

# RITCHIE BROS AUCTIONEERS INC

## FORM 6-K (Report of Foreign Issuer)

Filed 05/14/99 for the Period Ending 03/31/99

Telephone	7783315500
CIK	0001046102
Symbol	RBA
SIC Code	7389 - Business Services, Not Elsewhere Classified
Industry	Business Services
Sector	Services
Fiscal Year	12/31

# RITCHIE BROS AUCTIONEERS INC

## FORM 6-K (Report of Foreign Issuer)

Filed 5/14/1999 For Period Ending 3/31/1999

Address	6500 RIVER RD RICHMON, V6X 4G5
Telephone	604-273-7564
CIK	0001046102
Industry	Business Services
Sector	Services
Fiscal Year	12/31

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

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**Form 6-K**

**REPORT OF FOREIGN ISSUER  
PURSUANT TO RULE 13a-16 OR 15d-16 OF  
THE SECURITIES EXCHANGE ACT OF 1934**

For the quarter ended March 31, 1999

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**RITCHIE BROS. AUCTIONEERS INCORPORATED**

9200 Bridgeport Road  
Richmond, BC, Canada  
**V6X 1S1**  
(604) 273 7564  
(Address of principal executive offices)

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[indicate by check mark whether the registrant files or will file annual reports under cover Form 20-F or Form 40-F]

**Form 20-F  Form 40-F**

[indicate by check mark whether the registrant by furnishing information contained in this Form is also thereby furnishing the information to the Commission pursuant to rule 12g3-2(b) under the Securities Exchange Act of 1934]

Yes  No

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## **PART 1. FINANCIAL INFORMATION**

### **ITEM 1. FINANCIAL STATEMENTS**

The accompanying unaudited consolidated financial statements do not include all information and footnotes required by Canadian or United States generally accepted accounting principles. However, in the opinion of management, all adjustments (which consist only of normal recurring adjustments) necessary for a fair presentation of the results of operations for the relevant periods have been made. Results for the interim periods are not necessarily indicative of the results to be expected for the year or any other period. These financial statements should be read in conjunction with the summary of accounting policies and the notes to the consolidated financial statements for the year ended December 31, 1998 included in the Company's 1998 Annual Report, a copy of which has been filed with the Securities and Exchange Commission.

**RITCHIE BROS. AUCTIONEERS INCORPORATED**

**CONSOLIDATED STATEMENTS OF INCOME**  
 (EXPRESSED IN THOUSANDS OF UNITED STATES DOLLARS EXCEPT PER SHARE AMOUNTS)

(unaudited)

	THREE MONTHS ENDED MARCH 31,	
	1999	1998
Auction revenues.....	\$ 18,013	\$ 21,229
Direct expenses.....	2,752	3,567
	-----	-----
	15,261	17,662
Expenses:		
Depreciation.....	734	600
General and administrative.....	11,902	11,732
	-----	-----
	12,636	12,332
Income from operations.....	2,625	5,330
Other income (expenses):		
Interest expense.....	(243)	(741)
Other.....	267	323
	-----	-----
	(24)	(418)
Income before income taxes.....	2,649	4,912
Income taxes:		
Current.....	851	1,535
Future (note 3).....	166	--
	-----	-----
	1,017	1,535
Net income.....	\$ 1,632	\$ 3,377
	=====	=====
Net income per share:		
Basic.....	\$ 0.10	\$ 0.24
	=====	=====
Diluted.....	\$ 0.10	\$ 0.24
	=====	=====
Weighted average number of shares outstanding.....	16,572,152	13,991,833
	=====	=====
Diluted weighted average number of shares outstanding.....	16,783,199	14,188,166
	=====	=====

See accompanying notes to consolidated financial statements.

**RITCHIE BROS. AUCTIONEERS INCORPORATED**

**CONSOLIDATED BALANCE SHEETS**  
(EXPRESSED IN THOUSANDS OF UNITED STATES DOLLARS)

	MARCH 31 1999	DECEMBER 31 1998
	-----	-----
	(UNAUDITED)	
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents.....	\$108,506	\$ 73,620
Accounts receivable.....	40,366	6,771
Inventory.....	9,901	2,355
Advances against auction contracts.....	10,398	5,345
Prepaid expenses and deposits.....	1,462	711
	-----	-----
	170,633	88,802
Capital assets (note 2).....	65,881	61,324
Future income taxes (note 3).....	2,301	2,467
	-----	-----
	\$238,815	\$152,593
	=====	=====
<b>LIABILITIES AND EQUITY</b>		
Current liabilities:		
Auction proceeds payable.....	\$106,099	\$ 14,030
Accounts payable and accrued liabilities.....	13,602	21,751
Current bank loans.....	840	793
Income taxes payable.....	899	3,079
	-----	-----
	121,440	39,653
Bank term loans.....	10,648	8,768
	-----	-----
	132,088	48,421
<b>SHAREHOLDERS' EQUITY</b>		
Share capital (note 4).....	66,073	64,728
Retained earnings.....	43,404	41,772
Foreign currency translation adjustment.....	(2,750)	(2,328)
	-----	-----
	106,727	104,172
	-----	-----
	\$238,815	\$152,593
	=====	=====

Subsequent event (note 6)

See accompanying notes to consolidated financial statements.

**RITCHIE BROS. AUCTIONEERS INCORPORATED**

**CONSOLIDATED STATEMENT OF SHAREHOLDERS' EQUITY**  
 (EXPRESSED IN THOUSANDS OF UNITED STATES DOLLARS)

(unaudited)

	SHARE CAPITAL	RETAINED EARNINGS	FOREIGN CURRENCY TRANSLATION ADJUSTMENT	TOTAL SHAREHOLDERS' EQUITY
	-----	-----	-----	-----
Balance, December 31, 1998.....	\$64,728	\$41,772	\$(2,328)	\$104,172
Common shares issued.....	1,345	--	--	1,345
Net income.....	--	1,632	--	1,632
Foreign currency translation adjustment.....	--	--	(422)	(422)
	-----	-----	-----	-----
Balance, March 31, 1999.....	\$66,073	\$43,404	\$(2,750)	\$106,727
	=====	=====	=====	=====

See accompanying notes to consolidated financial statements.

**RITCHIE BROS. AUCTIONEERS INCORPORATED**

**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(EXPRESSED IN THOUSANDS OF UNITED STATES DOLLARS)

(unaudited)

	THREE MONTHS ENDED MARCH 31,	
	1999	1998
	-----	-----
Cash provided by (used in)		
Operations:		
Net income.....	\$ 1,632	\$ 3,377
Items not involving the use of cash		
Depreciation.....	734	600
Future income taxes.....	166	--
Changes in non-cash working capital:		
Accounts receivable.....	(33,595)	(51,347)
Inventory.....	(7,546)	299
Advances against auction contracts.....	(5,053)	(2,989)
Prepaid expenses and deposits.....	(751)	(250)
Auctions proceeds payable.....	92,069	63,624
Accounts payable and accrued liabilities.....	(8,149)	8,643
Income taxes payable.....	(2,180)	(3,253)
Foreign currency translation adjustment.....	(422)	(53)
	-----	-----
	36,905	18,651
	-----	-----
Financing:		
Issuance of share capital, net of issue costs.....	1,345	51,911
Bank loans.....	1,927	(241)
	-----	-----
	3,272	51,670
	-----	-----
Investments:		
Capital asset additions, net.....	(5,291)	(8,592)
	-----	-----
Increase in cash and cash equivalents.....	34,886	61,729
Cash and cash equivalents, beginning of period.....	73,620	27,149
	-----	-----
Cash and cash equivalents, end of period.....	\$108,506	\$88,878
	=====	=====
Supplemental disclosure of cash flow information		
Interest paid.....	\$ 248	\$ 735
Income taxes paid.....	\$ 2,161	\$ 4,415

See accompanying notes to consolidated financial statements.



**RITCHIE BROS. AUCTIONEERS INCORPORATED**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
(TABULAR DOLLAR AMOUNTS EXPRESSED IN THOUSANDS OF UNITED STATES DOLLARS)

MARCH 31, 1999

(Information as at March 31, 1999 and for the three-month periods ended March 31, 1999 and 1998 is unaudited)

1. SIGNIFICANT ACCOUNTING POLICIES:

(a) BASIS OF PRESENTATION:

These unaudited consolidated financial statements present the financial position, results of operations and changes in shareholders' equity and cash flows of Ritchie Bros. Auctioneers Incorporated (the "Company").

These consolidated financial statements have been prepared in accordance with Canadian generally accepted accounting principles for interim financial information. Except as disclosed in note 5, these consolidated financial statements comply, in all material respects, with generally accepted accounting principles in the United States.

2. CAPITAL ASSETS

Capital assets at December 31, 1998 are as follows:

	COST	ACCUMULATED DEPRECIATION	NET BOOK VALUE
	-----	-----	-----
Land and improvements.....	\$36,631	\$ 900	\$35,731
Buildings.....	21,056	2,825	18,231
Automotive equipment.....	5,164	1,606	3,558
Computer equipment.....	1,920	739	1,181
Yard equipment.....	2,619	1,124	1,495
Office equipment.....	1,996	1,018	978
Leasehold improvements.....	200	50	150
	-----	-----	-----
	\$69,586	\$8,262	\$61,324
	=====	=====	=====

Capital assets at March 31, 1999 are as follows:

	COST	ACCUMULATED DEPRECIATION	NET BOOK VALUE
	-----	-----	-----
Land and improvements.....	\$38,218	\$1,013	\$37,205
Buildings.....	23,581	2,919	20,662
Automotive equipment.....	5,631	1,768	3,863
Computer equipment.....	2,185	817	1,368
Yard equipment.....	2,543	1,147	1,396
Office equipment.....	2,267	1,084	1,183
Leasehold improvements.....	266	62	204
	-----	-----	-----
	\$74,691	\$8,810	\$65,881
	=====	=====	=====

**RITCHIE BROS. AUCTIONEERS INCORPORATED**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS -- (CONTINUED)**  
(TABULAR DOLLAR AMOUNTS EXPRESSED IN THOUSANDS OF UNITED STATES DOLLARS)

MARCH 31, 1999

(Information as at March 31, 1999 and for the three-month periods ended March 31, 1999 and 1998 is unaudited)

**3. FUTURE INCOME TAXES**

In the fourth quarter of 1998, the Company changed its policy for accounting for income taxes by adopting the provisions of Section 3465, Income Taxes, of The Handbook of the Canadian Institute of Chartered Accountants. Under this standard, current income taxes are recognized for the estimated income taxes payable for the current period. Future income tax assets and liabilities are recognized for temporary differences between the tax and accounting bases of assets and liabilities as well as for the benefit of losses available to be carried forward to future years for tax purposes that are likely to be realized.

The adoption of Section 3465 did not impact amounts reported in the prior period.

**4. SHARE CAPITAL:**

**SHARES ISSUED:**

In March 1998, the Company issued 3,335,000 common shares in connection with its initial public offering. Net proceeds raised from the offering, after deducting underwriting commissions and other direct costs, and after adding the future income tax benefit related to the amortization of underwriting costs, were \$53.9 million.

In February 1999, the Company issued 50,000 common shares to an employee. The transaction was recorded at a share price of \$26.875 per share, the market value of the common shares on the issuance date.

**OPTIONS GRANTED:**

In February 1999, the Company granted to directors and employees 17,000 options to acquire common shares. Each option has an exercise price of \$26.875, the market value of the common shares on the grant date, and expires on February 21, 2009.

**OPTIONS EXERCISED AND CANCELLED:**

During the three months ended March 31, 1999, 9,468 options were exercised at \$0.10 each and 1,500 options, having an exercise price of \$0.10 each, were cancelled. These \$0.10 options had been granted to employees of the Company prior to the Company's initial public offering. At March 31, 1999, 160,032 \$0.10 options remain outstanding.

**RITCHIE BROS. AUCTIONEERS INCORPORATED**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS -- (CONTINUED)**  
(TABULAR DOLLAR AMOUNTS EXPRESSED IN THOUSANDS OF UNITED STATES DOLLARS)

MARCH 31, 1999

(Information as at March 31, 1999 and for the three-month periods ended March 31, 1999 and 1998 is unaudited)

**5. UNITED STATES GENERALLY ACCEPTED ACCOUNTING PRINCIPLES:**

The consolidated financial statements are prepared in accordance with Canadian generally accepted accounting principles for interim financial information which differ, in certain respects, from accounting practices generally accepted in the United States and from requirements promulgated by the United States Securities and Exchange Commission.

Material differences to the consolidated financial statements and related notes of the Company are as follows:

**CONSOLIDATED STATEMENTS OF NET INCOME PER SHARE AND COMPREHENSIVE NET**

**INCOME**

	THREE MONTHS ENDED MARCH 31	
	1999	1998
Net income per share in accordance with United States GAAP		
Basic.....	\$ 0.10	\$ 0.24
Diluted.....	\$ 0.10	\$ 0.24
Net income.....	\$1,632	\$3,377
Other comprehensive income (loss) adjustments		
Foreign currency translation.....	(422)	(53)
Comprehensive net income in accordance with United States GAAP.....	\$1,210	\$3,324

**6. SUBSEQUENT EVENT:**

On April 1, 1999, the Company acquired the auction business of Forke, Inc. ("Forke"), a major auctioneer of industrial equipment headquartered in Lincoln, Nebraska. In related transactions, the Company has entered into agreements to acquire four permanent auction sites in Florida, North Carolina, Texas, and New Mexico, and an office building in Nebraska, subject to satisfactory completion of customary due diligence. The Company did not acquire Forke's equipment finance business. To acquire Forke's auction business, the Company paid cash of \$25 million, issued 100,000 common shares of the Company, and granted warrants to acquire 400,000 common shares of the Company for an exercise price of \$26.69 per share. To acquire the four permanent auction sites and the office building referred to above, and certain other tangible assets, the Company has agreed to pay \$12.4 million. The Company is financing these transactions substantially with a term loan facility.

## ITEM 2: MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### OVERVIEW

The following discussion summarizes the significant factors affecting the consolidated operating results and financial condition of Ritchie Bros. Auctioneers Incorporated ("Ritchie Bros." or the "Company") for the three months ended March 31, 1999 compared to the three months ended March 31, 1998. This discussion should be read in conjunction with the consolidated financial statements and notes thereto included herein and included in the Company's 1998 Annual Report. The Company prepares its consolidated financial statements in accordance with generally accepted accounting principles in Canada which, except as set out in note 5 to the consolidated financial statements, result in materially consistent financial position and results of operations to that which would be reported under generally accepted accounting principles in the United States. Amounts discussed below are based on consolidated financial statements prepared in accordance with Canadian accounting principles.

Ritchie Bros. is the world's leading auctioneer of industrial equipment. At March 31, 1999, the Company operated from over 50 locations, including 13 permanent auction sites and 7 regional auction units, in North America, Europe, Asia, Australia and the Middle East. The Company sells, through unreserved public auctions, a broad range of used equipment, including equipment utilized in the construction, transportation, mining, forestry, petroleum and agricultural industries.

Gross auction sales represent the aggregate selling prices of all items sold at Ritchie Bros. auctions during the periods indicated. Gross auction sales are key to understanding the financial results of the Company, since the amount of auction revenues and to a lesser extent, certain expenses, are dependent on it. Auction revenues include commissions earned as agent for consignors through both straight commission and gross guarantee contracts, plus the net profit on the sale of equipment purchased and sold by the Company as principal. Under a gross guarantee contract, the consignor is guaranteed a minimum amount of proceeds on the sale of its equipment. When the Company guarantees gross proceeds, it earns a commission on the guaranteed amount and typically participates in a negotiated percentage of proceeds, if any, in excess of the guaranteed amount. If auction proceeds are less than the guaranteed amount, the Company's commission would be reduced, or, if sufficiently lower, the Company would incur a loss. Auction revenues are reduced by the amount of any losses on gross guarantee consignments and sales by the Company as principal. Auction revenues also include interest income earned that is incidental to the auction business.

The Company's gross auction sales and auction revenues are affected by the seasonal nature of the auction business. Gross auction sales and auction revenues tend to increase during the second and fourth calendar quarters during which the Company generally conducts more auctions than in the first and third calendar quarters. The Company's gross auction sales and auction revenues are also affected on a period-to-period basis by the timing of major auctions. In newer markets where the Company is developing operations, the number and size of auctions and, as a result, the level of gross auction sales and auction revenues, is likely to vary more dramatically from period-to-period than in the Company's established markets where the number, size and frequency of the Company's auctions are more consistent. Finally, economies of scale are achieved as the Company's operations in a region mature from conducting intermittent auctions, establishing a regional auction unit, and ultimately to developing a permanent auction site. Economies of scale are also achieved when the size of the Company's auctions increases.

The Company is aware of potential restrictions that may affect the ability of equipment owners to transport certain equipment between some jurisdictions. Management believes that these potential restrictions have not had a significant impact on the Company's business, financial condition or results of operations to date. However, the extent of any future impact on the Company's business, financial condition or results of operations from these potential restrictions cannot be predicted at this time.

Although the Company cannot accurately anticipate the future effect of inflation, inflation historically has not had a material effect on the Company's operations.

In March 1999, the Company closed its office in Subic Bay, the Philippines due to significantly diminished activity at that location. The Company is negotiating to relocate its Asian regional auction unit to a more prominent Asian location.

On April 1, 1999, Ritchie Bros. acquired the auction business of Forke, Inc. ("Forke"), a major auctioneer of industrial equipment headquartered in Lincoln, Nebraska. Whereas Ritchie Bros. operates through over 50 locations throughout North America, Europe, Asia, Australia and the Middle East, Forke operated primarily in the United States. Forke had been conducting industrial auctions since 1921 and pioneered the industrial auction business in the United States. In related transactions, the Company has entered into agreements to acquire four permanent auction sites in Florida, North Carolina, Texas, and New Mexico, and an office building in Nebraska, subject to satisfactory completion of customary due diligence. The Company did not acquire Forke's equipment finance business. To acquire Forke's auction business, the Company paid cash of \$25 million, issued 100,000 common shares of the Company, and granted warrants to acquire 400,000 common shares of the Company at an exercise price of \$26.69 per share. To acquire the four permanent auction sites and the office building referred to above, and certain other tangible assets, the Company has agreed to pay \$12.4 million. The Company is financing these transactions substantially with a term loan facility. The Company expects that the Forke transaction will give rise to incremental operating costs commencing April 1, 1999. Incremental gross auction sales and auction revenues are not expected to commence until July 1999. These incremental amounts are expected to be material, but the actual amounts are unknown as they will be dependent, in part, on the productivity of the new employees.

On April 20, 1999, the Company opened its newest permanent auction site on the Gold Coast of Australia, near Brisbane, thereby upgrading its existing regional auction unit to a permanent auction site.

In May 1999, the Company purchased 60 acres of land in Montreal, Quebec with the intention of constructing a permanent auction site to serve the Montreal market. The new site is expected to replace the Company's existing Montreal-based regional auction unit in the first half of 2000, once the new auction facilities have been constructed.

## **RESULTS OF OPERATIONS**

### **AUCTION REVENUES**

Auction revenues of \$18.0 million for the three months ended March 31, 1999 decreased by \$3.2 million, or 15.1%, from the three months ended March 31, 1998 due to decreased gross auction sales, and a lower auction revenue rate earned by the Company on gross auction sales. Gross auction sales of \$201.8 million for the three months ended March 31, 1999 decreased by \$25.9 million, or 11.4%, from \$227.6 million in the 1998 period, primarily as a result of decreased gross auction sales in Europe and the effect on first quarter 1998 results of a large auction in the Middle East (a \$33 million auction was held in Dubai during the first quarter of 1998; the Company's first Dubai auction in 1999 was comparable in size -- \$31 million -- but was not held until the second quarter). Results for 1999 included significant gross auction sales for certain auctions held by the Company in the Port of Moerdijk, the Netherlands; Fort Worth, Texas; and Las Vegas, Nevada. Auction revenues as a percentage of gross auction sales have averaged 8.80% on a long-term basis. In the first quarter of 1999, the auction revenue rate of 8.93% was marginally higher than the long-term average and lower than the unusually high 9.33% rate experienced in the comparable 1998 period. The Company's expectations with respect to the long-term average auction revenue rate remain unchanged.

### **DIRECT EXPENSES**

Direct expenses are expenses that are incurred as a direct result of an auction sale being held. Direct expenses include the costs of hiring personnel to assist in conducting the auction, lease expenses for temporary auction sites, travel costs for full time employees to attend and work at the auction site, security hired to safeguard equipment while at the auction site, and advertising costs specifically related to the auction. Direct expenses of \$2.8 million for the three months ended March 31, 1999 decreased by \$0.8 million compared to the comparable period in 1998. As a percentage of gross auction sales, direct expenses were 1.36% for the three months ending March 31, 1999, lower than the 1.57% experienced during the 1998 period. This decrease

was primarily a result of fewer but larger auctions being held in the 1999 period as compared to the 1998 period and the related expense efficiencies arising from conducting large auctions.

