserves the right to withdraw some of the euipment from the sale.

Respectfully Submitted,

W. J. RUNYON & SON, INC.,  
DEBTOR


BY:   
WILLIAM M. BOST, JR.,  
ATTORNEY FOR DEBTOR

P. O. DRAWER 1099  
VICKSBURG, MS 39180  
(601) 636-5433

CERTIFICATE

I, William M. Bost, Jr., attorney of record for the Debtor, W. J. Runyon & Son, Inc., hereby certify that I have this day mailed, postage prepaid, via U. S. Mail, a true and correct copy of the above and foregoing Application and Notice to all parties in interest at their usual business addresses according to the Master Mailing Matrix on file in the Office of the Clerk.

Dated this the 3<sup>rd</sup> day of April, 1986.

  
WILLIAM M. BOST, JR.

Exhibits "A" through "H" are attached to the original APPLICATION TO  
SELL ASSETS OF THE DEBTOR FREE AND CLEAR OF LIENS AND ENCUMBRANCES  
on file herein, but are not attached hereto for the purposes of this order.

IN THE UNITED STATES BANKRUPTCY COURT,  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

IN RE: W. J. RUNYON & SON, INC.,  
DEBTOR

CHAPTER 11 PROCEEDING

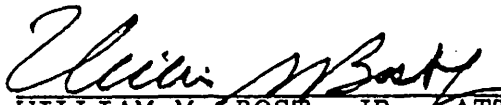
CASE NO. 8600304WC

NOTICE

TO: ALL CREDITORS AND OTHER PARTIES IN INTEREST:

YOU ARE HEREBY NOTIFIED that W. J. Runyon & Son, Inc., Debtor-in-Possession, has filed a Motion for Sale of Assets pursuant to §363(b) of Title 11 of the United State Code. Application asks the Court to permit the Debtor to marshall all of the equipment, repair, paint and fix up as necessary and store it in a single facility in order to conduct an auction sale or other sale for the best available price in a businesslike manner. The costs of the sale will be deducted from the sale proceeds. The sale will be free and clear of liens and all sale proceeds will be held in escrow or in trust and the pre-petition liens and administrative expenses incurred in the administration of the estate shall apply against the proceeds of the sale on the same priority as against the assets, prior to the sale. A copy of the application can be obtained from the Debtor's attorney by sending to the attorney at the hereinafter designated address, a check for \$10.00 to cover reproduction and handling and a self-addressed stamped envelope. Objections must be served upon William M. Bost, Jr., P. O. Drawer 1099, Vicksburg, Mississippi 39180, Attorney for Debtor-in-Possession and upon the Clerk of the Court, P. O. Drawer 2448, Jackson, Mississippi 39225-2448, not later than the 29th day of April, 1986. ~~HEARING IN THIS CAUSE WILL BE HELD IN THE BANKRUPTCY COURT ON THE 10TH FLOOR OF THE OLD DEPOSIT GUARANTY NATIONAL BANK BUILDING, JACKSON, MISSISSIPPI, ON THE XXXXXXXXXXXXX DAY OF APRIL, 1986.~~

DATED this the 3rd day of April, 1986.

  
WILLIAM M. BOST, JR. ATTORNEY  
FOR DEBTOR-IN-POSSESSION

ELLIS, BRADDOCK, BOST & ROBINSON, LTD.  
P. O. DRAWER 1099  
VICKSBURG, MS 39180  
(601) 636-5433



JUL 23 1986

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

IN THE MATTER OF:

CHAPTER 11 PROCEEDING

W. J. RUNYON & SON, INC.

CASE NO. 8600304 WC

ORDER

This action is before the Court upon motion of W. J. Runyon & Son, Inc. (Runyon), the debtor-in-possession, to sell certain assets consisting of equipment and vehicles free and clear of liens and to retain the proceeds of such sale subject to the liens and claims of creditors. Having considered the same, the Court finds that Crocker National Bank (Crocker Bank) filed an objection to said motion, but that the parties have now agreed as to the terms and conditions of said sale, and that said objection is hereby withdrawn. Accordingly, it is ORDERED:

1. That the debtor is hereby authorized to immediately enter into an auction sale agreement in substantially the form as attached as Exhibit "A" to this Order.

