



3.5.01 T

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101648131

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Timothy Yoo, in his capacity as Chapter 7 trustee for the Chapter 7 estate of Dick Cepek, Inc.

- Individual(s)
- General Partnership
- Corporation-State
- Other Trustee
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: June 12, 2000

2. Name and address of receiving party(ies)

Name: Performance Enterprises, Inc.

Internal Address: _____

Street Address: 4670 Allen Road

City: Stow State: OH ZIP: 44224

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State Ohio
- Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No

(Designations must be a separate document from assignment)

Additional name(s) & address(es) attached? Yes No

4. Application number(s) or patent number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

See Attached

1038,973

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Pamela J. Eblen

Internal Address: Jones, Day, Reavis & Pogue

Street Address: North Point

901 Lakeside Avenue

City: Cleveland State: OH ZIP: 44114

6. Total number of applications and registrations involved: 24

7. Total fee (37 CFR 3.41).....\$ 615.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Pamela J. Eblen
Name of Person Signing

Pamela J. Eblen
Signature

3/2/2001
Date

Total number of pages including cover sheet, attachments, and document: 35

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patents & Trademarks, Box Assignments
Washington, D.C. 20231

TRADEMARK
REEL: 002257 FRAME: 0799

EXHIBIT A

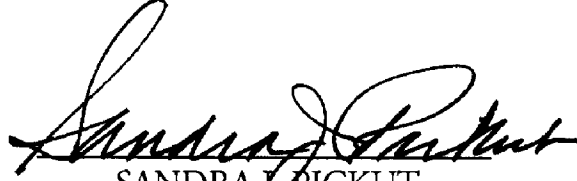
REGISTERED MARKS

Mark	Reg. No.	Reg. Date
BAJA-PROVEN	1,038,973	May 4, 1976
BAJA-PROVEN	969,512	October 2, 1973
DICK CEEPK	999,857	December 17, 1974
EUROTECH	1,316,131	January 22, 1985
EURO-TECH	1,894,016	May 16, 1995
EURO-TECH	1,433,744	March 24, 1987
F-C	1,508,044	October 11, 1988
FUN COUNTRY	1,099,438	August 15, 1978
GIANT FULLER	1,141,588	November 18, 1980
HOT TOPS	1,574,724	January 2, 1990
MAXI-TRUCKER	1,128,229	December 25, 1979
M-C	1,508,046	October 11, 1988
MINI-TRUCKER	1,089,668	April 18, 1978
MULTI-PADDLE	1,075,473	October 18, 1977
OFF-ROADER	1,102,051	September 12, 1978
OFF-ROADER	1,073,560	September 20, 1977
QUIET GIANT	1,090,817	May 9, 1978
RADIAL F-C	1,515,306	December 6, 1988
RADIAL M-C	1,515,308	December 6, 1988
RADIAL X-C	1,515,307	December 6, 1988
SAND RUNNER	1,107,183	November 28, 1978
SAND SPORT	1,137,844	July 15, 1980
SPIDER TRAC	1,502,113	August 30, 1988
X-C	1,510,050	October 25, 1988

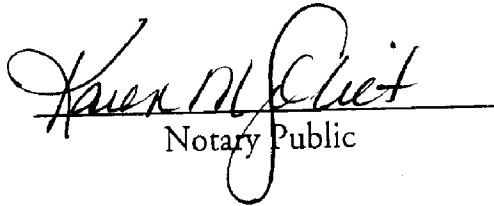
CERTIFICATE OF AUTHENTICATION
ASSIGNMENT OF TRADEMARKS RIGHTS

State Ohio)
County of Summit)

NOW comes the undersigned, SANDRA J. PICKUT, President of Performance Enterprises, Inc. and first being duly cautioned and sworn, states that the attached ASSIGNMENT OF UNITED STATES TRADEMARK RIGHTS is a true and correct copy of the original in all regards.


SANDRA J. PICKUT
President

IN WITNESS WHEREOF, I have hereunto set my hand and seal, signed and sworn to before me this 7 day of February 2001.