## **DEPRECIATION EXPENSE**

Depreciation is calculated on capital assets employed in the Company's business, including building and site improvements, automobiles, yard equipment, and computers. In the three-month period ending March 31, 1999, depreciation increased marginally from the 1998 period due to an increase in depreciable fixed assets. Management anticipates that depreciation expense will increase as existing auction sites are improved and additional permanent auction sites are acquired and developed, including those permanent sites acquired in the Forke transaction.

## **GENERAL AND ADMINISTRATIVE EXPENSE**

General and administrative expense ("G&A") includes employee expenses, such as salaries, wages, performance bonuses and benefits, non-auction related travel, institutional advertising, insurance, general office, and computer expenses. For the three months ended March 31, 1999, the Company incurred G&A of \$11.9 million, as compared to \$11.7 million for the comparable three month period in 1998. G&A in the 1998 period was higher than the average quarterly G&A of \$9.8 million in 1998 because of unusually high performance bonus accruals during the quarter. During the first quarter of 1999, the Company incurred a special compensation expense of approximately \$1.3 million related to a share issuance to an employee. The Company does not intend to make similar share issuances in the future. Management anticipates that G&A will increase in the future due to the personnel hired as a result of the Forke transaction, and an increasing level of administrative infrastructure to support expansion of the Company's operations. See "-- Overview".

## **INCOME FROM OPERATIONS**

Income from operations was \$2.6 million in the three months ended March 31, 1999 as compared to \$5.3 million in the comparable 1998 period. The primary reason for the decrease was the reduced gross auction sales in the 1999 period compared to the 1998 period. During the quarter ended June 30, 1999, the Company expects to incur incremental expenses relating to the Forke acquisition; however, the Company does not expect to incur any related incremental revenues during the period. As a result, income from operations will be negatively affected.

## **INTEREST EXPENSE**

Interest expense includes interest and bank charges paid on term bank debt. Interest expense for the three months ended March 31, 1999 decreased to \$0.2 million, compared to \$0.7 million incurred in the three months ended March 31, 1998. The decrease resulted from lower balances on the Company's operating credit facilities during 1999 versus the comparable 1998 period, Management is financing the Forke transaction with a term bank loan (\$25 million was drawn down on April 1, 1999), and plans to partially finance the acquisition of additional permanent auction sites by incurring debt, which will result in an increase in interest expense in the future. See "-- Overview" and "Liquidity and Capital Resources."

## **OTHER INCOME**

Other income arises from equipment appraisals performed by the Company, and other miscellaneous sources. Other income for the three months ended March 31, 1999 of \$0.3 million was unchanged from the comparable 1998 period.

## **INCOME TAXES**

Income taxes of \$1.0 million for the three months ended March 31, 1999 have been computed based on rates of tax that apply in each of the tax jurisdictions in which the Company operates. The effective rate of tax on net income for the 1999 period of 38.4% is higher than the rate the Company would normally expect for subsequent periods and higher than the effective tax rate in the comparable 1998 period of 31.3%. During the

three months ended March 31, 1999, the Company earned a larger portion of income in higher tax rate jurisdictions than during the comparable period in 1998.

## **LIQUIDITY AND CAPITAL RESOURCES**

The Company's cash can fluctuate significantly from period to period, largely due to differences in timing of receipt of gross sale proceeds from buyers and the payment of net amounts due to consignors. If auctions are conducted near a period end, the Company may hold cash in respect of those auctions that will not be paid to consignors until after the period end. Accordingly, Management believes a more meaningful measure of the Company's liquidity is working capital, including cash.

At both March 31, 1999 and December 31, 1998, working capital, including cash, was \$49.2 million.

Net capital expenditures by the Company during the three months ended March 31, 1999 were \$5.3 million as compared to \$8.6 million for the three months ended March 31, 1998. In the 1999 period, the Company continued to incur site development costs in the United States, Canada, Australia and Europe.

The Company is continuing with its plan to add additional permanent auction sites around the world and is presently in various stages of commitments to acquire land for development in the United States and Canada, including certain sites being acquired in connection with the Forke transaction.

The Company has established credit facilities with financial institutions in the United States, Canada, Europe, and Australia. The Company presently has access to credit lines for operations exceeding \$95.0 million and to credit lines for funding property acquisitions exceeding \$35.0 million. At March 31, 1999, the Company had no bank debt relating to operations, and bank debt related to property acquisitions totaled \$14.8 million. . In addition, on March 26, 1999, the Company entered into a credit agreement to access up to \$35.0 million through a new term loan facility to fund the acquisition of the auction business and certain assets of Forke. The Company intends to finance the total Forke related borrowings of approximately \$35 million over a five year term, with repayments of approximately \$5 million per year and a balloon payment of approximately \$15 million in 2004. The all-in interest rate on the facility is currently Libor plus 0.8%. See "-- Overview".

## **YEAR 2000 COMPLIANCE**

The Company relies on computer systems and software to operate its business, including applications used to control information about bidders and consignors and to operate certain of its marketing, finance and administrative functions. The Company initiated its "Year 2000" compliance efforts in 1997. Management believes that only minor modifications remain to be completed to make its systems Year 2000 compliant and that related costs incurred to date have not, and estimated future costs will not, have a material impact on the Company's business, financial condition, or results of operations.

The most reasonable likely worst case Year 2000 scenario would involve the failure of one or more of the Company's key suppliers to become Year 2000 compliant. In such a scenario, the Company's ability to adequately advertise its auctions and account for receipts and payments as efficiently as it does at present could be negatively affected.

The Company is presently developing contingency plans in the event of the Company's or its key suppliers' failure to achieve full Year 2000 compliance and management anticipates these will be completed in June 1999. The plan includes identifying alternate organizations that may act as replacements for those with which the Company presently conducts business and which may not achieve full Year 2000 compliance, including one or more of its lenders, marketing service suppliers, or external software providers. The plan also includes development of internal back-up systems and identification of available replacement resources to restore operations to present levels in the event of Year 2000 non-compliance. Failure by the Company or any of its key suppliers to achieve full Year 2000 compliance in a timely manner or consistent with its current cost estimates, or to rectify deficiencies through any contingency plans, could have a material adverse effect on the Company's business, financial condition and results of operations.

## **FORWARD-LOOKING STATEMENTS**

This Management's Discussion and Analysis of Financial Condition and Results of Operations contains forward-looking statements that involve risks and uncertainties. These statements are based on current expectations and estimates about the Company's business. These statements include, in particular, statements relating to auction revenue rates, direct expense rates, G&A increases, income tax rates, the anticipated improvement, acquisition and development of permanent auction sites, and the financing available to the Company. Words such as "expects", "intends", "plans", "believes", "estimates" and variations of such words and similar expressions are intended to identify such forward-looking statements. These statements are not guarantees of future performance and involve certain risks, uncertainties and assumptions that are difficult to predict. The following important factors, among others, could affect the Company's actual results and could cause such results to differ materially from those expressed in the Company's forward-looking statements: the many factors that impact on the supply of and demand for used equipment; fluctuations in the market values of used equipment; periodic and seasonal variations in operating results or financial conditions; the timing and location of auctions; potential delays in construction or development of auction sites; actions of competitors; adverse changes in economic conditions; restrictions affecting the ability of equipment owners to transport equipment between jurisdictions; the ability of the Company to integrate the business acquired and personnel hired as a result of the Forke transaction; and other risks and uncertainties as detailed in the Company's Rule 424(b) Prospectus dated March 9, 1998. The Company undertakes no obligation to update publicly any forward-looking statements, whether as a result of new information, future events or otherwise. Forward-looking statements should be considered in light of these factors.



**PART II. OTHER INFORMATION**

**ITEM 6. EXHIBITS**

NUMBER	DESCRIPTION
*3.1	Articles of Amalgamation, as amended
*3.2	By-laws
*4.1	Form of common share certificate
4.2	Description of capital shares contained in the Articles of Amalgamation (see Exhibit 3.1)
4.3	Description of rights of securityholders contained in the By-laws (see Exhibit 3.2)
*10.1	1997 Stock Option Plan, as amended
*10.2	Form of Indemnity Agreement for directors and officers
10.3	Asset Purchase Agreement dated as of February 19, 1999 among Ritchie Bros. Auctioneers (America) Inc., Forke, Inc., and certain other parties
10.4	Loan Agreement dated as of March 26, 1999 between Ritchie Bros. U.S. Finance Limited Partnership (Delaware), Ritchie Bros. Auctioneers Incorporated and U.S. Bank National Association.

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\* Incorporated by reference to the same exhibit number from the Registration Statement on Form F-1 filed on September 26, 1997, as amended (File No. 333-36457).

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

RITCHIE BROS. AUCTIONEERS INCORPORATED  
(Registrant)

Date May 13, 1999

By /s/ ROBERT S. ARMSTRONG

-----  
Robert S. Armstrong,  
Corporate Secretary

## EXHIBIT 10.3

### ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated as of February 19, 1999 (this "Agreement"), among RITCHIE BROS. AUCTIONEERS (AMERICA) INC., a Washington corporation (the "Purchaser"), FORKE, INC., a Delaware corporation ("Forke, Inc."), and the other Sellers, which are direct or indirect wholly owned (other than Forke Los Subastadores S.A. de C.V. which is 99.7% owned) subsidiaries of Forke, Inc., listed on the Signature pages hereof (together with Forke, Inc., collectively, the "Sellers") and the other parties listed on the Signature pages hereof.

#### RECITALS

- A. The Sellers own and operate an auction business and an equipment marketing business (collectively, the "Business").
- B. The Purchaser desires to purchase from the Sellers, and the Sellers desire to sell to the Purchaser, certain of the property and assets constituting the Business as of the date hereof, on the terms and subject to the conditions set forth herein.
- C. Concurrently herewith, (i) Ritchie Bros. Properties Inc., an affiliate of the Purchaser ("RBP") and certain of the Sellers are entering into the Sellers' Real Property Agreements (as defined herein) with respect to the Sellers' Real Property (as defined herein) and (ii) RBP and Ring Power Corporation, a Florida corporation ("Ring Power") and a shareholder of Forke, Inc., are entering into the Ring Power Agreement (as defined herein) with respect to the Ring Power Real Property (as defined herein).

#### AGREEMENT

NOW, THEREFORE, in consideration of the premises and of the mutual agreements and covenants hereinafter set forth, the Purchaser and the Sellers hereby agree as follows:

#### ARTICLE I. DEFINITIONS

##### SECTION 1.01 CERTAIN DEFINED TERMS

As used in this Agreement, the following terms shall have the following meanings (such definitions to be equally applicable to both the singular and plural forms of the terms defined):

"Ancillary Agreements" means the Bill of Sale, the Assignment and Assumption Agreement and the Sellers' Noncompetition Agreement.

"Assignment and Assumption Agreement" means an Assignment and Assumption Agreement in substantially the form of Exhibit A.

"Auction Agreement" means the Auction Agreements in substantially the forms of Exhibits E-1 and E-2.

"Benefit Plan" means each retirement, pension, profit sharing, deferred compensation, savings, bonus, incentive, cafeteria, flexible benefits, medical, dental, vision, hospitalization, life insurance, dependent care assistance, tuition reimbursement, disability, sick pay, holiday, vacation, severance, stock purchase, stock option, stock appreciation rights, fringe benefit and other employee benefit plan, fund, policy, program, contract, arrangement or payroll practice (including, but not limited to each "employee benefit plan," as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) and each employment or consulting contract or agreement, whether formal or informal, whether written or unwritten and whether legally binding or not, (i) sponsored, maintained, provided or contributed to by any Seller, (ii) covering or benefiting any current or former officer, employee, agent, director or independent contractor of any Seller (or any dependent or beneficiary of any such individual) or (iii) with respect to which any Seller has (or could have) any actual or potential obligation or liability.

"Bill of Sale" means a Bill of Sale in substantially the form of Exhibit B.

"Book Value" means (a) with respect to any item of depreciable Tangible Personal Property, the cost thereof to the Sellers minus accumulated depreciation determined (i) as of the end of the month immediately preceding the month in which the relevant item is transferred hereunder (or if acquired in the month transferred, as of the date acquired) and (ii) in accordance with GAAP applied in a manner consistent with the preparation of the Financial Statements and (b) with respect to any item normally expensed, a good faith estimate of the value thereof determined by Sellers.

"Business" has the meaning specified in the recitals to this Agreement.

"Business Day" means any day that is not a Saturday, Sunday or any other day on which banks generally are required or authorized to be closed in Vancouver, British Columbia or Lincoln, Nebraska.

"Control" means the record or beneficial ownership, or the right to control voting or disposition, of more than 50% of the voting equity securities or interests, or the right to elect or appoint a majority of the board of directors or comparable

governing authority, of any entity.

"Environmental Laws" means any federal, state or local or foreign statute, law, rule or regulation relating to: (a) releases, discharges, spills, leaks or emissions (or threatened releases, discharges, spills, leaks or emissions) of Hazardous Substances; (b) the manufacture, handling, transport, use, treatment, storage or disposal of Hazardous Substances or materials containing Hazardous Substances; or (c) otherwise relating to pollution of the environment by Hazardous Substances or the protection of human health from injury from Hazardous Substances.

"Environmental Permits" means all permits, licenses, approvals and other authorizations required under applicable Environmental Laws.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any corporation, trade, business or other entity that, together with any Seller, is treated as a single employer under Section 414(b), (c), (m) or (o) of the Internal Revenue Code.

"GAAP" means United States generally accepted accounting principles.

"Hazardous Substances" means (a) substances, chemicals or materials in concentrations regulated under any applicable federal, state or local or foreign statute, law, rule or regulation, including, without limitation, the following federal statutes and their state counterparts, as well as such statutes' implementing regulations as amended from time to time and as interpreted by administering agencies: the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Water Act, the Safe Drinking Water Act, the Atomic Energy Act, the Toxic Substances Control Act, the Federal Insecticide, Fungicide, and Rodenticide Act, and the Clean Air Act; (b) regulated concentrations of petroleum and petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde, polychlorinated biphenyls and radon gas; and (c) any other substances, chemicals or materials in concentrations with respect to which a federal, state or local or foreign agency requires environmental investigation, monitoring, reporting or remediation.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations thereunder.

"Internal Revenue Code" means the U.S. Internal Revenue Code of 1986, as amended.

"Leases" means the leases related to each of the parcels of the Sellers' Leased Real Property.

"Material Adverse Effect" means any material adverse effect on the Assets or any change in, or effect on, the Business as currently being conducted that is or is reasonably likely to be materially adverse to the business, condition (financial or otherwise), results of operations or prospects of the Business after the Closing.

"Noncompetition Agreements" means the Sellers' Noncompetition Agreement, and the Shareholders' Noncompetition Agreements.

"RBA" means Ritchie Bros. Auctioneers Incorporated, a Canadian corporation.

"Registration Rights Agreement" means the Registration Rights Agreement between RBA and Forke, Inc., in substantially the form of Exhibit H.

"Ring Power Agreement" means a real property purchase agreement in substantially the form of Exhibit C-1.

"Ring Power Real Property" means the portion of real property owned by Ring Power Corporation in Ocala, Florida which portion is referred to in the Ring Power Agreement, and the improvements thereon and related fixtures.

"Securities Act" means the U. S. Securities Act of 1933, as amended.

"Sellers' Leased Real Property" means the real property leased by the Sellers and used in the operation of the Business.

"Sellers Noncompetition Agreement" means the Noncompetition and Confidentiality Agreement, to be executed by each Seller, in substantially the form of Exhibit D-1.

"Sellers' Owned Real Property" means the real property owned by the Sellers in Statesville, North Carolina; Albuquerque, New Mexico; and Fort Worth, Texas, referred to in the Sellers' Real Property Agreements, and the improvements thereon and related fixtures.

"Sellers' Real Property" means the Sellers' Owned Real Property and the Sellers' Leased Real Property.

"Sellers' Real Property Agreements" means real property purchase agreements in substantially the forms of Exhibits C-2, C-3 and C-4.

"Shareholder Noncompetition Agreements" means the Noncompetition and

Confidentiality Agreements, to be executed by Ring Power, Thompson, Randal Ringhaver and Dewitt Thompson, in substantially the form of Exhibit D-2.

"Tax" or "Taxes" means all income, gross receipts, sales, use, employment, franchise, profits, property or other taxes, fees, stamp taxes and duties, assessments or charges of any kind whatsoever (whether payable directly or by withholding), together with any interest and any penalties, additions to tax or additional amounts imposed by any taxing authority with respect thereto.

"Thompson" means Thompson Machinery Commerce Corporation, a Tennessee corporation.

## SECTION 1.02 CERTAIN ADDITIONAL DEFINED TERMS

In addition to terms defined in Section 1.01, the following capitalized terms are used as defined in the Sections set forth opposite such terms:

Defined Terms -----	Section Reference -----
Additional Compensation	Section 5.06
Assets	Section 2.01(a)
Assumed Liabilities	Section 2.02(a)
Audited Financial Statements	Section 3.17(a)
Base Purchase Price	Section 2.03(a)(i)
Closing	Section 2.04(a)
Closing Date	Section 2.04(a)
Computer Equipment	Section 3.08
Confidentiality Agreement	Section 5.04(a)
Contracts	Section 2.01(a)(v)
Controlling Shareholders	Section 5.11
Employees	Section 3.13
Environmental Claims	Section 3.06(g)
Excluded Assets	Section 2.01(b)
Financial Statements	Section 3.17(a)
IRS	Section 5.02(b)
Intellectual Property Rights	Section 3.07(a)
Lenders	Section 2.03(a)(i)
Licenses	Section 3.05
Losses	Section 7.02(a)
Material Contracts	Section 3.11
Obligations	Section 7.04(a)
Payoff Amounts	Section 2.03(a)(i)

Prepays	Section 2.03(a)
Purchase Price	Section 2.03(a)
RBA Shares	Section 2.03(a)(ii)
RBA's SEC Filings	Section 3.19(c)
Retained Liabilities	Section 2.02(b)
RBP	Recitals
Ring Power	Recitals
Securities	Section 3.19(a)
Tangible Personal Property	Section 3.08
Unaudited Balance Sheet	Section 3.17(a)
Unaudited Financial Statements	Section 3.17(a)
Warrants	Section 2.03(a)(iii)

## ARTICLE II. PURCHASE AND SALE

### SECTION 2.01 PURCHASE AND SALE

(a) On the terms and subject to the conditions set forth in this Agreement, the Sellers shall, on the Closing Date (or such other date as may be applicable to Assets purchased pursuant to Section 5.10 hereof), sell, assign, transfer, convey and deliver to the Purchaser, and the Purchaser shall, on the Closing Date (or such other dates), purchase from the Sellers, all of the Sellers' right, title and interest in the Business, and all of the assets, other than Excluded Assets, used in the Business (all such assets, other than the Excluded Assets and other than Sellers' Owned Real Property which are being transferred pursuant to the terms of the Sellers' Real Property Agreements, being referred to herein, collectively, as the "Assets"), including without limitation, the following:

(i) all the Sellers' Intellectual Property Rights, regardless of in which jurisdiction such rights exist and whether such rights have been filed, registered or perfected, including, without limitation, patents, trade names (including, without limitation, "Forke," "Forke Brothers," "Forke Credit Corporation," "Forke Acceptance," "Miller & Miller" and "Forke Truck"), trademarks, service marks, copyrights, and trade secrets used directly or indirectly in the Business;

(ii) all copies of the Sellers' sales and promotional literature, customer lists and other sales-related materials used in the Business whether in electronic, printed or any other form, including, without limitation, The Blue Book and all associated records and rights;

(iii) all the Sellers' (A) assignable computer software, including,

without limitation, source code, operating systems and specifications, data, data bases, files, documentation and other materials related thereto, pertaining to the Business, and (B) Internet Web sites (including, without limitation, Web site domain names) used in the Business and all data and records generated in connection with or related to such Web sites;

(iv) the Computer Equipment and other Tangible Personal Property, to the extent the Purchaser elects to purchase any such assets pursuant to Section 5.10(a);

(v) all the Sellers' assignable rights, title and interest in, to and under the contracts, agreements, instruments, leases and licenses described in Schedule 2.01(a)(v), together with any Leases and equipment leases to be assigned to the Purchaser pursuant to Sections 5.10(a) and (b) (collectively, the "Contracts");

(vi) all municipal, state, federal and foreign franchises, permits, licenses, agreements, waivers and authorizations held or used by any of the Sellers in connection with, or required for, the conduct of the Business, as currently conducted, to the extent (A) transferable and (B) requested by the Purchaser;

(vii) all the Seller's prepaid rent, prepaid expenses and deposits under any Leases or Contracts assigned to the Purchaser in respect of which Seller shall be reimbursed at Closing (or with respect to any Lease, such other date as such Lease may be assumed);

(viii) all the Sellers' telephone numbers and facsimile numbers (other than those used exclusively for Forke Credit), a list of which is attached as Schedule 2.01(a)(viii); and

(ix) all goodwill associated with the foregoing Assets and the Business;

provided, however, that, notwithstanding the foregoing: (1) with respect to any of the Leases to be assigned to the Purchaser or any of the Tangible Personal Property to be purchased by the Purchaser after the Closing Date pursuant to Section 5.10, the Sellers shall sell, assign, transfer, convey and deliver to the Purchaser, and the Purchaser shall purchase from the Sellers, on the terms and subject to the conditions set forth in this Agreement, all of the Sellers' right, title and interest in and to such Leases and Tangible Personal Property on the date or dates specified in Section 5.10; and (2) the Sellers shall convey Sellers' Owned Real Property on such terms and conditions, and



on such dates, as are specified in the Sellers' Real Property Agreements.