2. That pursuant to said auction sale agreement the debtor is authorized to sell, convey and deliver by public auction all of the equipment and vehicles listed on an Inventory of Equipment and Vehicles attached hereto as Exhibit "B" to this Order except the

items listed in Exhibit "C" to this Order may be subsequently withdrawn from said auction sale by agreement of the debtor and Crocker Bank or upon further order of this Court.

3. That said equipment and vehicles shall be sold and conveyed free and clear of any and all liens of any type or amount and under the circumstances and conditions as set forth in the auction sale agreement and the orders of this Court.

4. The sale and disposition of said equipment and vehicles pursuant to this Order and the attached auction sale agreement is hereby adjudged to be a sale and disposition made pursuant to a judicial proceeding as set forth in Section 75-9-507(b), Miss. Code Ann. (1972).

5. That all checks delivered in payment of said equipment shall be made payable to W. J. Runyon & Son, Inc., debtor-in-possession.

6. That immediately upon the conclusion of the auction sale of said equipment, the auctioneer shall promptly deliver all money, checks and proceeds of said sale to designated representatives of the debtor and Crocker Bank, that said checks shall be endorsed by the debtor, and that all of said checks and sales proceeds shall be promptly deposited in an interest bearing account at the Wells Fargo Bank, San Francisco, California, styled "W. J. Runyon & Son, Inc., Special Account" and that no withdrawal or disbursement shall be made from said account except upon order of this Court. Interest on said

account shall be paid at the highest available rate for accounts of equivalent size on deposit for thirty (30) days or more.

7. That within ten (10) days after said auction sale, the debtor and the auctioneer shall make application with this Court for reimbursement of all expenses necessarily incurred in connection with said auction sale pursuant to the auction sale agreement, which application shall include copies of invoices and evidence of payment of said expenses.


8. That within ten (10) days after the conclusion of said auction sale, the auctioneer shall make application for payment of:

- a. All sales taxes; and
- b. A commission to be paid for the gross receipts (excluding sales taxes) of the auction sale as set forth in the auction sale agreement.

ORDERED, this the 28 day of July, 1986.

  
BANKRUPTCY JUDGE

SUBMITTED BY:

  
ATTORNEY FOR CROCKER NATIONAL  
BANK

AGREEMENT

AGREEMENT, made this the \_\_\_\_\_ day of June, 1986 by and between \_\_\_\_\_ (Auctioneer), W. J. Runyon & Son, Inc. (Owner), and The Crocker National Bank (Bank), for the public auction sale of equipment, trucks, trailers and vehicles in which Bank claims a security interest and which are itemized and described an "Inventory of Equipment", which is attached hereto as Exhibit "A" and incorporated by reference.

I. APPROVAL OF THE BANKRUPTCY COURT

Owner is the debtor-in-possession in a Chapter 11 proceeding styled In re: W. J. Runyon & Son, Inc., Cause No. 8600304WC pending in the Bankruptcy Court for the Southern District of Mississippi. All terms and conditions of this Agreement are subject to the approval and orders of the Bankruptcy Court.

II. DATE AND LOCATION OF AUCTION

The auction shall be conducted in or about \_\_\_\_\_ 1986; and that a date for the auction, as mutually agreed upon by Owner, Auctioneer, and Bank, be scheduled a minimum of \_\_\_\_\_ weeks from the date of execution of this auction agreement. The auction shall be conducted in or about the Jackson or Vicksburg, Mississippi areas at a site which is agreeable to Owner and Bank. Owner agrees that each item of equipment will be delivered to the sale site at least \_\_\_\_\_ days prior to the sale date.

### III. PUBLIC AUCTION METHOD OF SALE

Owner will sell, convey and deliver title to the Equipment, subject to approval of the Bankruptcy Court, free and clear of any and all liens and encumbrances, to the highest bidder at the auction; without minimum, reservation, buy-back, or persons bidding for Owner.