Notary Public

KAREN M. JOLIET, Notary Public
Residence - Summit County
State Wide Jurisdiction, Ohio
My Commission Expires May 5, 2004

ASSIGNMENT OF UNITED STATES TRADEMARK RIGHTS

WHEREAS, Timothy Yoo, in his capacity as Chapter 7 Trustee for the Chapter 7 estate of Dick Cepek, Inc., having a principal address at 1888 Century Park East, Suite 1500, Los Angeles, California 90067 (hereinafter "Assignor"), has the authority to transfer, without any representation or warranty of his rights, title, and interest in the applications and registrations as shown in the attached "Exhibit A" hereto (hereinafter the "Marks"), and as shown in the records of the United States Patent and Trademark Office; and

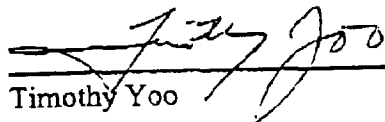
WHEREAS, Performance Enterprises, Inc., a corporation duly organized and existing under the laws of the State of Ohio, having a principal address at 4670 Allen Road, Stow, Ohio, 44224, (hereinafter "Assignee"), is desirous of acquiring all rights, title, and interest to the United States Trademark applications and registrations attached hereto on Exhibit A;

WHEREAS, the Assignor is willing to transfer and assign all of its rights, title and interest to the United States Trademark applications and registrations attached hereto on Exhibit A;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Assignor does hereby sell, convey, assign, transfer and deliver as sole legal and beneficial owner to Assignee, for its use and the use of its successors, assigns and legal representatives, all of Assignor's right, title and interest in and to the registrations listed on the attached Exhibit A, together with any and all additions, divisions and/or extensions thereof, and including all common law rights and the goodwill associated therewith, for the full term or terms of all such rights, together with the right to sue and recover all claims for damages for the past infringement thereof, for its own use and for the use of its successors, assigns and legal representatives.

IN WITNESS WHEREOF, Timothy Yoo has caused this ASSIGNMENT OF UNITED STATES TRADEMARK RIGHTS to be executed on its behalf as of the 22nd day of June, 2000.

TIMOTHY YOO IN HIS CAPACITY AS THE
CHAPTER 7 TRUSTEE FOR THE CHAPTER 7
ESTATE OF DICK CEPEK, INC. ("Assignor")



Timothy Yoo

A-1

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (the "Agreement") is entered into this ___ day of June, 2000, by and between Performance Enterprises, Inc., an Ohio corporation ("Buyer"), and Timothy Yoo ("Seller") in his capacity as Chapter 7 Trustee (the "Trustee") for the chapter 7 estate of Dick Cepek, Inc. ("Cepek" or the "Debtor").

RECITALS

- A. Buyer is engaged in the business of manufacturing, distributing and selling automotive parts, including specialized accessories for sport utility and light truck vehicles.
- B. Seller was appointed as Trustee pursuant to a notice of appointment filed with the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court") on February 14, 2000.
- C. Debtor filed a voluntary chapter 11 petition under Title 11 of the United States Code (the "Bankruptcy Code") on March 11, 1999 in the Bankruptcy Court, commencing the case styled as In Re Dick Cepek, Inc., case number LA 99-19373-LF (the "Case"). The Case was converted to one under chapter 7 of the Bankruptcy Code pursuant to an order of the Bankruptcy Court entered on February 16, 2000.
- D. Debtor was engaged in the business of wholesaling, distributing and retailing sport utility and light truck vehicle accessories. Debtor's principal place of business was located in Carson, California. Debtor ceased business operations on February 16, 2000.
- E. Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, the real and personal property more particularly described below (the "Assets") in accordance with the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, and for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

I
Purchase and Sale of Assets

1.01 Assets. Upon the terms and subject to all the conditions contained herein, Seller agrees to sell, assign, transfer and deliver to Buyer on the Closing (defined below), free and clear of all security interests, liens, claims and other encumbrances, the Assets, as described in the following subsections:

a. Personal Property Assets.

(i). Inventory. All inventory of Seller wherever located, including all automotive parts and accessories;

(ii). Tire Molds. All tire molds of Seller wherever located;

(iii). Fictitious Business Names, Trade Names, Goodwill and Other Intangible Rights. All of Seller's right, title and interest in and to all patents, trademarks and the attendant goodwill (including but not limited to those set forth on Exhibit "A"), trade names, trade styles, copyrights (including but not limited to those set forth on Exhibit "A"), internet addresses, websites and any other intangible assets of Seller, including, but not limited to, the name Dick Cepek and any dba of Cepek utilized in any jurisdiction, all stationery, letterheads, negatives, prints, flyers, pamphlets and all other media items used or to be used in connection with the products and services offered by Seller and Debtor, and all goodwill of Seller and Debtor;