(b) The following assets of the Sellers (the "Excluded Assets") are specifically excepted from the Assets to be transferred to the Purchaser pursuant to Section 2.01(a) and shall be retained by the Sellers:

(i) all of the Sellers' cash-in-hand, bank accounts, marketable securities and investment accounts;

(ii) all of the Sellers' accounts receivable;

(iii) any Computer Equipment and other Tangible Personal Property that the Purchaser does not elect to purchase pursuant to Section 5.10(a);

(iv) any Leases or equipment leases not assigned to the Purchaser pursuant to Sections 5.10(a) and (b);

(v) the capital stock of any corporation;

(vi) Benefit Plan assets;

(vii) claims against third parties that do not relate to claims against the Purchaser, and other claims against third parties, to the extent that the Purchaser has been fully indemnified for such claims or agrees that it has no potential liability that may relate to such claims;

(viii) claims against the Purchaser arising in connection with this Agreement; and

(ix) any other asset not used directly or indirectly in the Business.

provided, however, that any asset which is excluded pursuant to clauses (iii) or

(iv) above shall not become an "Excluded Asset" (and shall be considered an "Asset" for purposes of this Agreement) until the earlier of either

(1) the Purchaser has notified Forke, Inc. that the Purchaser elects not to acquire such asset, or (2) the time specified for the Purchaser to provide notice of its election to acquire such asset has elapsed, and the Purchaser has not provided such notice.

## SECTION 2.02 ASSUMPTION OF LIABILITIES

(a) On the terms and subject to the conditions set forth in this Agreement, the Purchaser shall execute and deliver, on the Closing Date, the Assignment and Assumption Agreement, pursuant to which the Purchaser shall agree to pay, perform and discharge, if and when due, the following liabilities and obligations of the Sellers

with respect to the Business (collectively, the "Assumed Liabilities"):

(i) all the Seller's express obligations under the written terms of the Contracts, but only to the extent such obligations arise as a result of activities carried on after the Closing Date (or, in the case of any Leases or equipment leases assigned to the Purchaser after the Closing Date pursuant to Section 5.10, after the date such Lease or equipment lease is so assigned to the Purchaser) and are unrelated to any default or other breach of any obligation by any of the Sellers or any agent thereof prior to the Closing Date (or such later date of assignment, as the case may be); and

(ii) all the Seller's express obligations arising under the franchises, permits, licenses, agreements, waivers and authorizations described in Section 2.01(a)(vi), but only to the extent such obligations arise after the Closing Date and are unrelated to any default or other breach of any obligation by any of the Sellers or any agent thereof prior to the Closing Date.

Notwithstanding anything to the contrary, it is agreed that the Purchaser does not, and by this Agreement or any Ancillary Agreement shall not, assume or agree to pay, perform, defend or discharge any liabilities or obligations (of any and every kind whatsoever) of any of the Sellers, other than the Assumed Liabilities.

(b) Notwithstanding the Closing, the Sellers shall retain, pay, perform and discharge, if and when due, to the extent not paid, performed or discharged on or prior to the Closing Date (or, in the case of any Leases or equipment leases assigned to the Purchaser after the Closing Date pursuant to Section 5.10, on or prior to the date such Lease or equipment lease is so assigned to the Purchaser), all liabilities and obligations, of any and every kind whatsoever, of the Sellers other than the Assumed Liabilities (collectively, the "Retained Liabilities"), including, without limitation, all the Sellers' liabilities and obligations, of any and every kind whatsoever, to their respective employees (including, without limitation, liabilities and obligations with respect to vacation pay, sick pay, and the Benefit Plans and obligations relating to any claims of constructive or actual termination arising in connection with Sellers' constructive or actual termination of such employees' employment).

(c) Sellers and their ERISA Affiliates shall retain and be solely responsible for satisfying any and all liabilities and obligations relating to the provision of health care continuation coverage under COBRA (as set forth in Section 4980B of the Code and Part 6 of Subtitle B of Title I of ERISA, as may be amended from time to time) or under any state law with respect to any medical, dental, vision or other group health plan sponsored, maintained or provided by the Sellers or their ERISA Affiliates, regardless of whether the relevant "qualifying event" occurs before, at or after the

## Closing.

### SECTION 2.03 PURCHASE PRICE; ALLOCATION OF PURCHASE PRICE

(a) Subject to any adjustments pursuant to Section 2.03(b), the purchase price for the Assets (excluding the purchase price for Sellers' Owned Real Property, which is specified in, and shall be paid pursuant to the terms and subject to the conditions of, Sellers' Real Property Agreements) (the "Purchase Price"), shall consist of the following:

(i) an amount (the "Base Purchase Price") equal to the sum of (A) \$25,000,000 plus (B) the aggregate amount, if any, by which the Base Purchase Price is to be increased as of the Closing Date pursuant to Section 5.10 (the Purchaser shall pay a portion of this cash amount directly to Nationsbank of Tennessee, N.A. and any other lenders of the Sellers (other than lessors) who have liens on the Assets (the "Lenders") in an amount sufficient to pay all of the Sellers' loan obligations to the Bank and such other lenders (the "Payoff Amounts"));

(ii) 100,000 Common Shares (the "RBA Shares") of RBA (appropriately adjusted for any stock dividend, split or combination prior to the Closing Date);

(iii) Warrants (the "Warrants") to purchase 400,000 Common Shares of RBA (appropriately adjusted for any stock dividend, split or combination prior to the Closing Date), in substantially the form of Exhibit F, exercisable until the second anniversary of the Closing Date hereof at an exercise price per share equal to the closing price of the Common Shares on the New York Stock Exchange on the date of this Agreement (or, if not a Business Day, on the immediately preceding Business Day); and

(iv) an amount equal to the prepaid rent, prepaid expenses and deposits transferred to Purchaser, as set forth on Schedule to be provided in a Schedule by the Sellers to the Purchaser three business days before the Closing Date, subject to adjustment until the Closing (the "Prepays").

(b) If any election under 5.10 is made by the Purchaser three Business Days prior to the Closing, the Purchase Price shall be increased by the aggregate Book Value (set forth in Schedule 3.08) of any Seller-owned Tangible Personal Property purchased by the Purchaser as a result of such election and the aggregate amount of any prepaid rent, security or similar deposits made by the Sellers under any Leases assigned to the Purchaser as a result of such election (which prepaid rent, security or similar deposits shall be assigned to the Purchaser). With respect to any such

Tangible Personal Property transferred to the Purchaser after the Closing or any such Leases assumed by the Purchaser after Closing, such additional amounts shall be paid after Closing in accordance with Section 5.10.

(c) The parties agree that, for U.S. Tax purposes, the Purchase Price shall be allocated as of the Closing Date among the Assets in accordance with Schedule 2.03(c) and Internal Revenue Code Section 1060 and Treasury Regulations thereunder and they shall file such Tax returns and forms as required reflecting such allocation of the Purchase Price. Any subsequent adjustments to the Purchase Price pursuant to Section 2.03 (b) shall be reflected in the allocation hereunder in a manner consistent with Treasury Regulation Section 1.1060-1T(f). No party hereto shall file any Tax return or form or take a position with a Tax authority that is inconsistent with such allocation.

#### SECTION 2.04 CLOSING

(a) Subject to the terms and conditions of this Agreement, the sale and purchase of the Assets and the assumption of the Assumed Liabilities contemplated hereby shall take place at a closing (the "Closing") at 10:00 a.m., local time, on the later to occur of (i) the fifth Business Day following the expiration or termination of the applicable waiting periods under the HSR Act, or (ii) the fifth Business Day after notification by the Purchaser to the Sellers (such notice to be given no later than the 25th day following the receipt by the Purchaser of the Audited Financial Statements and the Unaudited Financial Statements from the Sellers pursuant to Section 5.02). The Closing shall occur at the offices of Perkins Coie LLP, 1211 S.W. Fifth Avenue, Suite 1500, Portland, Oregon, or at such other time or on such other date or at such other place as Forke, Inc., on behalf of the Sellers, and the Purchaser may mutually agree upon in writing (the day on which the Closing takes place being the "Closing Date"). Notwithstanding anything to the contrary, the sale and purchase of the Assets and the assumption of the Assumed Liabilities shall be deemed for all purposes to have taken place as of 12:01 a.m. on the Closing Date (or, in the case of any Leases or equipment leases assigned to the Purchaser after the Closing Date pursuant to Section 5.10, as of 12:01 a.m. on the date such Lease or equipment lease is so assigned to the Purchaser).

(b) At the Closing, Forke, Inc. shall deliver, on behalf of the Sellers, or cause to be delivered to the Purchaser:

(i) the Bill of Sale, the Assignment and Assumption Agreement and such other instruments as may be reasonably requested by the Purchaser to transfer the Assets to the Purchaser;

- (ii) a receipt for the RBA Shares, the Warrants, the Base Purchase Price and the Prepaids;
- (iii) executed counterparts of each Ancillary Agreement to which any Seller is a party;
- (iv) the certificates and other documents required to be delivered pursuant to Section 6.02; and
- (v) evidence that, upon receipt of the Payoff Amounts, the Lenders will promptly release their liens against the Assets.

(c) At the Closing, the Purchaser shall deliver to Forke, Inc., on behalf of the Sellers:

- (i) the Base Purchase Price and the Prepaids, by cashier's check or wire transfer to an account designated by Forke, Inc., on behalf of the Sellers;
- (ii) a certificate evidencing the RBA Shares, issued in the name of Forke, Inc.;
- (iii) the Warrants, issued in the name of Forke, Inc.;
- (iv) executed counterparts of each Ancillary Agreement to which the Purchaser is a party; and
- (v) the certificates and other documents required to be delivered pursuant to Section 6.01.

### **ARTICLE III. REPRESENTATIONS AND WARRANTIES OF THE SELLERS**

Except as set forth in a Schedule bearing the number of the applicable Section, whether or not such Schedule is referenced in the text of the Section, each of the Sellers jointly and severally represents and warrants to the Purchaser as follows:

#### **SECTION 3.01 INCORPORATION AND AUTHORITY OF THE SELLERS**

Each Seller is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction set forth on Schedule 3.01 attached hereto and has all necessary corporate power and authority to enter into this Agreement and the Ancillary Agreements to which it is a party, to carry out its obligations hereunder and thereunder, to consummate the transactions contemplated hereby and thereby, to own, operate or lease the properties and assets now owned, operated or leased thereby,

and to carry on the business now being conducted thereby. Each Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the operation of its business as now being conducted makes such licensing or qualification necessary and in which the failure to qualify could have a Material adverse effect. Except as set forth on Schedule 3.01, the execution and delivery by each Seller of this Agreement and the Ancillary Agreements to which it is a party, the performance by each Seller of its obligations hereunder and thereunder and the consummation by each Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate or similar action on the part of each Seller and its shareholders. This Agreement has been duly executed and delivered by the Sellers and (assuming due authorization, execution and delivery by the Purchaser) this Agreement constitutes a legal, valid and binding obligation of each Seller, enforceable against such Seller in accordance with its terms. At the Closing, each of the Ancillary Agreements to which a Seller is a party shall be duly executed and delivered by such Seller, and (assuming due authorization, execution and delivery by the Purchaser) shall constitute a legal, valid and binding obligation of such Seller, enforceable against such Seller in accordance with its terms.

### SECTION 3.02 NO CONFLICT

The execution, delivery and performance by the Sellers of this Agreement and of each Ancillary Agreement to which any Seller is a party do not, and will not (a) violate or conflict with the charter documents of any Seller, in each case as amended, (b) conflict with or violate any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award applicable to any Seller, any of the Assets or the Business, or (c) subject to receipt of the consents described in Schedule 3.03, result in any breach of, or constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any lien or other encumbrance on any of the Assets pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument to which any Seller is a party or by which any of its assets or properties is bound or affected.

### SECTION 3.03 CONSENTS AND APPROVALS

Except as described in Schedule 3.03, the execution, delivery and performance by the Sellers of this Agreement and the Ancillary Agreements to which any Seller is a party do not, and will not, require any consent, approval, exemption, authorization or other action by, or filing with or notification to, any (a) court, administrative agency or other governmental or regulatory authority or (b) third party, except the notification requirements of the HSR Act.

#### SECTION 3.04 LITIGATION

Except as set forth on Schedule 3.04, no claim, action, proceeding (other than a notification pursuant to the HSR Act contemplated by this Agreement) or investigation is pending or, to the knowledge of the Sellers, threatened (a) against any of the Sellers, or any of their respective assets or properties, employees or the Business, before any federal, state or municipal court, or administrative, governmental or regulatory authority or body that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (b) which seeks to delay or prevent the consummation of, or which could reasonably be expected to adversely affect any of the Seller's ability to consummate the transactions contemplated hereby and by the Ancillary Agreements to which any Seller is a party. None of the Sellers or any of their respective assets or properties or the Business is subject to any order, writ, judgment, injunction, decree, determination or award that could reasonably be expected to have a Material Adverse Effect.

#### SECTION 3.05 COMPLIANCE WITH LAWS; LICENSES AND PERMITS

No Seller is in violation of any law, rule, regulation, order, judgment or decree applicable to it or by which any of its properties is bound or affected, except for violations the existence of which would not have a Material Adverse Effect. Each Seller has all governmental licenses, franchises, permits, approvals, authorizations, exemptions, certificates, registrations and similar documents or instruments (collectively, "Licenses") necessary to carry on the Business as it is now being conducted and to own and operate the Assets, except for such Licenses which the Sellers' failure to have would not have a Material Adverse Effect.

#### SECTION 3.06 ENVIRONMENTAL COMPLIANCE

Except as described in Schedule 3.06:

- (a) To the knowledge of the Sellers, Hazardous Substances have not been generated, used, treated or stored on, or transported to or from, any of the Sellers' Leased Real Property or any property adjoining any of the Sellers' Leased Real Property.
- (b) To the knowledge of the Sellers, Hazardous Substances have not been released or disposed of on any of the Sellers' Leased Real Property or any property adjoining any of the Sellers' Leased Real Property.
- (c) Environmental Permits have been obtained and are in effect for the operations conducted at the Sellers' Leased Real Property.

(d) There are no pending applications for issuance or renewal of any Environmental Permits for the operations conducted at any of the Sellers' Leased Real Property.

(e) The Sellers are in compliance in all material respects with all applicable Environmental Laws and the requirements of all their Environmental Permits pertaining to Sellers' Leased Real Property.

(f) The Sellers have disposed of all wastes, including those containing any Hazardous Substances, in compliance with all applicable Environmental Laws.

(g) There are no past, pending or threatened administrative, regulatory or judicial claims, actions, suits, investigations, demands, proceedings or notices of violation relating in any way to any Environmental Law or Environmental Permit ("Environmental Claims") against any Seller or any of the Sellers' Leased Real Property that, individually or in the aggregate, could have a Material Adverse Effect.

(h) To the knowledge of the Sellers, no parcel of the Sellers' Leased Real Property is listed or proposed for listing on the National Priorities List under CERCLA or on the CERCLIS or any similar state list of sites requiring investigation or cleanup.

(i) To the knowledge of the Sellers, no Seller has transported or arranged for the transportation of any Hazardous Substances to any location that is listed or proposed for listing on the National Priorities List under CERCLA or on the CERCLIS or any similar state list.

(j) To the knowledge of the Sellers, there are no circumstances with respect to any parcel of the Sellers' Leased Real Property that could reasonably be anticipated (i) to form the basis of an Environmental Claim against any Seller or any parcel of the Sellers' Leased Real Property that, individually or in the aggregate, could have a Material Adverse Effect or (ii) to cause any parcel of the Sellers' Leased Real Property to be subject to any restrictions on ownership, occupancy, use or transferability under any applicable Environmental Law.

(k) To the knowledge of the Sellers, there are not now, and never have been any underground storage tanks located on or under any of the Sellers' Leased Property or any property adjoining the Sellers' Leased Real Property.

#### SECTION 3.07 INTELLECTUAL PROPERTY RIGHTS

(a) The Sellers own or otherwise have exclusive rights to use in the Business as currently conducted in the jurisdiction of registration, without, to the



knowledge of the Sellers, restrictions or any conflict with the rights of others, all registered trademarks identified on Schedule 3.07(a) and, to the knowledge of the Sellers, the exclusive rights to use in the Business as currently conducted, without, to the knowledge of the Sellers, restrictions or any conflict with the rights of others, all patents, other trademarks, trade names, service marks, copyrights, trade secrets and other intellectual property rights, all applications and registrations therefor, and all other confidential or proprietary information relating to or used by the Sellers in the conduct of the Business as currently conducted (collectively, the "Intellectual Property Rights"). No rights have been granted by any Seller to any third party with respect to the Intellectual Property Rights. There is no claim, action or cause of action challenging any Seller's use of the Intellectual Property Rights or challenging or questioning the validity or effectiveness of any Intellectual Property Rights. To the knowledge of the Sellers, (i) neither the operation of the Business nor the Intellectual Property Rights infringe upon any issued or pending patent, trademark, trade name, service mark, copyright or other right of any person or entity, and (ii) there is no infringement by any other person or entity of any Intellectual Property Right. Schedule 3.07(a) lists all known patents, copyrights, trademarks and service marks, and any applications or registrations therefor, included in the Intellectual Property Rights.

(b) The Sellers have not provided any lists of their customers to any third party.

#### SECTION 3.08 TANGIBLE PERSONAL PROPERTY

Schedule 3.08 sets forth all computers and computer equipment (collectively, the "Computer Equipment"), yard equipment, machinery, office equipment and furniture owned by the Sellers, telephone equipment, motor vehicles and other tangible personal property used in connection with the Business, excluding inventory held for auction, (the "Tangible Personal Property"). The information in Schedule 3.08 is grouped by the Seller owning such equipment, and by the class of such property for purposes of Purchaser's electing whether to purchase such class, and whether such Tangible Personal Property is owned or leased by the Sellers and, if applicable, the Book Value thereof. No later than seven days following the date hereof, the Sellers will provide an updated Schedule 3.08, which will group the Tangible Personal Property and Computer Equipment by which parcel of Sellers' Real Property such personal property is located on or used. For each item of Tangible Personal Property with a Book Value of \$5,000 or more, Schedule 3.08 also sets forth the date such item was purchased or otherwise acquired by the Sellers, the date (if known) such item was manufactured and, if applicable, the serial number thereof. The Tangible Personal Property is in normal operating condition, ordinary wear and tear

excepted.

### SECTION 3.09 REAL PROPERTY

The only real property owned by the Sellers and their affiliates, and used in the Business, is the Sellers' Owned Real Property and the Ring Power Real Property; except that the Sellers pay a fee to Thompson to use its facility in Nashville, Tennessee to conduct auctions. Schedule 3.09 lists all of the Sellers' Leased Real Property.

### SECTION 3.10 TITLE TO ASSETS; ABSENCE OF LIENS

Except as set forth in Schedule 3.10, each Asset is either (a) owned by the Sellers, free and clear of all liens, security interests and other charges and encumbrances, except: (i) liens for Taxes, assessments and other governmental charges not yet due and payable; (ii) liens for Taxes, assessments and charges and other claims, the validity of which is being contested in good faith; and (iii) liens, security interests, imperfections of title and other charges and encumbrances which, individually and in the aggregate, are immaterial and, to the extent quantifiable, that relate to claims or liabilities of less than \$10,000, or (b) leased pursuant to one or more valid and enforceable lease agreements that have not been breached by the Sellers or, to the knowledge of the Sellers, any other party thereto. The Sellers have good and marketable title to all the Assets they own, subject only to the liens, security interest and other charges and encumbrances indicated above.