### IV. CONSIGNMENTS OF COMPARABLE EQUIPMENT

Consignments of comparable equipment for the auction will be accepted subject to the mutual agreement of Owner, Auctioneer and Bank. In the event other property is included in the auction sale, expenses relative to the auction will then be prorated among all participants.

### V. ADVERTISING AND PROMOTION OF AUCTION

Auctioneer will advertise and publicize the auction. The advertising budget and advertising copy for the auction will be subject to the mutual agreement of Owner, Auctioneer and Bank. Based on an estimated total advertising budget of Thirty Thousand Dollars (\$30,000.00), the promotion of the auction will include: "

- (1) a direct-mail campaign throughout the United States of full-color, descriptive auction brochures (one to pre-qualified, interested buyers from Auctioneer's exclusive mailing list);
- (2) advertisements in appropriate trade and business journals and periodicals throughout the United States;

(3) advertisements in major newspapers throughout the United States; and

(4) direct personal and telephone contacts to potential purchasers by Auctioneer's Sales and Marketing Department.

Auctioneer will advance funds, interest free, for such advertising and promotional expenditures; and will be reimbursed the actual costs of same from the proceeds of the auction, subject to the approval of the Bankruptcy Court.

#### VI. AUCTION FACILITIES

Owner shall furnish a suitable site for the preparation of the Equipment and from which to conduct the auction (including the check-out period of ten days following the date of the auction). "Suitable site" will include an office facility (or office trailer), utilities, pay telephone service, and lavatory accommodations. All costs incurred by Owner which are necessary to comply with this provision shall be reimbursed from the proceeds of the sale, subject to approval of the Bankruptcy Court.

#### VII. DELIVERY OF EQUIPMENT

Auctioneer requests that Owner, at Owner's expense, deliver the Equipment to the auction site with mounted attachments, operating batteries, and adequate fuel; and in sufficient time for make-ready preparation and inspection by prospective purchasers. All costs incurred by Owner which are necessary to comply with this provision

shall be reimbursed from the proceeds of the sale, subject to approval of the Bankruptcy Court.

#### VIII. MAKE-READY PREPARATION

Make-Ready Requirements - Make-ready of the Equipment will be limited to the work required to enhance the sale of the Equipment and to maximize the net dollar return from the sale of the Equipment and may include, as needed: sandblasting, steam cleaning, painting, decaling, and detailing the Equipment (using only the manufacturers' color, trim and decals); replacing broken or missing glass; repairing and/or reupholstering torn upholstery; replacing worn and missing parts (e.g., rubber, cutting edges, lights, grills, etc.); straightening panels, bumpers, and fenders; repairing cracks, grinding, and removing trash on machines; tuning-up engines; repairing hydraulic leaks; and/or undercarriage work.

Repair and/or cosmetic enhancement of the Equipment will be subject to approval of the Bankruptcy Court.

Make-Ready Supervisory Assistance - Auctioneer will furnish make-ready supervisory assistance to manage the make-ready preparation for the auction. The Make-Ready Supervisor will be a full-time, qualified, and experienced employee of Auctioneer, whose responsibilities will include, but not be limited to:

- (1) providing recommendations concerning the cosmetic, mechanical, and/or welding repairs needed on the Equipment;

- (2) soliciting bids from, subcontracting, and supervising the services of qualified and experienced cleaning and painting, mechanical, and/or welding contractors;
- (3) subcontracting and supervising laborers for inventorying, sorting, fueling, starting, moving, transporting, arranging, displaying, aligning and/or lotting the Equipment;
- (4) subcontracting and supervising laborers for preparing the auction site; and
- (5) cataloging the Equipment in such a manner to be used as a guide for buyers (sale catalog).

The cost of furnishing such make-ready supervisory assistance is estimated at One Thousand Dollars (\$1,000.00) per week, for a period of approximately ten weeks, or a total expenditure of Ten Thousand Dollars (\$10,000.00), such expenditure to be deducted from the proceeds of sale subject to approval of the Bankruptcy Court.