(iv). Telephone Lines. Assignment and transfer of Seller's rights with respect to all telephone number(s) utilized by Seller and Debtor at all locations where Seller and Debtor conduct or conducted business, including any "800" and all other toll free telephone numbers, provided, however, that Buyer shall have no responsibility for any delinquencies or arrearages of Seller and Debtor owed as of Closing (defined below) with respect to the telephone service utilized by Seller and Debtor, provided, further, that any cost associated with the transfer of any such telephone numbers from Seller to Buyer (other than arrearages through Closing which shall be paid by Seller) shall be paid by Buyer;

(v). Customer and Other Lists. All customer lists, vendor lists, supplier lists, mailing lists and any other document or record utilized in the conduct of Debtor's and Seller's business operations, including all computer disks containing such lists, documents and records;

(vi). Computer Equipment. All computer equipment and associated software, software rights and software manuals of Seller wherever located, except any leased computer equipment;

(vii). Vehicles. Five (5) forklifts wherever located.

(viii). Equipment. All machinery, equipment, furniture and fixtures of Seller wherever located;

(ix). Leaseholds. Subject to the provisions of paragraph 1.01 (e), assignment of Seller's interest in any personal property leases designated by Buyer prior to the deadline agreed by the parties hereto as the last date for the filing of a motion by Seller seeking approval of this Agreement (the "Sale Motion");

b. Real Property Assets.

(i). 7341 Indiana Avenue. Unencumbered title (including, but not limited to, title free and clear of any leases, claims and rights of possession and claims to proceeds from use) to the real property and all improvements, including fixtures, located at 7341 Indiana Avenue, Riverside California (the "Riverside Property"), title to which shall be transferred on Closing (defined below) to Buyer or any nominee designated by Buyer in writing no later than 24 hours prior to Closing (defined below);

(ii). Leaseholds. Subject to the provisions of paragraph 1.01 (e), assignment of Seller's interest in any real property leases designated by Buyer prior to the deadline agreed by the parties hereto as the last date for filing the Sale Motion.

c. Transfer Free and Clear. Seller shall deliver and convey good title to the Assets, free and clear of all security interests, liens and encumbrances. If, subsequent to Closing, it shall be determined that any of the Assets remain subject to any lien or encumbrance as to which Seller had actual knowledge, or any such lien or encumbrance, or holder thereof, was listed or otherwise identified on the Debtor's bankruptcy schedules as a secured creditor or on any UCC search available or that should have been available to Seller, Seller shall immediately discharge same and shall indemnify and hold Buyer harmless from any and all such liens and encumbrances provided that Seller's liability under this paragraph shall be limited to the portion of the Purchase Price applicable to such Assets, and Seller's total liability under this paragraph 1.01 (c) shall not exceed the Purchase Price.

d. Assets Excluded from Purchase. Buyer is not purchasing (or accepting the assignment of a lease interest), and Seller is not selling (or assigning to Buyer), any assets (or leases) other than as set forth above.

e. Real Property and Personal Property Lease Assignments. If Buyer desires that Seller assign to Buyer any personal property or real property lease (which has not been terminated as of the date of Closing) it will be Buyer's responsibility to enter into an agreement with the lessor, pursuant to which the lessor consents to the assignment, i.e., Seller will have no obligation to procure the consent of any lessors or to litigate, in any contested manner, with any lessors concerning the assignment of any real property or personal property lease to Buyer. In the event that any lessor objects to any proposed assignment of any real property or personal property

lease to Buyer, it shall be Buyer's responsibility to file any response and otherwise litigate any such objection. In no event will the Closing (defined below) of the sale be conditioned upon the approval of an assignment of any real property or personal property lease.

f. Condition of Assets: Removal. Buyer acknowledges that all of the Assets are being purchased in an "as is" "where is" condition and that Seller has made no representation or warranty as to the quality or quantity of any of the Assets being sold hereunder. Buyer shall have the responsibility and will bear all costs and expenses of removing all personal property from existing locations and repairing any damage to premises which may result from the removal or de-installation of any personal property or fixtures.

g. Consigned Goods. The Assets shall include any goods, including inventory, that are consigned to Debtor and Seller and as to which the consignor has not established to the reasonable satisfaction of Seller that it has perfected its interest in the consigned goods prior to Closing. If, after Closing (defined below) a consignor of goods establishes to the satisfaction of Seller that a valid and perfected consignment exists, such consignor shall have a lien against the Purchase Price to the extent of the value of the consigned goods; in no event shall Buyer have any liability to any party resulting from Buyer's purchase of goods ultimately determined to have been consigned to Seller or Debtor. Buyer has been advised of and is aware of the inventory consigned by LKI Enterprises dba Superlift Suspension Systems (and located at the Seller's Beaumont warehouse) which is not being sold to Buyer under this Agreement.