### SECTION 3.11 MATERIAL CONTRACTS

Schedule 3.11 contains a list of all of the contracts, agreements, instruments, leases (including, without limitation, the Leases), licenses, arrangements or commitments by which any of the Tangible Personal Property, the Assets or any of the Sellers' Real Property (excluding any easements, restrictions or other arrangements recorded solely in the public records) is subject or bound and that requires, in accordance with its terms, future payments in excess of \$10,000 or that is not cancelable without penalty upon not more than 30 days' notice and each other contract, agreement or commitment that is material to the Business other than auction dates and auction contracts entered into in the ordinary course of the Sellers' Business (collectively, the "Material Contracts"). The Sellers have delivered or made available to the Purchaser true and complete copies of all the Material Contracts, in each case as amended. With respect to the Material Contracts, (a) each Material Contract is valid, binding and enforceable in accordance with its terms; (b) no Seller is in default under or in violation of any provision of any of the Material Contracts; (c) no Seller has received notice of alleged nonperformance or other noncompliance with respect to its

or any other Seller's obligations under any of the Material Contracts which alleged nonperformance or other noncompliance is currently unresolved, nor any notice that is currently unresolved that any of the Material Contracts may be totally or partially terminated or suspended by any other party thereto; and (d) no Seller has any knowledge of any nonperformance, breach or other noncompliance by any other party to any of the Material Contracts.

### SECTION 3.12 EMPLOYEE BENEFIT MATTERS

(a) Schedule 3.12 contains a list of all Benefit Plans. None of the Sellers has any agreement, arrangement or commitment, whether formal or informal, whether written or unwritten and whether legally binding or not, to create any additional employee benefit plan, fund, policy, program, contract, arrangement or payroll practice or to modify, amend or terminate any existing Benefit Plan.

(b) Each Benefit Plan is, and at all times since its inception has been, maintained, administered, operated and funded in all material respects in accordance with its terms and in compliance with all applicable laws, statutes, orders, rules and regulations, including, but not limited to, ERISA and the Internal Revenue Code other than such noncompliance as will not have a Material Adverse Effect. No transaction, event or omission has occurred or failed to occur with respect to any Benefit Plan that has subjected, or could subject, any Seller, directly or indirectly, to a tax, fine, penalty or related charge for which payment has not been provided for by Seller under Chapter 43 of Subtitle D of the Internal Revenue Code or under Section 502(c), 502(i), 502(l) or 4071 of ERISA.

(c) Each Benefit Plan that is intended to be qualified under Section 401(a) of the Internal Revenue Code is, and at all times since inception has been, so qualified and its related trust is, and at all times since inception has been, exempt from taxation under Section 501(a) of the Internal Revenue Code, and each such Benefit Plan is the subject of an unrevoked favorable determination letter from the IRS to that effect. Nothing has occurred, and no circumstances exist, or are reasonably expected by any Seller to occur, that could cause such Benefit Plan to lose its tax-qualified status or that could cause the IRS to revoke the most recent determination letter issued with respect to such Benefit Plan or the Sellers (or such Benefit Plan) to otherwise lose their ability to rely on such determination letter.

(d) Each "group health plan," as defined in Section 4980B(g)(2) of the Internal Revenue Code or Section 607(1) or 733(a)(1) of ERISA, sponsored, maintained, provided or contributed to by any Seller or any ERISA Affiliate, or covering any of their employees, has been maintained, administered and operated at all times since its inception in compliance with the requirements of Section 4980B(f)

of the Internal Revenue Code, Parts 6 and 7 of Subtitle B of Title I of ERISA, any regulations under such Internal Revenue Code and ERISA sections and any other applicable laws regarding the provision or continuation of health insurance coverage or other welfare benefits (within the meaning of Section 3(1) of ERISA).

(e) No Seller or ERISA Affiliate maintains or contributes to, or has ever maintained or contributed to (or been obligated to contribute to), any multiemployer plan within the meaning of Section 3(37) or 4001(a)(3) of ERISA or Section 414(f) of the Internal Revenue Code, any multiple employer plan within the meaning of Section 4063 or 4064 of ERISA or Section 413(c) of the Internal Revenue Code, or any employee benefit plan, fund, program, contract or arrangement that is subject to Section 412 of the Internal Revenue Code or Section 302 or Title IV of ERISA, and no Seller or ERISA Affiliate has incurred, or could incur, any liability with respect to any such plan.

### SECTION 3.13 EMPLOYEES, LABOR MATTERS

Schedule 3.13 sets forth a list of all employees, including employees on leave of absence or disability leave, employed in the Business and all individuals who were employed in the Business on a full-time basis at any time within the past 12 months (collectively, the "Employees") (broken down by appropriate categories) and independent contractors providing auctioneer or sales services to the Sellers, and the Sellers have previously provided the purchasers with a schedule containing the current compensation levels therefor (broken down by base salary for 1999 and broken down by base salary, other compensation (excluding 401(k) matching contributions) and total compensation for each of the three calendar years in the period ending December 31, 1998), and all accrued benefits therefor, including, without limitation, accrued vacation and sick days, and, in the case of individuals no longer employed, the last day of employment and reason for termination. Schedule 3.13 indicates any Employees that are on leave of absence or disability leave. There are no labor controversies pending or, to any of the Seller's knowledge, threatened, between any Seller and any of the Employee. No Seller is a party to any collective bargaining agreement or other labor union contract applicable to any of the Employees, and no Seller has any knowledge of any strikes, slowdowns, work stoppages, lockouts, or threats thereof, by or with respect to any of the Employees.

### SECTION 3.14 TAXES

Except as set forth on Schedule 3.14, (a) the Sellers have timely filed or will file, all returns required to be filed by it with respect to Taxes pertaining to the Assets or the Business prior to the Closing Date, (b) all Taxes shown to be payable on such returns have been paid or will be paid by the Sellers, (c) there are no agreements,

waivers or consents providing for an extension of time with respect to the assessment of any such Taxes or any other agreements, waivers or consents agreed to by any Seller with, issued to, or for the benefit of, any taxing authority,

(d) no deficiency for any Tax has been asserted or assessed by a taxing authority against any Seller pertaining to the Assets or Business, and (e) all required deductions and withholdings at source with respect to the Assets and the Business have been made and either remitted by the Sellers to the relevant taxing authorities in all applicable jurisdictions or, if not delinquent, set aside in accounts for such purpose or accrued, reserved against and entered upon the books of the Sellers.

### SECTION 3.15 CONDUCT IN THE ORDINARY COURSE; ABSENCE OF CHANGES

Since the date of the Unaudited Balance Sheet, the Business has been conducted in the ordinary course and consistent with past practice. As amplification and not limitation of the foregoing, since the date of the Unaudited Balance Sheet no Seller has:

(i) sold, transferred, leased, subleased, licensed or otherwise disposed of any material properties or assets used in connection with the Business other than sales of inventory held for auction in the ordinary course of Sellers' business;

(ii) (A) granted any increase, or announced any increase in the wages, salaries, compensation, bonuses, incentives, pension or other benefits payable to any of the Employees, including, without limitation, any increase or change pursuant to any Benefit Plan, or (B) established or increased or promised to increase any benefits under any Benefit Plan, in either case except as required by law or applicable collective bargaining agreements;

(iii) suffered the loss of any significant customers or employees, individually or in the aggregate; or

(iv) suffered any Material Adverse Effect.

### SECTION 3.16 SUBSIDIARIES; SHAREHOLDERS

(a) The Sellers, other than Forke, Inc., include all subsidiaries of Forke, Inc. other than Forke Credit Corporation and Forke Acceptance Corporation. Each of such other Sellers is a direct or indirect wholly owned subsidiary of Forke, Inc.

(b) Ring Power and Thompson each own 29.31% of the outstanding capital stock of Forke, Inc. There are 13 additional shareholders of Forke, Inc. that together own the remaining 41.38% of the outstanding capital stock of Forke, Inc. and no such

other shareholder owns in excess of 6.2% of the outstanding capital stock of Forke, Inc. Except as set forth on Schedule 3.16, there are no other equity securities or options, warrants or other rights to acquire equity securities in Forke, Inc. or other instruments evidencing conversion rights for such securities outstanding and no agreements or understandings exist with respect to the future issuance of such securities rights or other instruments.

### SECTION 3.17 FINANCIAL INFORMATION

(a) The Sellers have provided to the Purchaser true and complete copies of (i) excerpts from the audited consolidated balance sheets of the Sellers dated as of December 31, 1997, 1996, and 1995 showing all liabilities of the Sellers and excerpts from the audited consolidated income statements for the Sellers for the years ended December 31, 1997, 1996 and 1995 (such audited consolidated balance sheets and audited consolidated income statements, together with the audited consolidated statements of cash flow and shareholders' equity and notes thereto, collectively, the "Audited Financial Statements") showing the Sellers' auction revenues, together with notes to the Audited Financial Statements and (ii) excerpts from the unaudited consolidated balance sheet for the Sellers as of December 31, 1998 (the "Unaudited Balance Sheet") showing all liabilities of the Sellers and excerpts from the unaudited consolidated income statements for the Sellers for the 12-month period ended December 31, 1998 (such unaudited consolidated balance sheet and unaudited consolidated income statement, together with the unaudited consolidated statements of cash flow and shareholders' equity for such period and notes thereto, collectively, the "Unaudited Financial Statements" and, together with the Audited Financial Statements, being referred to herein, collectively, as the "Financial Statements"), showing the Sellers' auction revenues. The Financial Statements present fairly, in all material respects, the financial condition and results of operations of the Sellers, on a consolidated basis, as of the dates thereof or for the periods covered thereby, and the Financial Statements have been prepared in accordance with GAAP, consistently applied, throughout the periods covered thereby, except as described in the notes thereto and except that the Unaudited Financial Statements do not contain the notes required by GAAP. Except as set forth in the Unaudited Balance Sheet, the Sellers have no liabilities, contingent or otherwise, other than (x) liabilities incurred in the ordinary course of business subsequent to the date of the Unaudited Balance Sheet and (y) obligations under contracts and commitments incurred in the ordinary course of business and not required under GAAP to be reflected in the Financial Statements, which, in both cases, individually or in the aggregate, are not material to the financial condition or operating results of the Sellers, on a consolidated basis.

(b) Forke, Inc. has provided to the Purchaser, on a schedule dated even date

herewith, true and accurate information regarding the gross auction sales and commissions and profits and losses on owned inventory of the Business since January 1, 1994, by calendar quarter and broken down by inventory, truck sales and traditional.

### SECTION 3.18 BROKERS

No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any of the Ancillary Agreements that could provide the basis for, or result in, any claim against the Purchaser or the Assets, based upon arrangements made by or on behalf of any Seller or any Shareholder.

### SECTION 3.19 SECURITIES MATTERS

(a) Forke, Inc. has full power and authority to own the RBA Shares and the Warrants to be delivered to it hereunder and the Common Shares of RBA issuable upon exercise of the Warrants (collectively, the "Securities").

(b) The Securities will be acquired for investment for Forke, Inc.'s own account, and not with a view to the distribution of any part thereof (other than to Shareholders), and Forke, Inc. has no present intention of selling, granting any participation in, or otherwise distributing the same (including to any Shareholders) in a manner contrary to the Securities Act, or applicable state or other securities laws.

(c) The Sellers have received copies of RBA's prospectus filed under Rule 424(b) of the Securities Act with respect to the Purchaser's initial public offering, and of RBA's Reports on Form 6-K filed with the SEC for the quarters ended March 31, June 30 and September 30, 1998 (collectively, "RBA's SEC Filings").

(d) The Sellers are able to fend for themselves in the transactions contemplated by this Agreement, can bear the economic risk of their investment (including possible complete loss of such investment) for an indefinite period of time and have such knowledge and experience in financial or business matters that they are capable of evaluating the merits and risks of the investment in the Securities. None of the Sellers has been organized for the purpose of acquiring the Securities. The Sellers understand that the Securities have not been registered under the Securities Act, or under the securities laws of any jurisdiction, by reason of reliance upon certain exemptions, and that the reliance of the Purchaser and RBA on such exemptions is predicated upon the accuracy of the representations and warranties in this Section. Forke, Inc. is familiar with Regulation D promulgated under the Securities Act and is an "accredited investor" as defined in Rule 501(a) of such Regulation D.

(e) The Sellers understand that the Securities are characterized as "restricted securities" under the U.S. federal securities laws inasmuch as they are being acquired from the Purchaser in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the Securities Act only in certain limited circumstances and in accordance with the terms and conditions set forth in the legend described in subsection (f) below. In this connection, the Sellers represent that they are familiar with Rule 144 promulgated under the Securities Act, as presently in effect, and understand the resale limitations imposed thereby and by the Securities Act.

(f) It is understood that the certificates evidencing the Securities may bear the following or a similar legend:

THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR APPLICABLE STATE LAW, AND NO INTEREST THEREIN MAY BE SOLD, DISTRIBUTED, ASSIGNED, OFFERED, PLEDGED OR OTHERWISE TRANSFERRED UNLESS (i) THERE IS AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS COVERING ANY SUCH TRANSACTION INVOLVING SAID SECURITIES,

(ii) THIS CORPORATION RECEIVES AN OPINION OF LEGAL COUNSEL FOR THE HOLDER OF THESE SECURITIES SATISFACTORY TO THIS CORPORATION STATING THAT SUCH TRANSACTION IS EXEMPT FROM REGISTRATION, OR (iii) THIS CORPORATION OTHERWISE SATISFIES ITSELF THAT SUCH TRANSACTION IS EXEMPT FROM REGISTRATION.

#### SECTION 3.20 DISCLOSURE

None of the foregoing representations or warranties contains any untrue statement of a material fact, and no Seller has omitted to state any material fact necessary to make such representation or warranty, or to Sellers' knowledge, any other material disclosure provided to the Purchaser, not misleading. Except as provided herein, to Seller's knowledge, there are no facts or information regarding the Business or the Assets that the Sellers have not disclosed in this Agreement that could reasonably be expected to have, singly or in the aggregate, a Material Adverse Effect.

#### **ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**



The Purchaser represents and warrants to the Sellers as follows:

#### SECTION 4.01 INCORPORATION AND AUTHORITY

The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of Washington and has all necessary corporate power and authority to enter into this Agreement and each of the Ancillary Agreements to which it is a party, to carry out its obligations hereunder and thereunder, to consummate the transactions contemplated hereby and thereby, to own, operate or lease the properties now owned, operated or leased by the Company and to carry on the business now being conducted by the Purchaser. Purchaser is a wholly-owned subsidiary of RBA. The execution and delivery of this Agreement and each of the Ancillary Agreements to which it is a party, the performance of its obligations hereunder and thereunder and the consummation by the Purchaser of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of the Purchaser. This Agreement has been duly executed and delivered by the Purchaser, and (assuming due authorization, execution and delivery by the other parties thereto) constitutes a legal, valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms. At the Closing, each of the Ancillary Agreements to which the Purchaser is a party shall be duly executed and delivered by the Purchaser, and (assuming due authorization, execution and delivery by the other parties thereto) shall constitute a legal, valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms. RBA is a corporation duly amalgamated, validly existing and in good standing under the laws of Canada, and has all necessary corporate power and authority to enter into the Warrant and the Registration Rights Agreement. At the Closing, the Warrant and the Registration Rights Agreement shall be duly executed and delivered by RBA and shall constitute a legal, valid and binding obligation of RBA, enforceable against RBA in accordance with its terms.

#### SECTION 4.02 NO CONFLICT

The execution, delivery and performance by the Purchaser of this Agreement and of each of the Ancillary Agreements to which it is a party and the execution, delivery and performance by RBA of the Warrant and the Registration Rights Agreement and the issuance of the RBA Shares by RBA pursuant to the terms hereof, do not, and will not (a) violate or conflict with the Articles of Incorporation or Articles of Amalgamation, as applicable, or Bylaws of the Purchaser or RBA, (b) conflict with or violate any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award applicable to the Purchaser or RBA, or (c) except as will not have a material adverse effect on the ability of the Purchaser or RBA to consummate the transactions contemplated by this Agreement, the Ancillary

Agreements to which it is a party, the Warrant and the Registration Rights Agreement, result in any breach of, or constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any lien or other encumbrance on any of the assets or properties of the Purchaser or RBA (other than liens and encumbrances in favor of lenders providing financing for the transactions contemplated by this Agreement) pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument relating to such assets or properties, to which the Purchaser or RBA is a party or by which any of such assets or properties is bound or affected.

#### SECTION 4.03 CONSENTS AND APPROVALS

The execution, delivery and performance by the Purchaser of this Agreement and of each Ancillary Agreement to which it is a party and the execution, delivery and performance by RBA of the Warrant and the Registration Rights Agreement and the issuance of the RBA Shares by RBA pursuant to the terms hereof, do not, and will not, require any consent, approval, exemption, authorization or other action by, or filing with or notification to, any (a) court, administrative agency or other governmental or regulatory authority or (b) third party, except the notification requirements of the HSR Act and post-Closing filings under the federal securities laws.

#### SECTION 4.04 LITIGATION

No claim, action, proceeding or investigation is pending or, to the Purchaser's knowledge, threatened (a) against Purchaser or RBA or any of their respective assets or properties, employees or business, before any federal, state or municipal court, or administrative, governmental or regulatory authority or body that, individually or in the aggregate, could reasonably be expected to have a material adverse effect on the Purchaser's or RBA's business, condition (financial or otherwise), results of operations or prospects, or (b) which seeks to delay or prevent the consummation of, or which could reasonably be expected to adversely affect the Purchaser's or RBA's ability to consummate the transactions contemplated hereby, by the Ancillary Agreements to which it is a party and by the Warrant and the Registration Rights Agreement. Neither the Purchaser nor any of its assets or properties or business is subject to any order, writ, judgment, injunction, decree, determination or award that could reasonably be expected to have a material adverse effect on the Purchaser's business, condition (financial or otherwise), results of operations or prospects.

#### SECTION 4.05 BROKERS

No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any of the Ancillary Agreements based upon arrangements made by or on behalf of the Purchaser.

#### SECTION 4.06 DISCLOSURE

Neither RBA's SEC Filings nor any of the foregoing representations or warranties of the Purchaser in this Article IV contains any untrue statement of a material fact, and the Purchaser has not omitted to state any material fact necessary to make such representation or warranty, or any other disclosure provided to the Sellers, not misleading.

#### SECTION 4.07 RBA SHARES AND WARRANT SHARES

The RBA Shares will be duly authorized, validly issued, fully paid and nonassessable when issued in accordance with the terms of this Agreement and the Shares issued upon exercise of the Warrants will be duly authorized, validly issued, fully paid and nonassessable when issued in accordance with the terms of the Warrants.

### **ARTICLE V. ADDITIONAL AGREEMENTS**

#### SECTION 5.01 CONDUCT OF BUSINESS PRIOR TO THE CLOSING

(a) The Sellers covenant and agree that, between the date hereof and the Closing Date, they shall (i) conduct the Business in the ordinary course and consistent with its prior practice, (ii) use their best efforts to keep available to the Purchaser the services of the Employees and (iii) use their best efforts to preserve the current relationships of the Sellers with their customers and other persons with which they have relationships relevant to the Business.

(b) The Sellers covenant and agree that, without the prior written consent of the Purchaser (which consent shall not be unreasonably withheld), they will not, prior to the latest date that any Asset may be transferred pursuant to Section 5.10, (i) sell, transfer or otherwise dispose of (or agree to sell, transfer or otherwise dispose of) any of the assets related to the Business (other than as contemplated by this Agreement); (ii) create, or permit to be created, any lien, security interest or other charge or encumbrances on any of the Assets, other than any liens, security interests, charges and encumbrances of the type described in clauses (i) through (iii) of Section 3.10;

(iii) except as specifically contemplated by Section 5.06 hereof, establish or materially increase any bonus, insurance, severance, deferred compensation, pension, retirement, profit sharing, stock option, stock purchase or other employee benefit plan, or

otherwise increase the compensation payable or to become payable to any Employee, except as may be required by law or applicable collective bargaining agreements; (iv) enter into any employment or severance agreement with any Employees or establish, adopt, enter into or amend any collective bargaining agreement, except as may be required by law or any applicable collective bargaining agreements; or (v) except as required by law, disclose any competitive or confidential information or provide any customer lists to any third party.

## SECTION 5.02 ACCESS TO INFORMATION

(a) From the date hereof until the Closing Date, upon reasonable notice, the Sellers shall, and shall cause each of their officers, directors, employees, auditors and agents to, (i) afford the officers, employees and authorized agents and representatives of the Purchaser reasonable access to the offices, properties, books and records of the Sellers relating to the Business or the Assets and (ii) furnish to the officers, employees and authorized agents and representatives of the Purchaser such additional financial and operating data and other information regarding the Business or the Assets as the Purchaser may from time to time reasonably request; provided, however, (i) that such investigation shall be conducted in a manner so as not to interfere unreasonably with any of the businesses or operations of the Sellers and (i) the Sellers shall not be required to provide the Audited Financial Statements and the Unaudited Financial Statements (or the general ledger, trial balances, or other similar financial records supporting such financial statements, except to the extent disclosure thereof supports the disclosed excerpts and does not disclose the otherwise undisclosed portions of such financial statements) until the expiration or termination of the applicable waiting periods under the HSR Act.