Cleaning and Painting, Mechanical, and/or Welding Contractors - Auctioneer will be responsible for soliciting bids from, subcontracting, and supervising the services of qualified and experienced cleaning and painting, mechanical, and/or welding contractors for the performance of cosmetic, mechanical, and/or welding repairs on the Equipment, as recommended by Auctioneer and as approved by the Bankruptcy Court.

Labor - Auctioneer will be responsible for subcontracting and



supervising laborers to work under the direction of the Make-Ready Supervisor to:

- (1) inventory, sort, fuel, start, move, transport, arrange, display, align, and/or lot the Equipment;
- (2) prepare the auction site;
- (3) show the Equipment to prospective purchasers during the pre-inspection period of seven days prior to the date of the auction; and
- (4) otherwise assist Auctioneer as required.

Auctioneer will advance funds, interest free, for such make-ready expenditures; and will deduct the actual costs of same from the proceeds of the auction, subject to approval of the Bankruptcy Court.

#### IX. AUCTION TEAM

Auctioneer, at its expense, will furnish a qualified and experienced team of licensed auctioneers, ringmen, cashiers, clerks, and registration and clerical assistants to conduct the auction.

#### X. BUYER'S GUIDE

Auctioneer, at its expense, will furnish a sale catalog for the auction, with the Equipment to be sold numbered by lot, as a guide for bidders. The sale catalog will contain the "The Rules of the Auction and the Terms of the Sale" as approved by the Bankruptcy Court.

#### XI. WARRANTY

Auctioneer will not make representations or warranties of any

kind or nature, express or implied, with respect to the qualify or fitness of the Equipment for any purpose, or with respect to the condition of the Equipment. Any purchaser of the Equipment will assume full and complete responsibility with respect to the condition, state of repair, or lack of repair of all or any portion of the Equipment; and Auctioneer will not have any obligation or liability of any kind to any purchaser or any other third parties with respect thereto.

#### XII. SECURITY AND CHECKOUT PERSONNEL

Auctioneer will be responsible for furnishing security services for minimum, twenty-four hour security prior to the date of the auction; and minimum, twenty-four hour security and checkout of purchases beginning the day of the auction and continuing through the checkout period of ten days following the date of the auction.

Auctioneer will advance funds, interest free, for such security and checkout personnel; and will be reimbursed the actual costs of same from the proceeds of the auction, subject to the approval of the Bankruptcy Court.

#### XIII. CHECKOUT PROCEDURE

Successful purchasers will receive two yellow copies of Auctioneer's invoice upon full payment. One yellow copy of this invoice will be furnished to security personnel by the purchaser, at time of checkout, permitting the purchaser to remove purchases from

the auction site.

#### XIV. TRANSPORTATION AGENTS

Purchasers, at their sole cost and expense, will bear the responsibility of loading and trucking or otherwise removing the Equipment from the Equipment site. Auctioneer, however, will be responsible for contacting transportation companies, rail carriers, truckers, freight handlers, freight carriers, and/or freight forwarders to request their attendance at the auction for the convenience of buyers.

#### XV. CATERING SERVICES

Auctioneer will be responsible for arranging catering services the day of the auction at no expense to Owner.

#### XVI. COLLECTIONS AND ACCOUNTING OF AUCTION

Anyone wishing to bid on items in the auction will register for the auction by furnishing the required information to Auctioneer as set forth in Auctioneer's bidder's card. Anyone bidding for an account other than their own will have to register as such. Auctioneer will reserve the right to reject the bid of anyone that is not a registered bidder.

All purchases will be paid in U.S. funds the day of the auction by cash, Cashier's Check, company check, or personal check. All checks shall be made payable to W. J. Runyon & Son, Inc., Debtor-In-Possession. A bank letter of reference will be required with all

company or personal checks. Auctioneer shall immediately remit all proceeds of the sale to Owner for deposit in such account as directed by order of the Bankruptcy Court. Owner shall immediately apply to the Bankruptcy Court for an order directing that (a) all sales taxes shall be paid for account of the Owner/Auctioneer; (b) that the Auctioneer shall be paid a commission of 5% of the gross receipts (excluding sales taxes); (c) that reimbursable expenses be paid; and (d) that the remaining proceeds shall be held subject to further orders of the Bankruptcy Court. Auctioneer and Owner shall submit invoices on reimbursable expenses to the Bankruptcy Court for expense reimbursement.

Auctioneer will furnish Owner with the pink copies of Auctioneer's invoices at the conclusion of the auction; which will state the buyer's name and address, the buyer's number, and the lots and price of the lots purchased by the buyer. Within ten working days from the date of the auction, Auctioneer will furnish to Owner and Bank a description of the Equipment sold in the auction, in lot number sequence, to include the buyer's number and the full and true amount of sales price received.

Owner and/or Bank will have the right to audit any and all records and accounting of the auction. Auctioneer will have the right to require that any such audit be conducted at their sole cost and expense and that the audit be conducted at Auctioneer's executive

offices located in Fort Worth, Tarrant County, Texas.

XVII. COMMISSION TO AUCTIONEER

Owner will grant Auctioneer exclusive right to sell all Equipment advertising for auction, and will pay Auctioneer Five Percent (5%) of the gross receipts (excluding sales taxes) from the sale of that Equipment, as commission for services rendered and the fulfillment of the responsibilities described. Owner further agrees that Auctioneer shall be paid from the proceeds of the auction all expenses provided herein, subject to the approval of the Bankruptcy Court.

XVIII. DELEGATION OF RIGHTS

Auctioneer will not assign or delegate any rights, obligations, or duties without the express, written consent of Owner and Bank.

XIX. BEST EFFORT

Auctioneer hereby agrees and covenants to use its best efforts and workmanlike manner to secure purchasers and conduct the auction, and to comply with all federal, state, and local laws and requirements.

XX. MULTIPLE COUNTERPARTS

This Agreement may be executed by and between the parties in multiple counterparts or multiple originals.

XXI. GOVERNING LAW

This Agreement is subject to the laws of the state of Mississippi and shall inure to the benefit of the parties, their successors and

assigns, including successor trustees in bankruptcy.

WITNESS OUR SIGNATURES, on the dates set forth below.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATED: \_\_\_\_\_

W. J. RUNYON & SON, INC., DEBTOR-  
IN-POSSESSION

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATED: \_\_\_\_\_

CROCKER NATIONAL BANK

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATED: \_\_\_\_\_

Exhibits "B" and "C" are attached to the original ORDER entered herein on July 28, 1986, but are not attached hereto for the purposes of this order.

## AGREEMENT

AGREEMENT, made this the 11 day of <sup>Aug</sup>~~June~~, 1986 by and between Superior Auctioneering and Marketing, Inc. (Auctioneer) and W. J. Runyon & Son, Inc. (Owner), for the public auction sale of equipment, trucks, trailers and vehicles in which Bank claims a security interest and which are itemized and described on an "Inventory of Equipment", which is attached hereto as Exhibit "A" and incorporated by reference.

### I. APPROVAL OF THE BANKRUPTCY COURT

Owner is the debtor-in-possession in a Chapter 11 proceeding styled In Re: W. J. Runyon & Son, Inc., Cause No. 8600304WC pending in the Bankruptcy Court for the Southern District of Mississippi. All terms and conditions of this Agreement are subject to the approval and orders of the Bankruptcy Court.

### II. DATE AND LOCATION OF AUCTION

The auction shall be conducted in or about October 8, 1986; and that a date for the auction, as mutually agreed upon by Owner and Auctioneer, be scheduled a minimum of 8 weeks from the date of execution of this auction agreement. The auction shall be conducted in or about the Jackson or Vicksburg, Mississippi areas at a site which is agreeable to Owner and



Crocker National Bank. Owner agrees that each item of equipment will be delivered to the sale site at least 14 days prior to the sale date.