(b) Without limiting the generality of Section 5.02(a) above, as soon as practicable after the date hereof, each Seller shall deliver to the Purchaser or its representatives a true, correct and complete copy (or, in the case of any unwritten Benefit Plan, a description) of each Benefit Plan (and all amendments thereto), along with, to the extent applicable to the particular Benefit Plan, the following information: (i) copies of the annual reports (Form 5500 series), and all attachments thereto, filed with respect to such Benefit Plan for the last three years; (ii) copies of the summary plan descriptions, summary annual reports, summaries of modifications and all employee manuals or communications filed or distributed with respect to such Benefit Plan during the last three years; (iii) copies of any insurance contracts or trust agreements (and any amendments thereto) through which such Benefit Plan is funded; (iv) copies of the most recently prepared actuarial report and financial statements prepared for such Benefit Plan; and (v) a copy of the most recent determination letter issued by the Internal Revenue Service ("IRS") with respect to such Benefit Plan.

(c) If necessary to facilitate the resolution of any claims made by or against or incurred by the Sellers prior to the Closing, upon reasonable notice, the Purchaser shall, after the Closing, at the Sellers' expense, (i) afford the Sellers' officers, employees and authorized agents and representatives reasonable access to the offices, properties, books and records of the Purchaser relating to the Business or the Assets, (ii) furnish to the officers, employees and authorized agents and representatives of the Sellers such additional financial and other information regarding the Business or the Assets as the Sellers may from time to time reasonably request and (iii) make available to the Sellers, the employees of the Purchaser whose assistance, testimony or presence is necessary to assist the Sellers in evaluating any such claims and in defending such claims, including the presence of such persons as witnesses in hearings or trials for such purposes; provided, however, that such investigation shall be conducted in a manner so as not to interfere unreasonably with any of the businesses or operations of the Purchaser or any of its affiliates or subsidiaries.

#### SECTION 5.03 BOOKS AND RECORDS

(a) If, in order (i) to effect the orderly liquidation of the Excluded Assets and the completion of the Sellers' business activities, or (ii) properly to prepare documents required to be filed with governmental authorities or the Sellers' financial statements, it is necessary that any Seller or its successors be furnished with additional information relating to the Business or the Assets, and such information is in the possession of the Purchaser, the Purchaser agrees to use its reasonable best efforts to furnish or provide access to such information to such Seller, at such Seller's cost and expense.

(b) If, in order properly to prepare documents required to be filed with governmental authorities or its financial statements, it is necessary that the Purchaser or its successors be furnished with additional information relating to the Business, the Assets or the Sellers, and such information is in the possession of the Sellers, the Sellers agree to use their reasonable best efforts to furnish such information to the Purchaser, at the Purchaser's cost and expense.

(c) The Sellers covenant and agree to retain and preserve in a secure, accessible facility in Lincoln, Nebraska, Jacksonville, Florida or another mutually agreeable location, for a period of 12 months following the Closing, all the Sellers' general, financial, personnel and other records (including, without limitation, all appraisal files, records pertaining to consignments and commission rates, offers, commitments, purchases and sales, invoices and other relevant documents) pertaining to the Business and to afford the officers, employees and authorized agents and representatives of the Purchaser full access to such records for any purpose deemed appropriate by the Purchaser, including, but not limited to, making copies thereof.

#### SECTION 5.04 CONFIDENTIALITY

(a) The terms of the letter agreement dated December 3, 1998 (the "Confidentiality Agreement") between Forke Auctioneers, Inc. and RBA are hereby incorporated by reference and shall continue in full force and effect until the Closing except as required by the securities laws and as contemplated by Section 9.03, at which time the obligations of RBA under such Confidentiality Agreement and under this Section 5.04 shall terminate; provided, however, that the Confidentiality Agreement shall terminate only in respect of that portion of the Information (as defined in the Confidentiality Agreement) exclusively relating to the transactions contemplated by this Agreement. If the Closing does not occur, or if this Agreement is terminated pursuant to Section 8.01 hereof, the Confidentiality Agreement shall continue in full force and effect in respect of such Information and RBA and the Purchaser shall promptly return to Forke, Inc., on behalf of the Sellers, all copies of any such Information and any analyses, reports, compilations or summaries based, in whole or in part, on such Information.

(b) The Sellers, their affiliates and their respective representatives will keep confidential any and all proprietary information obtained from the Purchaser or its affiliates concerning the Purchaser, its affiliates or its business. Immediately following the Closing, or if this Agreement is terminated pursuant to Section 8.01 hereof or otherwise prior to Closing, the Sellers shall promptly return to the Purchaser all copies of any such information and any analyses, reports, compilations or summaries based, in whole or in part, on such proprietary information. In addition, after the Closing, the Sellers and such affiliates and representatives will keep confidential any and all proprietary information regarding the Assets or the Business and shall treat all such information as the Purchaser's confidential and proprietary information. Immediately following the Closing, the Sellers shall destroy any printed copies and eliminate all electronic and other versions of Sellers' promotional literature, customer lists and other sales related materials and software pertaining to the Business and not used exclusively in the business of Forke Credit other than those copies and versions provided to the Purchaser pursuant to Section 2.01(a)(i) hereof. If, following the Closing, the Sellers become aware of any employee or former employee of the Sellers, or any other third party, that has in such party's possession any form of any such materials, the Sellers shall immediately inform the Purchaser of the identity of such party and of the nature of the materials in such party's possession, and the Sellers shall use reasonable efforts to cause such party (i) to immediately cease using any such material, and (ii) to convey such material to the Purchaser.

#### SECTION 5.05 REGULATORY AND OTHER AUTHORIZATIONS; CONSENTS

Each party hereto will use its best efforts to obtain all authorizations, consents,

orders and approvals of all federal, state, local and foreign regulatory bodies and officials, and of any lessors or other third parties, that may be or become necessary for its execution and delivery of, and the performance of its obligations pursuant to, this Agreement and the Ancillary Agreements to which it is a party, and will cooperate fully with the other parties in promptly seeking to obtain all such authorizations, consents, orders and approvals. The Purchaser and the Sellers agree to make an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated hereby on the date hereof and to supply promptly any additional information and documentary material that may be requested pursuant to the HSR Act, with any supplemental filings, correspondence or other communications with the appropriate reporting authorities to be coordinated by the Purchaser's counsel. The parties hereto will not take any action that will have the effect of delaying, impairing or impeding the receipt of any required approvals. The Purchaser, on the one hand, and the Sellers, on the other hand, shall pay their own respective expenses in connection with the preparation of the Notification and Report Forms and the Purchaser shall be responsible for the filing fees required by the HSR Act.

#### SECTION 5.06 EMPLOYEES

(a) The Purchaser or an affiliate of the Purchaser will, after the execution of this Agreement, offer employment to all the Employees identified on Schedules 6.02(j)(A) and 6.02(j)(B) and otherwise identified in Section 6.02(j), and such other Employees as the Purchaser may elect, upon terms (subject to the next sentence) that are substantially equivalent to those provided to similarly-situated employees of the Purchaser, conditioned and effective upon the Closing and, unless otherwise agreed by the Sellers and the Purchaser, the Sellers will terminate all such Employees who accept employment with Purchaser at the Closing. The Sellers agree that they shall use their best efforts to encourage each Employee offered employment by the Purchaser to accept such offer. With respect to Scott Forke, Michael Rich, Michael Groves and Gary Seybold, the Purchaser shall compensate such Employees (through an aggregate of base salary and signing bonus) at the annual rate of \$100,000. The Sellers shall be entitled, but shall not be required, to pay the Employee's listed on Schedules 6.02(j)(A) and 6.02(j)(B) and otherwise identified in Section 6.02(j), additional compensation in excess of the amount to be paid to such employees by the Purchaser (the "Additional Compensation") in order to induce such Employees to accept employment with the Purchaser. To the extent that Sellers elect to pay such Additional Compensation, Sellers agree to pay such Additional Compensation in equal monthly installments in the form of severance payments over the period from the Closing Date until December 31, 1999 (or a proportionately reduced amount paid over a shorter period in case of termination of employment by

the Purchaser), and such Employees' total monthly compensation during the period from the Closing date until December 31, 1999 will not exceed their average monthly compensation in effect prior to the Closing without the prior written approval of the Purchaser.

(b) To the extent that duration of service is relevant for purposes of eligibility, vesting or benefit accrual under the Purchaser's vacation plan and employee stock purchase program (but not for any other purpose), such plan and program shall credit each Employee hired by the Purchaser for service prior to the Closing with the Sellers.

#### SECTION 5.07 TRANSFER FEES AND TAXES

Each of the Purchaser and the Sellers shall be liable for and pay the sales, transfer and similar Taxes, charges or fees to be paid by such party by applicable statutes or regulations as a result of the sale and transfer of the Assets contemplated hereby; provided, however, that with respect to any such Taxes, charges or fees or related filings that may arise from the transfer of Seller's Real Property to the Purchaser, the provisions of Seller's Real Property Agreements shall govern. The parties shall cooperate in the filing of all necessary documentation and Tax returns, reports and forms with respect to such Taxes, charges and fees.

#### SECTION 5.08 CHANGE OF NAMES AND TELEPHONE NUMBERS; FORKE CREDIT CORPORATION

As promptly as practicable after the Closing, the Sellers will execute such applications to governmental authorities, consents and other documents and take such other action, and will cause their affiliates to execute such applications, consents and other documents and take such other action, as the Purchaser may reasonably request in order (a) to change each of the Sellers' and such affiliates' names to one not involving the use of the word "Forke" or "Miller" and (b) to enable the Purchaser to use and register, as the Purchaser may desire, such name and any variation thereof and each of the Sellers' telephone numbers; provided, however, that (i) the Sellers may use the Forke name during the period immediately following the Closing to the extent required to comply with the Sellers' obligations under Section 5.09(a) hereof, and (ii) Forke Credit Corporation (but no assignee or successor thereto, by operation of law or otherwise) may continue to use such name to conduct its financing business as currently conducted, but only for so long and to the extent that it does not, directly or indirectly, use such name in connection with any auction-related business. The right granted in the preceding proviso to use the name "Forke Credit Corporation" shall automatically terminate upon the earlier of (x) Forke Credit Corporation's using such name (A) to conduct business other than its financing business as currently conducted



or (B) in connection with any auction-related business, and (y) the date twelve (12) months after Closing.

#### SECTION 5.09 POST-CLOSING FORKE AUCTIONS

(a) The Sellers shall be responsible for conducting any auctions that, as of the Closing, auction brochures have previously been distributed or for which an auction brochure is scheduled for its press run during the five Business Days immediately following the Closing. The Purchaser agrees to assist the Sellers in conducting such auctions by providing the Purchaser's personnel and other resources to the extent consistent with the Purchaser's business requirements at the Purchaser's fully-loaded cost. The Sellers and the Purchaser may agree that any such auctions shall instead be conducted by the Purchaser pursuant to Section 5.09(b) below.

(b) If, as of the Closing, the Sellers have contracted or committed in writing for the sale of equipment by auctions other than those described in Section 5.09(a) above, the Purchaser agrees to conduct such auctions, on behalf of the Sellers for a fee equal to 6% of the aggregate gross auction sales (reduced on a deal-by-deal basis for direct auction expenses (including, but not limited to, costs related to the auction site) previously paid by the Sellers) of such equipment and upon such terms and conditions as are provided in the Purchaser's standard straight commission auction contract. Such fee may be retained by the Purchaser from gross auction sales it collects, on behalf of the Sellers, in connection with the auctions. To the extent any Seller is the owner or lessee of any site used for any such auction, such Seller hereby authorizes the Purchaser, its employees and agents to enter upon such site for the purpose of conducting such auction at a fair rental rate. Notwithstanding the Purchaser's role in conducting any such auctions under this Section, the Sellers shall remain solely responsible for all obligations to consignors and others with respect to the contracts or commitments any of the Sellers or their agents made to sell equipment at such auctions. Promptly following the Closing, the Sellers shall provide notice to each consignor or other party for whom the Purchaser will be conducting auctions on the Sellers' behalf to the effect that the Purchaser shall conduct such auction on behalf of the Sellers and such notice will provide such consignor or other party the opportunity to cancel their contract with the Sellers. With respect to any post-closing auction that the Purchaser is conducting on Seller's behalf pursuant to this Section 5.09(b), the Purchaser shall not be required to advertise in its brochures any equipment for any consignors for which the Sellers have not delivered such notice.

#### SECTION 5.10 RIGHT TO PURCHASE ADDITIONAL ASSETS

(a) The Purchaser may elect, by providing written notice thereof to the Sellers at any time prior to the third Business Day before the Closing Date, that (i) any

or all of the scheduled classes of Computer Equipment and Tangible Personal Property owned by the Sellers be included in the Assets transferred to the Purchaser at the Closing and/or (ii) all of the Sellers' right, title and interest in, to and under any or all of the leases by which the Sellers lease Computer Equipment or Tangible Personal Property be assigned to the Purchaser at the Closing and included in the Assets. The Purchaser shall, to the extent set forth in Section 2.02(a), assume the obligations of the Sellers under any such assigned leases. The Base Purchase Price payable at the Closing shall be increased by the aggregate Book Value (set forth in Schedule 3.08) of any Seller-owned Computer Equipment and Tangible Personal Property purchased by the Purchaser. Notwithstanding the foregoing, with respect to (x) any Lease assumed by the Purchaser after the Closing pursuant to this Section 5.10 or (y) any of Seller's Real Property transferred to RBP after the Closing, the Purchaser may elect to condition the purchase of any Tangible Personal Property situated on the premises subject to such Lease or on such parcel of Sellers' Real Property upon the assumption of such Lease or the closing of the transfer of such parcel of Sellers' Real Property, in which case the payment by the Purchaser of any additional purchase price required with respect to such Tangible Personal Property shall take place on the date such Lease is assumed or the closing date of the transfer of such parcel of Seller's Real Property, as the case may be.

(b) The Purchaser may elect, by providing written notice thereof to the Sellers at any time prior to the third Business Day before the Closing Date, that the Sellers assign to the Purchaser all of their right, title and interest in, to and under any or all of the Leases and the Purchaser shall, to the extent set forth in Section 2.02(a), assume the obligations of the Sellers under any such assigned Lease. Notwithstanding the foregoing, the Purchaser may elect to condition the Purchaser's assumption of any Lease upon satisfactory completion, in the Purchaser's sole discretion, of an environmental review of the real property subject to such Lease. Unless the Purchaser notifies Forke, Inc. within 30 days after the Closing, that it is not so satisfied (stating the reasons why), the Purchaser shall be conclusively presumed to be satisfied with such review and shall assume such Lease effective on the Closing Date in accordance with the terms of this Section 5.10. If the Purchaser has elected to conditionally assume any Lease under this Section 5.10(b), the Purchaser shall reimburse the Sellers for the rent obligations and other obligations under the Lease for the period from the Closing until the day that the Purchaser notifies the Sellers that it will not assume such Lease due to the environmental review. Notwithstanding the foregoing, and solely with respect to the Lease for Sellers' existing facility in Lincoln, Nebraska, the Purchaser may elect to assume such Lease up to 30 days following the Closing Date by providing written notice to the Sellers at any time prior to such 30th day, and the Purchaser will not be responsible for the rent obligations and other obligations under such Lease unless and until the Purchaser assumes such Lease. The Sellers and the

Purchaser shall prorate amounts prepaid, deposits and amounts due under any assigned Lease with respect to property taxes and utilities, based on the number of days in the billing period preceding and including, and following the date of the assignment.

(c) The applicable Sellers shall execute and deliver additional Bills of Sale and Assignment Agreements and such other instruments as may be reasonably requested by the Purchaser to reflect any transfers and assignments which occur after the Closing Date pursuant to this Section 5.10. The Purchaser shall execute and deliver additional Assignment and Assumption Agreements as may be reasonably requested by the Sellers to reflect any such assumptions which occur after the Closing Date.

(d) The Sellers agree to promptly provide to the Purchaser such evidence as the Purchaser shall reasonably request regarding the calculation of the Book Value of any item or items of Tangible Personal Property.

#### SECTION 5.11 ADDITIONAL MATTERS

Ring Power and Thompson (the "Controlling Shareholders") each covenant and agree (i) to execute and deliver, on or prior to the Closing Date, an Auction Agreement and a Shareholder Noncompetition Agreement with the Purchaser, (ii) to provide, or cause to be provided, to the Purchaser, within 60 days following the end of each calendar year beginning with calendar year 1999 and for so long as the Sellers shall have any indemnity obligation to the Purchaser under this Agreement, a letter from a nationally recognized certified public accounting firm certifying as to the compliance with clause (iii) below, and (iii) to cause Forke, Inc. to maintain a minimum net worth (defined as total assets less total liabilities other than liabilities expressly subordinated to Sellers' obligations to Purchaser under this Agreement (with subordination provisions reasonably satisfactory to Purchaser)), for a period of two years after the Closing Date, equal to at least \$10,000,000. On or prior to the Closing Date, Randal Ringhaver and Dewitt Thompson shall each provide a letter to the Purchaser certifying that Ring Power and Thompson Machinery, L.P., a limited partnership for which Thompson is the general partner, each hold a Caterpillar dealer franchise within Florida and Tennessee, respectively.

#### SECTION 5.12 LINCOLN FACILITY

The Sellers covenant and agree to keep the Sellers' existing facility in Lincoln, Nebraska open for a period of at least 30 days after the Closing Date. During such period, the Sellers shall continue to employ all of the Sellers' existing staff at such facility, together with the Sellers' field administrative staff wherever located. The

Sellers shall cause such Employees, in addition to any activities on the Sellers' behalf, to assist the Purchaser in the transfer of the Assets and in obtaining access to the information and records referenced in Section 5.03 hereof. Prior to the expiration of such 30-day period, the Purchaser may designate, by notice to Forke, Inc., certain of such Employees to whom the Purchaser intends to offer employment. The Sellers shall use their best efforts to encourage each such Employee offered employment by the Purchaser to accept such offer.

#### SECTION 5.13 OTHER NEGOTIATIONS

None of the Sellers will (and the Sellers will instruct their respective officers, directors, employees, agents and affiliates on its behalf not to) take any action to solicit, initiate, seek, encourage or support any inquiry, proposal or offer from, furnish any information to, or participate in any negotiations with, any corporation, partnership, person or other entity or group (other than the Purchaser) regarding any acquisition of any of the Sellers, any merger or consolidation with or involving any of the Sellers, or any acquisition of any material portion of the stock or assets of any of the Sellers or enter into an agreement concerning any of the foregoing with any party other than the Purchaser.

#### SECTION 5.14 FURTHER ACTION

Each of the parties hereto shall execute and deliver such documents and other papers and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated hereby.

#### SECTION 5.15 RENTAL PAYMENTS FOR SELLERS' OWNED REAL PROPERTY

For the period of time between the Closing Date and either the closing date under a Sellers' Real Property Agreement or the date that the Purchaser notifies the Seller under such Seller's Real Property Agreement that the Purchaser has elected not to purchase the applicable Seller's Owned Real Property pursuant to the terms of such agreement, the Purchaser shall pay such Seller a monthly rent for such property equal to three quarters of one percent (3/4%) of the purchase price of such property under the applicable Seller's Real Property Agreement, which amount shall be prorated for any partial month.

#### SECTION 5.16 TRADEMARK FILINGS

The Sellers will, prior to Closing, file an application to register the names "Forke Europe," "Forke Auctioneers," "Forke," "Forke Brothers" and "Forke Truck" in the community trademark registry. The Purchaser will pay the fees and expenses in connection with such filing.

## ARTICLE VI. CONDITIONS TO CLOSING

### SECTION 6.01 CONDITIONS TO OBLIGATIONS OF THE SELLERS

The obligations of the Sellers to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

- (a) Representations and Warranties; Covenants. The representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects as of the Closing, with the same force and effect as if made as of the Closing (other than such representations and warranties as are made as of another date), and all the covenants contained in this Agreement to be complied with by the Purchaser on or before the Closing, including payment of the Base Purchase Price and the Prepaids, shall have been complied with in all material respects, and the Seller shall have received a certificate of the Purchaser to such effect signed by a duly authorized officer thereof.
- (b) No Order. No governmental authority or other agency or commission or court of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, injunction or other order (whether temporary, preliminary or permanent) which is in effect and has the effect of making the transactions contemplated by this Agreement illegal or otherwise restraining or prohibiting consummation of such transactions.
- (c) HSR Act. Any waiting period (and any extension thereof) under the HSR Act applicable to the purchase of the Assets contemplated hereby shall have expired or been terminated.
- (d) Consents. All consents, authorizations and approvals, if any, necessary for the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements shall have been obtained, including, without limitation, written consents from the applicable landlords to the assignments of any Leases to be assigned to the Purchaser pursuant to Section 5.10(b), except to the extent the failure to obtain such consent will not have a material adverse effect on the Sellers.
- (e) Ancillary Agreements. The Purchaser shall have duly executed and delivered to the Sellers counterparts of the Assignment and Assumption Agreement and the Ancillary Agreements to which it is a party that have not been previously delivered.
- (f) Warrant and RBA Shares. RBA shall have delivered the Warrant and the RBA Shares.

(g) Registration Rights Agreement. The Purchaser shall have duly executed and delivered to Forke, Inc. the Registration Rights Agreement.

(h) Legal Opinion. The Sellers shall have received from counsel to the Purchaser legal opinions from Canadian and U.S. counsel, each addressed to the Sellers and dated the Closing Date, in form and substance reasonably agreed among the Sellers and the Purchaser within ten days following the date hereof.

(i) Sellers' Real Property Agreements. The Purchaser shall not be in material default under any of the Sellers' Real Property Agreements.

(j) Approval by Counsel. All actions, proceedings, instruments, and documents required to fulfill the conditions set forth in this Section 6.01 or incident hereto and all other related legal matters shall have been reasonably satisfactory to the Sellers' counsel, and such counsel shall have been furnished with such certified copies of such corporate actions and proceedings and such other instruments and documents as shall have been reasonably requested by such counsel.

To the extent the closing of any transaction contemplated by Section 5.10 is to take place after the Closing, the obligations of the Sellers to consummate such transaction shall be subject to the prior fulfillment of each of the foregoing conditions (treating the closing of such transaction as the Closing for purposes of each condition).

#### SECTION 6.02 CONDITIONS TO OBLIGATIONS OF THE PURCHASER

The obligation of the Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) Representations and Warranties; Covenants. The representations and warranties of the Sellers contained in this Agreement shall be true and correct in all material respects as of the Closing, with the same force and effect as if made as of the Closing (other than such representations and warranties as are made as of another date), and all the covenants contained in this Agreement to be complied with by the Sellers on or before the Closing shall have been complied with in all material respects, and the Purchaser shall have received a certificate of each of the Sellers to such effect signed by a duly authorized officer thereof.

(b) No Order. No governmental authority or other agency or commission or court of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, injunction or other order (whether temporary, preliminary or permanent) which is in effect and has the effect of making the

transactions contemplated by this Agreement illegal or otherwise restraining or prohibiting consummation of such transactions.

(c) HSR Act. Any waiting period (and any extension thereof) under the HSR Act applicable to the purchase of the Assets contemplated hereby shall have expired or been terminated.

(d) Consents. All consents, authorizations and approvals, if any, necessary for the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements shall have been obtained, including, without limitation, written consents, in form and substance satisfactory to the Purchaser, from the applicable landlords to assignments of any Leases to be assigned to the Purchaser pursuant to Section 5.10(b), except to the extent the failure to obtain such consent will not have a Material Adverse Effect.

(e) Ancillary Agreements. The Sellers shall have duly executed and delivered to the Purchaser the Bill of Sale, the Assignment and Assumption Agreement and the Ancillary Agreements to which they are parties that have not been previously delivered.

(f) Shareholder Documents. The Purchaser shall have received the Shareholder Noncompetition Agreements.

(g) Sellers' Real Property Agreements. None of the Sellers shall be in material default under any of the Sellers' Real Property Agreements.

(h) Letters Regarding Ring Power and Thompson. The Purchaser shall have received the letters from Randal Ringhaver and Dewitt Thompson referenced in Section 5.11 hereof.

(i) Legal Opinion. The Purchaser shall have received from counsel to the Sellers a legal opinion addressed to the Purchaser and dated the Closing Date in form and substance reasonably agreed among the Sellers and the Purchaser within ten days following the date hereof.

(j) Minimum Number of Employees. (i) Not less than 75% of all auctioneers listed on Schedule 6.02(j)(A) and 80% of all sales representatives listed on Schedule 6.02(j)(B), shall have accepted the Purchaser's offer of employment pursuant to Section 5.06(a), (ii) Robert Whitsit, Greg Forke, Scott Forke, Michael Rich and Gary Seybold, shall have accepted such offer of employment, as evidenced, in each case, by such Employees having executed the Purchaser's employment agreement in substantially the form attached as Exhibit G hereto (the effectiveness of which shall be conditioned upon the consummation of the Closing). Neither the failure of any of the

persons referenced in clause (ii) in this Section 6.02(j) to pass any of the drug or medical exams under the terms of such person's employment agreement with the Purchaser, nor the death or disability of any such person prior to the Closing Date shall cause the Sellers to fail to meet the conditions set forth in this Section 6.02(j), which persons shall be treated as though they accepted employment hereunder.

(k) Approval by Counsel. All actions, proceedings, instruments, and documents required to fulfill the conditions set forth in this Section 6.02 or incident hereto and all other related legal matters shall have been reasonably satisfactory to the Purchaser's counsel, and such counsel shall have been furnished with such certified copies of such corporate actions and proceedings and such other instruments and documents as shall have been reasonably requested by such counsel.

(l) No Material Adverse Change. Since the date of the Unaudited Financial Statement, there shall have been no damage to or destruction of any material Asset, or any labor disruption, employee departures or other event, development or condition of any character, including, without limitation, any change in the Business, which has had or could reasonably be expected to have a Material Adverse Effect, provided, however, that employee attrition shall not constitute a Material Adverse Effect for purposes of this paragraph if the conditions set forth in Section 6.02(j) above have been satisfied; and provided further, that a decrease in the number of scheduled auctions or in the amount of equipment to be auctioned by the Sellers shall not constitute a Material Adverse Effect under this Agreement.

(m) Release of Liens. All liens, security interests and other encumbrances on, in or against the Assets shall have been released.

(n) Post-Closing Auction Information. The Purchaser shall have received all relevant information (including, without limitation, the anticipated date of sale) regarding all equipment that the Sellers have contracted or committed to sell by auction on a date after the Closing Date, as referenced in Section 5.09.

(o) Auction Agreements. The Controlling Shareholders shall each have entered into an Auction Agreement with Purchaser.

## **ARTICLE VII. INDEMNIFICATION**

### **SECTION 7.01 SURVIVAL**

Subject to the limitations and other provisions of this Agreement, the representations and warranties of the parties hereto contained herein shall survive and remain in full force and effect, regardless of any investigation made by or on behalf of the Sellers or the Purchaser, for a period of two years after the Closing Date; provided,



however, that the representations and warranties set forth in Section 3.14 shall remain in full force and effect until the applicable period under the statute of limitations applicable to the subject matter thereof has expired.

#### SECTION 7.02 INDEMNIFICATION BY THE PURCHASER

(a) The Purchaser agrees, subject to the other terms and conditions of this Section 7.02, to indemnify the Sellers and their affiliates against and hold the Sellers and such affiliates harmless from any and all liabilities, losses, costs, expenses (including, without limitation, reasonable attorneys' fees) of and damages (collectively, "Losses") to the Sellers and such affiliates arising out of or with respect to (i) the breach of any representation, warranty, covenant or agreement of the Purchaser in this Agreement or any of the Ancillary Agreements, (ii) the use or ownership of the Assets or conduct of the Business by the Purchaser following the transfer thereto pursuant to the terms of this Agreement and (iii) the Assumed Liabilities.

(b) No claim may be made against the Purchaser for indemnification pursuant to this Section 7.02 with respect to any individual Loss unless the aggregate of all Losses of the Sellers and their affiliates with respect to this Section 7.02 shall exceed \$100,000, in which case the Purchaser shall be required to pay for the aggregate amount of all such Losses and any additional Losses; provided, however, that any Losses arising in connection with Section 4.05, 5.07, 5.10(b) or 9.01 or in connection with the Assumed Liabilities shall not be subject to any such limitation.

(c) No claim may be asserted nor any action commenced against the Purchaser pursuant to this Section 7.02 or otherwise for breach of any representation or warranty contained in this Agreement, unless written notice of such claim or action is received by the Purchaser, describing the facts and circumstances with respect to the subject matter of such claim or action on or prior to the date on which the representation or warranty on which such claim or action is based ceases to survive as set forth in Section 7.01, irrespective of whether the subject matter of such claim or action shall have occurred before or after such date.

(d) The Sellers agree to give the Purchaser prompt written notice of any claim, assertion, event or proceeding by or in respect of a third party of which any Seller has knowledge concerning any Loss as to which any Seller or any affiliate thereof may request indemnification hereunder or any Loss as to which the \$100,000 amount referred to in Section 7.02(b) may be applied. The Purchaser shall have the right to direct, through counsel of its own choosing, the defense or settlement of any such claim or proceeding at its own expense. If the Purchaser elects to direct the defense of any such claim or proceeding, the Sellers may participate in such defense,

but in such case the expenses of the Sellers shall be paid by the Sellers. The Sellers shall provide the Purchaser with access to their records and personnel relating to any such claim, assertion, event or proceeding during normal business hours and the Sellers shall otherwise cooperate with the Purchaser in the defense or settlement thereof, and the Purchaser shall reimburse the Sellers for all their reasonable out-of-pocket expenses in connection therewith. If the Purchaser elects to direct the defense of any such claim or proceeding, the Seller shall not pay, or permit to be paid, any part of any claim or demand arising from such asserted liability, unless the claim may be settled for less than the \$100,000 amount referred to in Section 7.02(b) or Purchaser consents in writing to such payment (which consent shall not be unreasonably withheld) or unless the Purchaser, subject to the last sentence of this Section 7.02(d), withdraws from the defense of such asserted liability, or unless a final judgment from which no appeal may be taken by or on behalf of the Sellers is entered against the Sellers for such liability. If the Purchaser shall fail to defend, or if, after commencing or undertaking any such defense, the Purchaser fails to prosecute or withdraws from such defense, the Sellers shall have the right to undertake the defense or settlement thereof, at the Purchaser's expense. If the Sellers assume the defense of any such claim or proceeding pursuant to this Section 7.02(d) and propose to settle such claim or proceeding prior to a final judgment thereon or to forego any appeal with respect thereto, then the Sellers shall give the Purchaser prompt written notice thereof and the Purchaser shall have the right, at the Purchaser's expense, to participate in the settlement or assume or reassume the defense of such claim or proceeding.

#### SECTION 7.03 INDEMNIFICATION BY THE SELLERS

(a) Each Seller agrees, subject to the other terms and conditions of this Section 7.03, jointly and severally, to indemnify the Purchaser and its affiliates against and hold the Purchaser and its affiliates harmless from any and all Losses of or to the Purchaser and its affiliates arising out of or with respect to (i) the breach of any representation, warranty, covenant or agreement of any of the Sellers in this Agreement or any of the Ancillary Agreements, (ii) the conduct of the Business prior to the Closing or the use or ownership of the Assets prior to the transfer to the Purchaser pursuant to the terms of this Agreement, (iii) the Retained Liabilities, (iv) other than to the extent such Loss is attributable to the negligence or willful misconduct of the Purchaser, its employees or agents, the performance by the Purchaser, its employees and agents of the Purchaser's obligations under Section 5.09, and (v) any of the Sellers' Employees that are not hired by the Purchaser arising within the scope of their employment by the Sellers.

(b) No claim may be made against the Sellers for indemnification pursuant

to this Section 7.03 with respect to any individual Loss unless the aggregate of all Losses of the Purchaser with respect to this Section 7.03 shall exceed \$100,000, in which case the Sellers shall be required to pay or be liable for the aggregate amount of such Losses and any additional Losses; provided, however, that any Losses arising in connection with Sections 3.18, 5.07, 5.09, 5.10(b) or 9.01 shall not be subject to any such limitation.

(c) No claim may be asserted nor any action commenced against the Sellers pursuant to this Section 7.03 or otherwise for breach of any representation or warranty contained in this Agreement, unless written notice of such claim or action is received by Forke, Inc., on behalf of the Sellers, describing the facts and circumstances with respect to the subject matter of such claim or action on or prior to the date on which the representation or warranty on which such claim or action is based ceases to survive as set forth in Section 7.01, irrespective of whether the subject matter of such claim or action shall have occurred before or after such date.

(d) The Purchaser agrees to give Forke, Inc., on behalf of the Sellers, prompt written notice of any claim, assertion, event or proceeding by or in respect of a third party of which it has knowledge concerning any Loss as to which it may request indemnification hereunder or any liability or damage as to which the \$100,000 amount referred to in Section 7.03(b) may be applied. The Sellers shall have the right to direct, through counsel of their own choosing, the defense or settlement of any such claim or proceeding at their own expense. If the Sellers elect to direct the defense of any such claim or proceeding, the Purchaser may participate in such defense, but in such case the expenses of the Purchaser shall be paid by the Purchaser. The Purchaser shall provide the Sellers with access to its records and personnel relating to any such claim, assertion, event or proceeding during normal business hours and shall otherwise cooperate with the Sellers in the defense or settlement thereof, and the Sellers shall reimburse the Purchaser for all its reasonable out-of-pocket expenses in connection therewith. If the Sellers elect to direct the defense of any such claim or proceeding, the Purchaser shall not pay, or permit to be paid, any part of any claim or demand arising from such asserted liability unless the claim may be settled for less than the \$100,000 amount referred to in Section 7.03(b) or Sellers consent in writing to such payment (which consent shall not be unreasonably withheld) or unless the Sellers, subject to the last sentence of this Section 7.03(d), withdraw from the defense of such asserted liability or unless a final judgment from which no appeal may be taken by or on behalf of the Purchaser is entered against the Purchaser for such liability. If the Sellers shall fail to defend or, if after commencing or undertaking any such defense, shall fail to prosecute or shall withdraw from such defense, the Purchaser shall have the right to undertake the defense or settlement thereof, at the Sellers' expense. If the Purchaser assumes the defense of any such claim or

proceeding pursuant to this Section 7.03(d) and proposes to settle such claim or proceeding prior to a final judgment thereon or to forego any appeal with respect thereto, then the Purchaser shall give the Sellers prompt written notice thereof and the Sellers shall have the right, at their own expense, to participate in the settlement or assume or reassume the defense of such claim or proceeding.

## **ARTICLE VIII. TERMINATION, AMENDMENT AND WAIVER**

### **SECTION 8.01 TERMINATION**

This Agreement may be terminated upon written notice given at any time prior to the Closing:

(a) by the mutual written consent of Forke, Inc., on behalf of the Sellers, and the Purchaser; or

(b) by Forke, Inc., on behalf of the Sellers, or by the Purchaser, if the Closing shall not have occurred prior to April 30, 1999; provided, however, that the right to terminate this Agreement under this Section 8.01(b) shall not be available to (i) the Sellers if the failure by any Seller to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur prior to such date, or (ii) the Purchaser, if the Purchaser's failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur prior to such date.

### **SECTION 8.02 EFFECT OF TERMINATION**

In the event of termination of this Agreement as provided in Section 8.01, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except (a) as set forth in Sections 5.04 and 9.01 and (b) nothing herein shall relieve either party from liability for any willful breach hereof.

### **SECTION 8.03 WAIVER**

(a) At any time prior to the Closing, Forke, Inc., on behalf of the Sellers, may (i) extend the time for the performance of any of the obligations or other acts of the Purchaser, (ii) waive any inaccuracies in the representations and warranties of the Purchaser contained herein or in any document delivered pursuant hereto or (iii) waive compliance with any of the agreements or conditions of the Purchaser contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by Forke, Inc., on behalf of the Sellers.

(b) At any time prior to the Closing, the Purchaser may (i) extend the time

for the performance of any of the obligations or other acts of the Sellers, (ii) waive any inaccuracies in the representations and warranties of the Sellers contained herein or in any document delivered pursuant hereto or (iii) waive compliance with any of the agreements or conditions of the Sellers contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the Purchaser.

## **ARTICLE IX. GENERAL PROVISIONS**

### **SECTION 9.01 EXPENSES**

Unless otherwise indicated in this Agreement, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

### **SECTION 9.02 NOTICES**

All notices, requests, claims, demands and other communications given or made pursuant hereto shall be in writing (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by courier, by facsimile (with confirmation copy of such facsimile material delivered in person or by registered or certified mail, postage prepaid, return receipt requested) or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 9.02):

(a) if to any of the Sellers:

Forke, Inc.  
8050 Philips Highway  
Jacksonville, FL 32256  
Attention: Ronald T. Roy Facsimile: (904) 281-0155

with a copy to:

Holland & Knight, LLP  
Suite 2000  
One Independent Drive  
Jacksonville, FL 32202  
Attention: James L. Main

Facsimile: (904)-358-2199

(b) if to the Purchaser:

Ritchie Bros. Auctioneers Incorporated 9200 Bridgeport Road  
Richmond, B.C. V6X 1S1  
**CANADA**

Attention: C. Russell Cmolik

Facsimile: (604) 273-2405

with a copy to:

Perkins Coie LLP  
1211 SW Fifth Avenue, Suite 1500 Portland, OR 97204  
Attention: Roy W. Tucker Facsimile: (503) 727-2222

(c) if to Ring Power Corporation:

8050 Philips Highway  
Jacksonville, FL 32256  
Attention: Ronald T. Roy Facsimile: (904) 281-0155

(d) if to Thompson Machinery Commerce Corporation:

1245 Bridgestone Blvd.

LaVergne, TN 37086-1981

Attention: Dewitt C. Thompson, IV Facsimile: (615) 251-8611

#### SECTION 9.03 ANNOUNCEMENTS

Upon the signing of this Agreement, a press release, in the form of Exhibit 9.03, shall be released by the Purchaser and Forke, Inc., on behalf of the Sellers. Such press release shall not disclose the Purchase Price. No Seller or any affiliate or agent thereof shall make, or cause to be made, any other press releases or public announcements in respect of this Agreement or the transactions contemplated herein or otherwise communicate with any news media without prior consent of the Purchaser, which consent shall not be unreasonably withheld. The parties shall cooperate as to the timing and contents of any such announcement by any party,

except as such release, announcement or communication may be required by governmental authorities, a court of competent jurisdiction or applicable law (including, without limitation, securities laws affecting the Purchaser's public disclosure obligations), in which case the party releasing the information shall use its best efforts to provide the information contained therein to the other party in advance of its disclosure. The Sellers authorize Forke, Inc. to act on their behalf with respect to any actions contemplated by this Section 9.03.

#### SECTION 9.04 HEADINGS

The descriptive headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

#### SECTION 9.05 SEVERABILITY

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

#### SECTION 9.06 ENTIRE AGREEMENT

This Agreement, the Ancillary Agreements and the Ring Power Agreement constitute the entire agreement of the parties hereto with respect to the subject matter hereof and, except as set forth in Section 5.04, supersede all prior agreements and undertakings, both written and oral, between any of the parties with respect to the subject matter hereof.

#### SECTION 9.07 ASSIGNMENT

Prior to the Closing, this Agreement shall not be assigned by operation of law or otherwise without the express written consent (which shall not be unreasonably withheld) of Forke, Inc., on behalf of the Sellers, with respect to assignments by the Purchaser, or of the Purchaser, with respect to assignments by any of the Sellers; provided, however, that the Purchaser may assign its rights and obligations hereunder to purchase any or all of the Assets and to assume any or all of the Assumed

Liabilities or any other liabilities or obligations of the Purchasers or its affiliates, to one or more of the direct or indirect wholly owned affiliates of RBA so long as the Purchaser remains liable hereunder and under all agreements and documents to be delivered by it pursuant hereto, and the affiliate assumes all such obligations in writing in form and content acceptable to Sellers. This Agreement shall be binding upon and inure to the benefit of the successors, heirs, personal representatives and permitted assigns of the parties hereto.

#### SECTION 9.08 NO THIRD-PARTY BENEFICIARIES

This Agreement is for the sole benefit of the parties hereto and their successors and permitted assigns, and nothing herein expressed or implied is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

#### SECTION 9.09 AMENDMENT; WAIVER

This Agreement may not be amended or modified except by an instrument in writing duly executed by Forke, Inc. (on behalf of the Sellers), the Purchaser; and, with respect to any amendment or modification of Section 5.11, the Controlling Shareholders. Waiver of any term or condition of this Agreement shall only be effective if in writing and shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition, or a waiver of any other term or condition of this Agreement.

#### SECTION 9.10 GOVERNING LAW

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to contracts executed and to be performed in that State.

#### SECTION 9.11 COUNTERPARTS

This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

#### SECTION 9.12 ATTORNEYS' FEES

If any suit or action arising out of or related to this Agreement is brought by any party, the prevailing party shall be entitled to recover the costs and fees (including, without limitation, reasonable attorneys' fees, the fees and costs of experts



and consultants, copying, courier and telecommunication costs, and deposition costs and all other costs of discovery) incurred by such prevailing party in such suit or action, including, without limitation, any post-trial or appellate proceeding, or in the collection or enforcement of any judgment or award entered or made in such suit or action.