### III. PUBLIC AUCTION METHOD OF SALE

Owner will sell, convey and deliver title to the Equipment, subject to approval of the Bankruptcy Court, free and clear of any and all liens and encumbrances, to the highest bidder at the auction; without minimum, reservation, buy-back, or persons bidding for Owner.

### IV. CONSIGNMENTS OF COMPARABLE EQUIPMENT

Consignments of comparable equipment for the auction will be accepted subject to the mutual agreement of Owner, Auctioneer and Bank. In the event other property is included in the auction sale, expenses relative to the auction will then be prorated among all participants.

### V. ADVERTISING AND PROMOTION OF AUCTION

Auctioneer will advertise and publicize the auction. The advertising budget and advertising copy for the auction will be subject to the mutual agreement of Owner and Auctioneer. Based on an estimated total advertising budget of Thirty Thousand Dollars (<sup>25000.00</sup>~~\$30,000.00~~), the promotion of the auction will include:

- 1) a direct-mail campaign throughout the United States of full-color, descriptive auction brochures (one to prequalified, interested

buyers from Auctioneer's exclusive mailing list);

2) advertisements in appropriate trade and business journals and periodicals throughout the United States;

3) advertisements in major newspapers throughout the United States; and

4) direct personal and telephone contacts to potential purchasers by Auctioneer's Sales and Marketing Department.

Auctioneer will advance funds, interest free, for such advertising and promotional expenditures; and will be reimbursed the actual costs of same from the proceeds of the auction, subject to the approval of the Bankruptcy Court.

#### VI. AUCTION FACILITIES

Owner shall furnish a suitable site for the preparation of the Equipment and from which to conduct the auction (including the checkout period of ten days following the date of the auction). "Suitable site" will include an office facility (or office trailer), utilities, pay telephone service, and lavatory accommodations. All costs incurred by Owner which are necessary to comply with this provision shall be reimbursed from the proceeds of the sale, subject to approval of the Bankruptcy Court.

## VII. DELIVERY OF EQUIPMENT

Auctioneer requests that Owner, at Owner's expense, deliver the Equipment to the auction site with mounted attachments, operating batteries, and adequate fuel; and in sufficient time for make-ready preparation and inspection by prospective purchasers. All costs incurred by Owner which are necessary to comply with this provision shall be reimbursed from the proceeds of the sale, subject to approval of the Bankruptcy Court.

## VIII. MAKE-READY PREPARATION

Make-Ready Requirements - Make-ready of the Equipment will be limited to the work required to enhance the sale of the Equipment and to maximize the net dollar return from the sale of the Equipment and may include, as needed: sandblasting, steam cleaning, painting, decaling, and detailing the Equipment (using only the manufacturers' color, trim and decals); replacing broken or missing glass; repairing and/or reupholstering torn upholstery; replacing worn and missing parts (e.g., rubber, cutting edges, lights, grills, etc.); straightening panels, bumpers, and fenders; repairing cracks, grinding, and removing trash on machines; tuning-up engines; repairing hydraulic leaks; and/or undercarriage work.

Repair and/or cosmetic enhancement of the Equipment will be subject to approval of the Bankruptcy Court.

Make-Ready Supervisory Assistance - Auctioneer will furnish make-ready supervisory assistance to manage the make-ready preparation for the auction. The Make-Ready Supervisor will be a full-time, qualified, and experienced employee of Auctioneer, whose responsibilities will include, but not be limited to:

- 1) providing recommendations concerning the cosmetic, mechanical, and/or welding repairs needed on the Equipment;
- 2) soliciting bids from, subcontracting, and supervising the services of qualified and experienced cleaning and painting, mechanical, and/or welding contractors;
- 3) subcontracting and supervising laborers for inventorying, sorting, fueling, starting, moving, transporting, arranging, displaying, aligning and/or lotting the Equipment;
- 4) subcontracting and supervising laborers for preparing the auction site; and
- 5) cataloging the Equipment in such a manner to be used as a guide for buyers (sale catalogue).