[This space intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed or caused to be duly executed on their behalf this Asset Purchase Agreement as of the date first written above.

**PURCHASER:**

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

By:  
Name:  
Title:

**SELLERS:**

**FORKE, INC.**

By:  
Name:  
Title:

**FORKE AUCTIONEERS, INC.**

By:  
Name:  
Title:

**FORKE AUCTIONEERS, LTD.**

By:  
Name:  
Title:

**FORKE EUROPE, B.V.**

By:  
Name:  
Title:

**FORKE LOS SUBASTADORES S.A. de C.V.**

By:  
Name:  
Title:

**OTHERS:**

**RING POWER CORPORATION**

By:  
Name:  
Title:

**THOMPSON MACHINERY COMMERCE CORPORATION**

By:  
Name:  
Title:

## SCHEDULES

## EXHIBITS

**EXHIBIT 10.4**

**LOAN AGREEMENT**

Dated as of: March 26, 1999

Parties:       Ritchie Bros. U.S. Finance Limited Partnership (Delaware)   ("Borrower")  
                  Ritchie Bros. Auctioneers Incorporated                         ("Guarantor")  
And:            U.S. BANK NATIONAL ASSOCIATION                                 ("Lender")

**ARTICLE I**  
**DEFINITIONS AND INTERPRETIVE PROVISIONS**

**1.1 DEFINITIONS.**

As used in this Agreement, the following terms shall have the following meanings:

"Access Laws" means the Americans With Disabilities Act of 1990; the Fair Housing Amendments Act of 1988; all other federal, state and local laws or ordinances related to disabled access; and all statutes, rules, regulations, ordinances, orders of governmental bodies and regulatory agencies and orders and decrees of any court adopted, enacted or issued with respect thereto; all as now existing or hereafter amended or adopted.

"Default" means any Event of Default or any event which with the giving of notice or the passage of time, or both, would constitute an Event of Default.

"Environmental Laws" means all laws, rules, regulations, or ordinances of any Governmental Body pertaining to Hazardous Substances and environmental regulation, contamination or clean-up including, without limitation, the federal statutes commonly known as CERCLA and RCRA and all other national, state or provincial lien or environmental clean-up statutes, all as now existing or hereafter amended or adopted.

"GAAP" means Canadian generally accepted accounting principles consistently applied.

"Governmental Body" means (a) any foreign or domestic national, federal, state or local government or municipality or political subdivision of any government or municipality, (b) any assessment, improvement, community facilities or other special taxing district, (c) any governmental or quasi-governmental body, agency, authority, board, bureau, commission, corporation, department, instrumentality or public body, (d) any court, administrative tribunal, arbitrator, public utility or regulatory body, or (e) any central bank or comparable authority.

"Guaranty" means each guaranty of any obligations of Borrower to Lender heretofore, contemporaneously herewith or hereafter executed by any Guarantor or any other Person.

"Hazardous Substances" means (a) any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, or a hazardous, toxic or radioactive substance (or designated by any similar term) by or for purposes of any applicable Environmental Law; (b) asbestos and any substance or compound containing asbestos; and (c) any other hazardous, toxic or

dangerous waste, substance or material, including but not limited to gasoline, crude oil, fuel oil, diesel oil, and any other related petroleum products.

"Loan Documents" means this Agreement, the Reducing Revolver Note, the Guaranties and all other documents and instruments attached hereto, referred to herein or heretofore, contemporaneously herewith or hereafter executed or delivered to Lender by any Person in connection with any indebtedness of Borrower to Lender.

"Loan Party" means each party hereto other than Lender.

"Parent" means Ritchie Bros. Auctioneers Incorporated, which is incorporated under the laws of Canada.

"Person" means an individual or entity, including without limitation a corporation, general or limited partnership, limited liability company, trust, unincorporated association, government or government agency.

"RB Companies" means the Parent and each of its present or future direct and indirect subsidiaries.

## 1.2 OTHER INTERPRETIVE PROVISIONS.

1.2.1 Unless otherwise specified, the words "herein," "hereof," "hereto," "hereunder" and similar terms refer to this Agreement as a whole and not to any particular provisions of this Agreement and subsection, section, and exhibit references are to this Agreement.

1.2.2 The word "or" shall not be exclusive; the singular includes the plural and the plural includes the singular; the masculine includes the feminine and the feminine includes the masculine, and the word "including" is not limiting and means "including without limitation".

1.2.3 References to any Loan Document shall mean such Loan Document as amended, modified, supplemented or extended from time to time and any number of substitutions, renewals and replacements thereof or therefor.

1.2.4 References to governmental laws, statutes, ordinances, rules and regulations shall be construed as including all amendments, consolidations and replacements thereof or therefor.

1.2.5 Headings in this Agreement and each of the other Loan Documents are for convenience of reference only and are not part of the substance hereof or thereof.

1.2.6 Except as otherwise provided in this Agreement or any other Loan Document, all accounting terms used in this Agreement or any other Loan Document shall be construed, and all accounting and financial information or computations shall be prepared or computed, in accordance with GAAP. If GAAP changes during the term of this Agreement such that any covenants contained herein would then be calculated in a different manner or with different components, the Loan Parties and Lender agree to negotiate in good faith to amend this Agreement in such respects as is necessary to conform those covenants as criteria for evaluating the Loan Parties' financial condition to substantially the same criteria as were effective before such change in GAAP, provided, however, that until the Loan Parties and Lender so amend this Agreement, all such covenants shall be calculated in accordance with GAAP as in effect on the date of this Agreement.

**ARTICLE II  
REDUCING REVOLVER LOANS**

2.1 LOANS. Subject to the terms and conditions of this Agreement, Lender agrees to make loans to Borrower from time to time on a reducing revolving credit basis (each a "Reducing Revolver Advance", and collectively, the "Reducing Revolver Loans"), provided that the aggregate principal amount of outstanding Reducing Revolver Loans shall at no time exceed the Maximum Reducing Revolver Amount in effect at such time.

2.2 MAXIMUM AMOUNT.

2.2.1 The initial Maximum Reducing Revolver Amount shall be \$35,000,000. On April 1, 2000 and on the same day of 2001, 2002 and 2003 and on April 2, 2004 (each a "Reduction Date") the Maximum Reducing Revolver Amount shall be reduced by \$1,750,000.

2.2.2 The Maximum Reducing Revolver Amount may also be reduced pursuant to Section 6.1.3.

2.2.3 Borrower may permanently reduce the maximum Reducing Revolver Amount, provided that Borrower notifies Lender in writing not less than two weeks prior to such permanent reduction.

2.2.4 On September 30, 2004 the Maximum Reducing Revolver Amount shall be permanently reduced to \$0.00.

2.3 USE OF PROCEEDS. Borrower shall use the proceeds of the initial Reducing Revolver Advance to fund the acquisition of the assets of Forke Auctioneers, Inc. Subsequent Reducing Revolver Advances shall be used for Borrower's general corporate purposes.

2.4 NOTE. The Reducing Revolver Loans shall be evidenced by a promissory note executed by Borrower in the principal amount of \$35,000,000 substantially in the form attached as EXHIBIT A ("Reducing Revolver Note"). The Reducing Revolver Loans shall be subject to all terms and conditions of the Reducing Revolver Note and of this Agreement.

2.5 INTEREST. Interest on the unpaid principal balance of the Reducing Revolver Note shall be due and payable at the times and at the rates set forth in the Reducing Revolver Note.

2.6 PRINCIPAL PAYMENTS. On each Reduction Date, Borrower shall pay to Lender such amount as is necessary to reduce the principal balance of the Reducing Revolver Note to the Maximum Reducing Revolver Amount in effect as of such date. The principal balance of the Reducing Revolver Note shall be due and payable in full on September 30, 2004.

2.7 ADDITIONAL PAYMENTS. In addition to the payments otherwise required on the Reducing Revolver Note, if at any time the outstanding principal balance of the Reducing Revolver Note exceeds the Maximum Reducing Revolver Amount, Borrower shall pay to Lender on demand an amount equal to the amount by which such principal balance exceeds the Maximum Reducing Revolver Amount.

2.8 REQUESTS FOR ADVANCES. Whenever Borrower wishes to request a Reducing Revolver Advance, Borrower shall give Lender notice thereof in accordance with the provisions of the Reducing Revolver Note.



2.9 LOAN FEE. On the date of the initial Reducing Revolver Advance, Borrower shall pay to Lender a loan fee in the amount of \$8,750.00 for the period from such date through June 30, 1999. On September 1, 1999, and on the first day of the last month of each fiscal quarter thereafter, Borrower shall pay to Lender a fee for such fiscal quarter computed at a rate per annum equal to the Applicable Percentage (based upon the Debt to EBITDA Ratio as of the last day of the preceding fiscal quarter) of the Maximum Reducing Revolver Amount as in effect on the first day of such fiscal quarter. Notwithstanding the foregoing, if Borrower does not timely furnish a Compliance Certificate setting forth the Debt to EBITDA Ratio, the Applicable Percentage shall be automatically adjusted, as of the first day of the last month of the applicable fiscal quarter, to the highest rate set forth below.

The Applicable Percentage shall be the percent per annum set forth below opposite the applicable Debt to EBITDA Ratio (as defined in Section 6.1.1).

DEBT TO EBITDA RATIO -----	APPLICABLE PERCENTAGE -----
Less than 1.0 to 1.0	.075%
Equal to or greater than 1.0 to 1.0 but less than 1.75 to 1.0	.10%
Equal to or greater than 1.75 to 1.0 but less than 2.50 to 1.0	.125%
Equal to or greater than 2.50 to 1.0 but less than 3.25 to 1.0	.15%
Equal to or greater than 3.25 to 1.0	.20%

### ARTICLE III GUARANTIES AND NEGATIVE PLEDGE

3.1 GUARANTY. All present and future obligations of Borrower to Lender shall be guaranteed by Guarantor. Concurrently with execution of this Agreement, Guarantor shall execute and deliver a guaranty to Lender.

3.2 MAXIMUM GUARANTY AMOUNT. Notwithstanding any contrary provision of any Guaranty, if any action or proceeding is commenced asserting that the Guaranty of any Guarantor is subject to avoidance as a fraudulent transfer or fraudulent conveyance or any similar term under any applicable state or federal law, the obligations of such Guarantor under such Guaranty shall be limited to the maximum amount that would not render such Guarantor's obligations subject to avoidance under such law in such action or proceeding.

3.3 NEGATIVE PLEDGE.

3.3.1 Without the prior written consent of Lender, the Parent shall not, and shall not permit any of the other RB Companies to, grant, create, assume or permit to exist any pledge, assignment for security purposes, encumbrance, mortgage, hypothecation, or any other security interest (including without limitation, any conditional sale or other title retention agreement and any financing or capital lease having substantially the same economic effect as any of the foregoing) in all or any portion of any real or personal property now owned or hereafter acquired by the RB Companies (collectively, "Property"), except those liens and security interests in effect as of March 31, 1999 which are described on attached SCHEDULE 3.3.1.

3.3.2 Notwithstanding any other provision of this Agreement, the RB Companies may create or permit to exist purchase money security interests or equivalent security interests (including without limitation capital or financing leases) granted to secure the purchase price of or to finance the acquisition of equipment for use in the ordinary course of the RB Companies business so long as (a) such security interest does not extend to any Property other than the equipment acquired, and (b) such security interest secures only the obligation to pay the purchase price (or the obligation under any capital or financing lease).

#### **ARTICLE IV CONDITIONS PRECEDENT**

4.1 INITIAL CONDITIONS PRECEDENT. The effectiveness of this Agreement is subject to satisfaction of each of the following conditions precedent concurrently with or prior to execution of this Agreement:

4.1.1 Lender shall have received executed originals of this Agreement, the Reducing Revolver Note, and each other Loan Document required by Lender.

4.1.2 Lender shall have received all documents and information Lender may request relating to the authority for and validity of this Agreement and the other Loan Documents, and to any other related matters, each in form and substance satisfactory to Lender.

4.1.3 Lender shall have received such additional documents and information and each Loan Party shall have satisfied such additional requirements as Lender reasonably requires.

4.1.4 Lender shall have received the fee required by Section 2.9.

4.1.5 Lender shall have received an opinion from counsel for Guarantor acceptable to Lender, covering such matters as Lender reasonably requires.

4.2 CONDITIONS PRECEDENT TO EACH REDUCING REVOLVER ADVANCE. Lender's agreement to Reducing Revolver Advance is subject to satisfaction of the following conditions on the date Reducing Revolver Advance is made.

4.2.1 No Default shall have occurred or will exist following the making of the Reducing Revolver Advance.

4.2.2 The representations and warranties in this Agreement shall be true and correct as of such date.

**ARTICLE V  
REPRESENTATIONS AND WARRANTIES**

**5.1 REPRESENTATIONS AND WARRANTIES.** Each Loan Party hereby represents and warrants as of the date of execution of this Agreement and as of the date of each Reducing Revolver Advance:

**5.1.1 EXISTENCE AND POWER.** Borrower is a duly organized and validly existing limited partnership and Guarantor is a duly organized and validly existing corporation, and each Loan Party is duly qualified and in good standing in each jurisdiction where the conduct of its business or the ownership of its properties requires such qualification, and has full power, authority and legal right to carry on its business as presently conducted, to own and operate its properties and assets, and to execute, deliver and perform the Loan Documents and all other documents to be executed and delivered by it.

**5.1.2 AUTHORIZATION.** Its execution, delivery and performance of the Loan Documents and all documents to be executed, delivered or performed by it and any borrowing in connection therewith have been duly authorized by all necessary corporate or other entity action, do not contravene any law, regulation, rule or order binding on it, or its articles of incorporation or operating agreement, and do not contravene the provisions of or constitute a default under any agreement or instrument to which it is a party or by which it may be bound or affected.

**5.1.3 LITIGATION.** There are no actions, proceedings, investigations, or claims pending against it, or to its knowledge, threatened against or affecting it, before any court or arbitrator or any governmental body or agency which would be likely to result in a judgment or order against it (in excess of insurance coverage) for more than \$1,000,000 individually or in the aggregate, excluding any matters previously reflected in Guarantor's financial statements as of December 31, 1998 (the "Existing Claims").

**5.1.4 FINANCIAL CONDITION.** Its most recent balance sheet and related statements of income, retained earnings and cash flows heretofore delivered to Lender fairly present as of the date thereof its financial condition for the period then ended, all in accordance with GAAP. Since that date there have been no material adverse changes in its financial condition or operations, except as disclosed to Lender in writing.

**5.1.5 TAXES.** It has filed all tax returns and reports required of it, and has paid all taxes payable by it which have become due pursuant to such tax returns and all other taxes and assessments payable by it.

**5.1.6 OTHER AGREEMENTS.** It is not in breach of or in default under any agreement to which it is a party or which is binding on it or any of its assets, which such breach or default would have a material adverse effect on its financial condition or operations.

**5.1.7 GOVERNMENTAL APPROVALS.** No approval, authorization, consent, certificate of compliance, license, permit or exemption from, contract with, registration or filing with or report or notice to any Governmental Body is required for its due execution, delivery and performance of the Loan Documents or the loyalty, validity, binding effect and enforceability of any of the Loan Documents, except such as have been obtained and are in full force and effect.

5.1.8 COMPLIANCE WITH LAWS. It is in compliance in all material respects with all applicable laws, regulations and ordinances of any Governmental Body, including without limitation all environmental permits, Environmental Laws, Access Laws and laws regulating employee pensions or retirement plans.

5.1.9 NO MATERIAL MISSTATEMENTS. No report, financial statement, representation or other information furnished by it to Lender contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

5.1.10 ENFORCEABILITY. This Agreement constitutes, and each other Loan Document to which it is a party when executed and delivered to Lender will constitute a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms.

5.2 CONTINUING REPRESENTATIONS. Each request by Borrower for a Reducing Revolver Advance shall be deemed to be its representation and warranty that (a) no Default has occurred, or will exist after the making of such Reducing Revolver Advance, and (b) all representations and warranties set forth in this Agreement are true, accurate and complete as of the date of such request.

## **ARTICLE VI FINANCIAL COVENANTS AND INFORMATION**

6.1 FINANCIAL COVENANTS. Until payment and performance in full of all obligations of each Loan Party under the Loan Documents, each Loan Party agrees that:

6.1.1 DEBT TO EBITDA RATIO. The Parent shall maintain, on a consolidated basis, as of the last day of each fiscal quarter, a Debt to EBITDA Ratio of not more than 4.0 to 1.0.

As used herein:

"Debt to EBITDA Ratio" means, as of any date of determination, the ratio, for the Parent and its subsidiaries on a consolidated basis of (a) long term debt (including liabilities as lessee on capital leases and the current portion of long term debt and capital leases) as of such date to (b) EBITDA for the period of four consecutive fiscal quarters ending on such date (each such period, an "Annual Period").

"EBITDA" means, for any time period net income (or loss) for such time period plus the amount which in determining net income (or loss) has been deducted for interest expense, income taxes, depreciation and amortization.

6.1.2 FUNDED DEBT RATIO. The Parent shall maintain, on a consolidated basis, as of the last day of each fiscal quarter, a ratio of Funded Debt to Funds Employed of not more than .75 to 1.0.

As used herein:

"Funded Debt" means, as of any date of determination, the principal portion of all interest bearing indebtedness (including liabilities as lessee on capital leases) of the Parent at such time.

"Funds Employed" means as of any date of determination the sum of (a) the

Parent's Funded Debt plus (b) an amount equal to the Parent's assets minus the Parent's liabilities.

6.1.3 **FIXED CHARGE RATIO.** The Parent shall maintain, on a consolidated basis, as of the last day of each fiscal quarter, a Fixed Charge Ratio of not less than 1.50 to 1.0.

"Fixed Charge Ratio" means, as of any date of determination, the ratio, for the Parent and its subsidiaries on a consolidated basis, of (a) EBITDA for the Annual Period ending on such date, minus dividends declared or paid during such Annual Period to (b) the sum of (i) the current portion of long term debt (including liabilities as lessee on capital leases), plus (ii) the Required Sinking Fund Amount for the Annual Period commencing on such date, plus (iii) interest expense for the Annual Period ending on such date.

6.1.4 **RIGHT TO CURE.** If the financial statements delivered by Borrower pursuant to Section 6.2.2 demonstrate that the Loan Parties are not in compliance with the requirements of Sections 6.1.1, 6.1.2 or 6.1.3 as of the end of any fiscal quarter, the Loan Parties shall have 30 days following timely delivery of such financial statements within which to cure the violation by delivering to Lender such additional financial statements as Lender requires which demonstrate compliance with such requirements as of the last day of the month prior to the date of delivery of such additional financial statements (including, for purposes of this calculation only, EBITDA dividends and interest expense for the one-year period ending on such last day and the current portion of long term debt and Required Sinking Fund Amount for the one-year period commencing on such day). If the violation is not cured within such time period, then Lender may, at its sole discretion, call the loan by declaring the entire outstanding balance of principal and interest on the Reducing Revolver Note immediately due and payable.

6.1.5 **DEBT.** Without the prior written consent of Lender, which shall not be unreasonably withheld, the Parent shall not, and shall not permit any of the RB Companies to, incur or permit to exist, any indebtedness to or commitments for indebtedness from any Person, except a) indebtedness to and commitments from Lender, b) indebtedness and commitments existing on the date hereof and set forth on attached SCHEDULE 6.1.2 and any renewals or extensions thereof (but excluding any increase thereof) c) short term trade obligations incurred in the ordinary course of business, and d) additional indebtedness and/or commitments in an aggregate principal amount of up to \$10,000,000.

6.1.6 **SINKING FUND.** On a consolidated basis, Parent shall at all times on and after April 1, 2000, maintain cash on hand in an amount at least equal to the Required Sinking Fund Amount at such time. The Required Sinking Fund Amount shall be \$3,250,000 as of April 1, 2000. On April 1 of each year thereafter (each a "Sinking Fund Increase Date") the Required Sinking Fund Amount shall be increased by \$3,250,000. Notwithstanding the foregoing, the Sinking Fund Amount shall not increase on any Sinking Fund Increase Date if, at least 10 days prior to such date, Borrower (a) notifies Lender of its election to permanently reduce the Maximum Reducing Revolver Amount by an amount equal to the required increase in the Sinking Fund Amount and (b) makes such payments as are necessary to reduce the principal balance of the Reducing Revolver Note by such amount.

## 6.2 FINANCIAL INFORMATION.

6.2.1 As soon as available and in any event within 120 days after the end of each of its fiscal years, the Parent shall deliver to Lender its CPA or Chartered Accountant audited balance sheet as at the end of such fiscal year; related statements of income, retained earnings and cash flows for such year; and report, if any, to management by the accountant who prepared the financial statements, in each case certified by a certified public accountant acceptable to Lender. No document or report shall contain a disclaimer of opinion or adverse opinion except such as Lender in its sole discretion may determine to be immaterial.

6.2.2 As soon as available and in any event within 45 days after the end of each of its fiscal quarters, the Parent shall deliver to Lender its internally prepared consolidated balance sheet and related statements of income, retained earnings and cash flow as at the end of such quarter, and for the fiscal year to date.

6.2.3 As soon as available and in any event within 45 days after the end of each fiscal quarter Borrower or the Parent shall deliver to Lender, at Borrower's sole expense, a Compliance Certificate, substantially in the form attached as EXHIBIT B signed by its chief financial officer or other authorized officer acceptable to Lender.

6.2.4 Within 10 days after filing, the Parent shall deliver to Lender copies of all financial statements, proxy statements, reports and other documents which the Parent files with the Securities and Exchange Commission or sends to its stockholders.

6.2.5 From time to time, each Loan Party shall provide to Lender such information as Lender may reasonably request concerning the financial condition and business affairs of such Loan Party.

## **ARTICLE VII AFFIRMATIVE COVENANTS**

Until payment and performance in full of all obligations of each Loan Party under the Loan Documents, each Loan Party agrees that:

7.1 **INSPECTION RIGHTS.** At any reasonable time, and from time to time upon the reasonable request of Lender, it will permit Lender to examine and make copies of and abstracts from its records and books of account, to visit its properties and to discuss its affairs, finances and accounts with any of its officers or representatives.

7.2 **KEEPING OF BOOKS AND RECORDS.** It will keep adequate records and books of account in which complete entries will be made reflecting all material financial transactions, and except as otherwise specifically provided herein, will prepare all financial statements, computations and information required hereunder in accordance with GAAP.

7.3 **OTHER OBLIGATIONS.** It will pay and discharge before the same shall become delinquent all indebtedness, taxes and other obligations for which it is liable or to which its income or property is subject and all claims for labor and materials or supplies which, if unpaid, might become by law a lien upon its assets, unless it is contesting the indebtedness, taxes, or other obligations in good faith and provision has been made to the reasonable satisfaction of Lender for the payment thereof in the event any such contest is determined adversely to it.

7.4 INSURANCE. It will provide, maintain and deliver to Lender policies of insurance on its properties and operations, in such form and amounts and covering such risks as Lender may require.

7.5 COMPLIANCE WITH LAWS. It shall comply in all material respects with all laws, regulations and ordinances of any Governmental Body (including but not limited to all Environmental Laws, Access Laws, the Fair Labor Standards Act and laws regulating employee pension and retirement plans) and promptly provide written notice to Lender of the receipt of any notice of violation thereof from any governmental authority which violation, alone or together with any other such violations, could reasonably be expected to have a material adverse effect on its business, assets, operations or condition, financial or otherwise.

7.6 NOTIFICATION. Promptly after learning thereof, it will notify Lender in writing of:

7.6.1 The occurrence of any Default, and if such Default is then continuing, a certificate of its chief financial officer or other authorized officer setting forth the details thereof and the action which it is taking or proposes to take with respect thereto.

7.6.2 The occurrence of any release of any Hazardous Substances onto or affecting any of its property or any adjacent property, any Collateral, or any other environmental problem or liability with respect to any such property.

7.6.3 The details of any claim, lien, litigation, administrative proceeding or judgment involving \$1,000,000 or more individually or in the aggregate (other than the Existing Claims) threatened, instituted or completed against any Loan Party, or any assets of any Loan Party, including but not limited to any and all enforcement, cleanup, removal or other governmental or regulatory proceedings pursuant to any Environmental Laws.

## **ARTICLE VIII NEGATIVE COVENANTS**

Until payment and performance in full of all obligations of each Loan Party under the Loan Documents, each Loan Party agrees that except with the written consent of Lender:

8.1 LIQUIDATION, MERGER, ETC. It shall not wind up, liquidate or dissolve itself, reorganize, merge or consolidate with or into, or convey, sell, assign, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to any Person, except one of the RB Companies.

8.2 TYPE OF BUSINESS. It shall not make any material change in the character of its business.

8.3 STRUCTURE. It shall not make any material change in its organizational structure.

8.4 TRANSACTIONS WITH AFFILIATES. It shall not enter into any transaction with any affiliate, including, without limitation, the purchase, sale, or exchange of property or the rendering of any service, except in the ordinary course of business and upon fair and reasonable terms no less favorable to it than those that would prevail in a comparable arm's-length transaction with a Person not an affiliate.

## **ARTICLE IX**

## FOREIGN JURISDICTION, CURRENCY AND TAX MATTERS

### 9.1 JURISDICTION.

9.1.1 Each Loan Party hereby irrevocably consents to the non-exclusive jurisdiction of any state or federal court of competent jurisdiction in the State of Oregon, in any action, suit or proceeding ("Proceeding") enforcing or otherwise arising out of this Agreement or any of the other Loan Documents, and irrevocably agrees that all claims which are the subject of such Proceeding may be heard or determined in any such court.

9.1.2 Each Loan Party hereby designates and appoints Perkins Coie LLP, whose address in the United States is 1211 SW Fifth Avenue, #1500, Portland, OR 97204-3715, as its authorized agent ("Agent") and true and lawful attorney in fact in its name, place and stead to accept service of a summons and complaint or any other process in any such Proceeding and agrees that the failure of Agent to give any notice of any such service of process to any Loan Party shall not impair or affect the validity of such service or of any judgment based thereon.

9.1.3 Each Loan Party waives personal service of process and consents to the service of any and all process in any Proceeding by mail or hand delivery or as otherwise provided by the laws of the State of Oregon or the United States of America, (a) to each Loan Party at Perkins Coie LLP, 1211 SW Fifth Avenue, #1500, Portland, OR 97204-3715 or at such other address in the United States as each Loan Party provides in writing to Bank for such service; (b) to Agent at Agent's address set forth above.

9.1.4 Each Loan Party waives any defense or objection to jurisdiction or venue in the aforesaid courts, including any objection or defense based upon lack of personal jurisdiction, insufficiency of summons or process, sovereign immunity or other immunity from suit or the doctrine of forum non conveniens. Each Loan Party agrees that a final judgment rendered against such Loan Party by any state or federal court in the state of Oregon in any action, suit or proceeding shall be conclusive and may be enforced in other jurisdictions, domestic or foreign, by suit on the judgment or in any other manner provided by law.

9.1.5 Nothing herein shall affect the right of Lender to serve legal process or obtain jurisdiction in any other manner permitted by law, or affect the right of Lender to bring any action, suit or proceeding against any Loan Party or its property in the courts of any other jurisdiction, domestic or foreign.

### 9.2 JUDGMENT CURRENCY.

9.2.1 All references to money amounts herein or in any other Loan Document are to lawful money of the United States of America. The payment obligations of any Loan Party under any Loan Document shall not be discharged by any amount paid in any currency other than United States Dollars ("USD"), except to the extent of the USD amount realized by Lender when the amount paid is converted to USD under Lender's normal banking practices.

9.2.2 If, for purposes of obtaining judgment in any foreign court it is necessary to convert a sum due hereunder from USD into another currency (the "Other Currency"), the rate of exchange shall be that at which, in accordance with its normal banking practice, Lender could



purchase USD with the Other Currency on the date judgment is obtained; provided, however, that the obligation of any Loan Party in respect of any amount due to Lender in USD shall be discharged only if and to the extent that, on the day of receipt of any sum adjudged due in the Other Currency, Lender is able, in accordance with its normal banking practice, to purchase the amount of USD with such Other Currency which Lender could have purchased on the judgment date.

9.2.3 If the amount paid to Lender in any currency other than USD, whether pursuant to a judgment or otherwise, does not, upon conversion to USD in accordance with Lender's normal banking practices, yield the amount of USD due hereunder, each Loan Party, as a separate obligation, and notwithstanding any judgment or other recovery, agrees to indemnify Lender against and to pay to Lender on demand, in USD, any difference between the sum originally due in USD and the amount of USD obtained by Lender.

9.3 DEDUCTION AND WITHHOLDING. Any and all payments made by any Loan Party shall be made free and clear of and without deduction for any present or future taxes, levies, imposts, dedications, charges or withholding pursuant to any applicable laws ("Taxes"), unless such Loan Party shall be required by applicable law to make any such deduction. If, pursuant to any requirement of applicable law, any Loan Party shall make any deduction or withholding from any amount to be paid hereunder, then the parties shall, on a best efforts basis, agree to modify the terms of the Reducing Revolver Loan so as to eliminate the required withholding. The Loan Parties shall furnish to Lender, as soon as reasonable, such receipts and other documents as may be required to establish payment of such Taxes and any tax credit to which Lender may be entitled. The obligations of each Party under this Section 9.3 shall survive the termination of the Loan Agreement and the repayment of the indebtedness evidenced by or guaranteed by the Loan Documents. Upon receipt of any tax credit or refund to which the Lender is entitled, the Loan Parties shall pay to Lender the amount, if any, which is necessary so that Lender is made whole and receives the amount it would have received if no withholding had occurred.

## **ARTICLE X DEFAULT**

10.1 EVENTS OF DEFAULT. The occurrence of any of the following shall constitute an Event of Default under this Agreement and each of the Loan Documents:

10.1.1 Any failure of any Loan Party to pay any portion of any principal, interest, fees or any other amount when due under this Agreement, the Reducing Revolver Note or any other Loan Document.

10.1.2 Any failure of any Loan Party to pay, perform or comply with any term of this Agreement, any other Loan Document, or any other agreement between Lender or any affiliate of Lender and any Loan Party or any of the RB Companies.

10.1.3 Any indebtedness of any Loan Party under any note, indenture, agreement, undertaking or obligation of any kind to any Person, including Lender, becomes due by acceleration or otherwise and is not paid.

10.1.4 Any default under any security instrument securing any indebtedness or obligation of Borrower to Lender or any security interest or lien created or purported to be created by any security document shall cease to be, or shall be asserted by any Person not to be, a valid, first

priority security interest or lien.

10.1.5 Any Guaranty shall cease to be, or shall be asserted by any Loan Party not to be, in full force and effect.

10.1.6 Any warranty, representation, statement, or information made or furnished to Lender by or on behalf of any Loan Party proves to have been false or misleading in any material respect when made or furnished or when deemed made or furnished, or becomes false or misleading in any material respect at any time thereafter.

10.1.7 The commencement of any proceeding under any bankruptcy or insolvency laws by or against, appointment of a receiver for any part of the property of, insolvency or business failure of, or any attachment, seizure or levy on any property of, any Loan Party.

10.1.8 The dissolution or liquidation of any Loan Party or the taking by any Loan Party of any action to authorize a dissolution or liquidation.

10.1.9 The interruption or cessation of a material portion of any Loan Party's ordinary business operations.

10.1.10 Except with respect to the Existing Claims, any judgment, writ of attachment or similar process in an amount in excess of \$1,000,000 individually or in the aggregate shall be entered or filed against any Loan Party or any property of any Loan Party and remains unpaid, unvacated, unbonded or unstayed for a period of 30 days or more.

10.1.11 The failure of any Loan Party to provide Lender with financial information promptly when requested.

10.1.12 Any change in ownership of any of the partnership interests in Borrower.

10.1.13 Any material adverse change, as reasonably determined by Lender, in the financial condition or management of any Loan Party or Lender reasonably deems itself insecure with respect to the payment or performance of the obligations of any Loan Party to Lender.

10.2 CONSEQUENCES OF DEFAULT; LENDER'S RIGHTS AND REMEDIES. Time is of the essence of this Agreement.

10.2.1 Upon the occurrence of any Event of Default and at any time thereafter Lender may, at its sole option, do any one or more of the following:

(a) Without notice to any Loan Party, terminate the availability of Reducing Revolver Advances and declare the entire outstanding balance of principal and interest on the Reducing Revolver Note and other Loan Documents immediately due and payable, whereupon the same shall become immediately due and payable without presentment, demand, protest or other requirements of any kind, all of which are expressly waived by each Loan Party; and

(b) Exercise any and all other rights and remedies provided in the Loan Documents and in any related agreements and documents, and as otherwise provided by law.

10.2.2 Notwithstanding any right to cure events of default provided in the Reducing Revolver Note or any of the other Loan Documents, each Loan Party agrees that such Loan Party

shall have only such cure rights as may be set forth herein.

## **ARTICLE XI ARBITRATION**

11.1 **ARBITRATION OF CLAIMS.** Either Lender or any Loan Party may require that all disputes, claims, counterclaims, and defenses, including those based on or arising from any alleged tort ("Claims") relating in any way to this Agreement, any loan, any of the Loan Documents, or any transaction of which this Agreement is a part (each a "Credit"), be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and Title 9 of the U.S. Code. All Claims will be subject to the statutes of limitation applicable if they were litigated. This provision is void if the Credit, at the time of the proposed submission to arbitration, is secured by real property located outside of Oregon or Washington, or if the effect of the arbitration procedure (as opposed to any Claims of any Loan Party) would be to materially impair Lender's ability to realize on any Collateral securing the Credit.

11.2 **ARBITRATORS.** If arbitration occurs and each party's Claim is less than \$100,000, one neutral arbitrator will decide all issues; if any party's Claim is \$100,000 or more three neutral arbitrators will decide all issues. All arbitrators will be active Oregon State Bar members in good standing. All arbitration hearings will be held in Portland, Oregon. In addition to all other powers, the arbitrator(s) shall have the exclusive right to determine all issues of arbitrability. Judgment on any arbitration award may be entered in any court with jurisdiction.

11.3 **OTHER REMEDIES.** If any party institutes any judicial proceeding relating to any Credit, such action shall not be a waiver of the right to submit any Claim to arbitration. In addition, each has the right before, during, and after any arbitration to exercise any number of the following remedies, in any order or concurrently: (a) setoff; (b) self-help repossession; (c) judicial or non-judicial foreclosure against real or personal property collateral; (d) provisional remedies, including injunction, appointment of receiver, attachment, claim and delivery and replevin.

11.4 **GOVERNING PROVISION.** Each Loan Party agrees that, notwithstanding any contrary provision of the Reducing Revolver Note or any of the other Loan Documents, the provisions of this Article shall govern the arbitration of all matters described herein.

## **ARTICLE XII MISCELLANEOUS**

12.1 **NO WAIVER BY LENDER.** No failure or delay of Lender in exercising any right, power or remedy under this Agreement or any Loan Document shall operate as a waiver of such right, power or remedy of Lender or of any other right. A waiver of any provision of any Loan Document shall not constitute a waiver of or prejudice Lender's right otherwise to demand strict compliance with that provision or any other provision. Any waiver, permit, consent or approval of any kind or character on the part of Lender must be in writing and shall be effective only to the extent specifically set forth in such writing.

12.2 **COSTS AND FEES.** Without limiting any other provisions of this Agreement, Borrower hereby agrees to pay Lender on demand an amount equal to all costs and expenses incurred by Lender in connection with the negotiation, preparation, execution, administration and enforcement of the Loan Documents, including without limitation all recording costs, filing fees, costs of

appraisals, collateral audits, costs of perfecting, maintaining and defending Lender's security interest in the Collateral and fees of in-house and outside counsel.

12.3 NOTICES. Except as otherwise specifically set forth in any Loan Document, all notices, requests and demands hereunder shall be in writing, and shall be deemed to have been given when hand-delivered, when sent by registered or certified mail, postage prepaid, or when sent by telecopier, addressed as set forth below; provided, however, that any request for a Reducing Revolver Advance shall not be effective until received by Lender. Any party may at any time change its address for notices by giving notice of such change to the other parties.

If to Borrower or Guarantor:

c/o Ritchie Bros. Auctioneers Incorporated  
9200 Bridgeport Road  
Richmond, BC Canada V6X 1S1  
Fax: (604) 273-6873

If to Lender:

U.S. Bank National Association  
Oregon Corporate Banking  
111 S.W. Fifth Avenue, T-4  
Portland, OR 97204  
Fax: (503) 275-5795

12.4 COLLECTION COSTS AND ATTORNEY FEES. Whether or not litigation or arbitration is commenced, the Loan Party promises to pay all costs of collecting any amounts which may become due to Lender under any of the Loan Documents. Without limiting the foregoing, if litigation or arbitration is commenced to enforce or construe any term of any of the Loan Documents, the prevailing party shall be entitled to recover from the other party all costs thereof, including but not limited to such sums as the court or arbitrator(s) may adjudge reasonable as attorney fees at trial, in any appellate proceeding, proceeding under the bankruptcy code or receivership and post-judgment attorney fees incurred in enforcing any judgment .

12.5 INTEGRATION; CONFLICTING TERMS. This Agreement together with the other Loan Documents comprises the entire agreement of the parties on the subject matter hereof and supersedes and replaces all prior agreements, oral and written, on such subject matter. If any term of any of the other Loan Documents expressly conflicts with the provisions of this Agreement, the provisions of this Agreement shall control; provided, however, that the inclusion of supplemental rights and remedies of Lender in any of the other Loan Documents shall not be deemed a conflict with this Agreement.

12.6 ASSIGNMENT AND PARTICIPATION. Lender may from time to time assign or sell participating interests in all or any part of its interest in this Agreement, the Reducing Revolver Note and the other Loan Documents.

12.7 SUCCESSORS AND ASSIGNS. This Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, except that no Loan Party may assign or transfer any of its rights or obligations under any Loan Document without the prior written consent of Lender.

12.8 SEVERABILITY. If any provisions of this Agreement or any of the Loan Documents is held invalid under any applicable laws, such invalidity shall not affect any other provision of this Agreement that can be given effect without the invalid provision.

12.9 GOVERNING LAW. Except to the extent that Lender has greater rights and remedies

under federal law, this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Oregon without regard to conflicts of law principles (except that matters concerning the validity and perfection of security interests covered thereby shall be governed by the conflicts of law provisions of the Uniform Commercial Code).

12.10 ADDITIONAL ACTS. Upon request by Lender, each Loan Party will from time to time provide such information, execute such documents and do such acts as may reasonably be required by Lender in connection with any indebtedness or obligations of any of them to Lender.

12.11 DOCUMENTS SATISFACTORY TO LENDER. All information, documents and instruments required to be executed or delivered to Lender shall be in form and substance satisfactory to Lender.

12.12 COMPUTATIONS. All interest rates and fees referred to herein shall be computed on the basis of a 360-day year and applied to the actual number of days elapsed.

12.13 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of said counterparts taken together shall be deemed to constitute but one document.

12.14 DISCLOSURE.

UNDER OREGON LAW, MOST AGREEMENTS PROMISES AND COMMITMENTS MADE BY LENDERS AFTER OCTOBER 3, 1989, CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY THE LENDER TO BE ENFORCEABLE.

**EACH LOAN PARTY ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT.**

RITCHIE BROS. U.S. FINANCE  
LIMITED PARTNERSHIP (DELAWARE)

BY: RITCHIE BROS. HOLDINGS LTD.,  
ITS GENERAL PARTNER

BY:

TITLE:

RITCHIE BROS. AUCTIONEERS  
INCORPORATED

U.S. BANK NATIONAL ASSOCIATION

BY:

TITLE:

BY:

TITLE:

**EXHIBIT B \_\_\_\_\_**  
**COMPLIANCE CERTIFICATE**

This Compliance Certificate is executed and delivered by \_\_\_\_\_ to U.S. Bank National Association ("Lender") pursuant to the requirements of the Loan Agreement dated as of \_\_\_\_\_ between Borrower, certain other parties and Lender ("Loan Agreement"). Any capitalized terms used herein and not defined herein shall have the meanings given to such terms in the Loan Agreement. This Compliance Certificate covers the fiscal quarter ended \_\_\_\_\_.

1. A review of the activities of Loan Parties during the fiscal period covered by this Compliance Certificate has been made under the supervision of the undersigned with a view to determining whether during such fiscal period the Loan Parties performed and observed all of their obligations under the Loan Agreement. To the best knowledge of the undersigned, during such fiscal period all covenants and conditions of Loan Parties have been performed and observed and no Default has occurred and is continuing under the Loan Agreement [with the exceptions set forth below in response to which Loan Parties has taken or proposes to take the following actions:

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\_\_\_\_\_.]

2. To the best knowledge of the undersigned, no material adverse change has occurred with regard to Loan Parties' business, assets, operations or condition, financial or otherwise, since the last Compliance Certificate was delivered [with the exceptions set forth below:

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\_\_\_\_\_.]

3. Attached are the calculations and other supporting documentation showing whether Loan Parties were in compliance with Sections 6.1.1, 6.1.2, 6.1.3 and 6.1.5 of the Loan Agreement as of the end of the fiscal period covered by this Compliance Certificate. Each such calculation is derived from the books and records of the Loan Parties and correctly reflects whether the Loan Parties are in compliance with the applicable sections of the Loan Agreement.

4. This Compliance Certificate is executed on \_\_\_\_\_.

By:

Title:

---

**End of Filing**

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