Cleaning and Painting, Mechanical, and/or Welding

Contractors - Auctioneer will be responsible for soliciting bids from, subcontracting, and supervising the services of qualified

and experienced cleaning and painting, mechanical, and/or welding contractors for the performance of cosmetic, mechanical, and/or welding repairs on the Equipment, as recommended by Auctioneer. and as approved by the Bankruptcy Court.

Labor - Auctioneer will be responsible for sub-contracting and supervising laborers to work under the direction of the Make-Ready Supervisor to:

- 1) inventory, sort, fuel, start, move, transport, arrange, display, align, and/or lot the Equipment;
- 2) prepare the auction site;
- 3) show the Equipment to prospective purchasers during the pre-inspection period of seven days prior to the date of the auction; and
- 4) otherwise assist Auctioneer as required.

Auctioneer will advance funds, interest free, for such make-ready expenditures; and will deduct the actual costs of same from the proceeds of the auction, subject to approval of the Bankruptcy Court.

#### IX. AUCTION TEAM

Auctioneer, at its expense, will furnish a qualified and experienced team of licensed auctioneers, ringmen, cashiers, clerks, and registration and clerical assistants to conduct the auction.

#### X. BUYER'S GUIDE

Auctioneer, at its expense, will furnish a sale catalog for the auction, with the Equipment to be sold numbered by lot; as a guide for bidders. The sale catalog will contain "The Rules of the Auction and the Terms of the Sale" as approved by the Bankruptcy Court.

#### XI. WARRANTY

Auctioneer will not make representations or warranties of any kind or nature, express or implied, with respect to the quality or fitness of the Equipment for any purpose, or with respect to the condition of the Equipment. Any purchaser of the Equipment will assume full and complete responsibility with respect to the condition, state of repair, or lack of repair of all or any portion of the Equipment; and Auctioneer will not have any obligation or liability of any kind to any purchaser or any other third parties with respect thereto.

#### XII. SECURITY AND CHECKOUT PERSONNEL

Auctioneer will be responsible for furnishing security services for minimum, twenty-four hour security prior to the date of the auction; and minimum, twenty-four hour security and checkout of purchases beginning the day of the auction and continuing through the checkout period of ten days following the date of the auction.

Auctioneer will advance funds, interest free, for such security and checkout personnel; and will be reimbursed the actual costs of same from the proceeds of the auction, subject to the approval of the Bankruptcy Court.

XIII. CHECKOUT PROCEDURE

Successful purchasers will receive two yellow copies of: Auctioneer's invoice upon full payment. One yellow copy of this invoice will be furnished to security personnel by the purchaser, at time of checkout, permitting the purchaser to remove purchases from the auction site.

XIV. TRANSPORTATION AGENTS

Purchasers, at their sole cost and expense, will bear the responsibility of loading and trucking or otherwise removing the Equipment from the Equipment site. Auctioneer, however, will be responsible for contacting transportation companies, rail carriers, truckers, freight handlers, freight carriers, and/or freight forwarders to request their attendance at the auction for the convenience of buyers.

XV. CATERING SERVICES

Auctioneer will be responsible for arranging catering services the day of the auction at no expense to Owner.

XVI. COLLECTIONS AND ACCOUNTING OF AUCTION

Anyone wishing to bid on items in the auction will register for the auction by furnishing the required information

to Auctioneer as set forth in Auctioneer's bidder's card. Anyone bidding for an account other than their own will have to register as such. Auctioneer will reserve the right to reject the bid of anyone that is not a registered bidder.

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XXI. GOVERNING LAW

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WITNESS OUR SIGNATURES, on the dates set forth below.

SUPERIOR AUCTIONEERING AND MARKETING, INC.

BY: C. Phil Harvey  
TITLE: Sales Representative  
DATED: 8-11-86

W. J. RUNYON & SON, INC., DEBTOR-IN-POSSESSION

BY: [Signature]  
TITLE: President  
DATED: 8/11/86