II

No Assumption of Liabilities

2.01 No Assumption of Liabilities. Except as expressly provided in this Agreement, Buyer does not, and shall not be obligated to, assume or become liable for any of Seller's or Debtor's liabilities, obligations, debts, contracts or other commitments whatsoever, whether known or unknown, fixed or contingent. Notwithstanding the foregoing, if Buyer elects to accept the assignment of any personal property lease or real property lease, Buyer shall be responsible only for those obligations under any assigned lease as may come due or otherwise accrue following such assignment, plus any amounts mutually agreed upon between Buyer and the respective personal property or real property lessor.

III

Purchase Price

3.01 Purchase Price. As consideration for the sale, transfer and delivery of the Assets by Seller to Buyer, and upon the terms and subject to all of the conditions contained herein, Buyer shall pay \$1.6 million for the Assets (the "Purchase Price"). Buyer has paid \$75,000 and will pay the balance of the Purchase Price at Closing.

060700 17.59

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TROOP STECHER FASICH REDDICK & TOBEY, LLP

3.02 Allocation of Purchase Price. The Purchase Price shall be allocated as set forth on Schedule 3.03 annexed hereto. This allocation is intended to comply with IRC §§ 197, 338, 1060 and any other applicable rule or regulation. Each of the parties hereto agrees to report this transaction for tax purposes in accordance with this agreed upon allocation of the Purchase Price.

IV
Conditions Precedent and Pre-Closing Obligations

4.01 Access to Assets. Prior to Closing (defined below), Seller shall allow Buyer reasonable access to the Assets for purposes of inspection to ensure that no shrinkage in inventory or disappearance of other personal property subject to this Agreement occurs pending Closing (defined below).

V
Closing

5.01 Order. This Agreement, and all of the provisions herein, shall become effective only after the entry by the clerk of the Bankruptcy Court on the docket of the Case of an order (the "Order") to be prepared by Seller in a form acceptable to Buyer and containing the following provisions, among others: (a) finding and concluding, among other things, that (i) adequate notice of the Sale Motion has been given to all creditors and parties in interest, (ii) the Purchase Price constitutes fair consideration for the Assets, (iii) the sale of the Assets constitutes an arms length transaction and is in no way collusive, and (iv) the sale is in good faith pursuant to 11 U.S.C. § 363(m), (b) approving this Agreement in its entirety, (c) authorizing Seller to sell, transfer and assign the Assets to Buyer in accordance with 11 U.S.C. § 363(b), (d) authorizing the assignment or the assumption and assignment, as applicable, to Buyer of Seller's interest in the personal property and real property leases designated by Buyer (as described in paragraphs 1.01(a)(ix) and (b)(ii) of this Agreement) pursuant to 11 U.S.C. § 365 (a) and (f), and (e) authorizing Buyer and Seller to perform all of the terms hereof. The Order shall be lodged with the Bankruptcy Court as soon as practical following the conclusion of the hearing on the Sale Motion.

5.02 Closing. If the Bankruptcy Court, upon a request which shall be made by Seller, waives the provisions of Rule 6004(g) of the Federal Rules of Bankruptcy Procedure, the closing under this Agreement (the "Closing") shall occur immediately following entry of the Order, provided, however, that if a notice of appeal is timely filed and a stay pending appeal is obtained, Closing shall occur on the first business day following the date on which the Order becomes a final order (the "Final Order"). For purposes of this Agreement, the Order shall become the Final Order once the time to appeal the Order has lapsed and any appeal or motion for reconsideration is no longer pending and any stay is no longer in effect with respect to the Order. If a timely appeal from the Order has been taken, but no stay has been obtained, the parties shall cooperate to effectuate this Agreement immediately upon entry of the Order. If a stay pending appeal is

obtained, this Agreement shall be null and void if the stay is not lifted within thirty (30) days of issuance, and the Order must so provide.

5.03 Buyer's Conditions to Closing. The obligation of Buyer to complete the transactions contemplated by this Agreement is subject to fulfillment on or prior to Closing of the following conditions, all but the first of which may be waived by Buyer:

(a) Entry of the Order. Entry of the Order and immediate consummation of the transactions contemplated by this Agreement.

(b) Title Insurance Commitment. Prior to Closing, Buyer shall have received, at Buyer's cost and expense, a binding commitment to issue a CLTA standard coverage owner's policy of title insurance with respect to the Riverside Property naming Buyer (or Buyer's nominee, as applicable) as the insured, which policy shall be issued by a title insurance company reasonably acceptable to Buyer. The commitment shall show title to the Riverside Property in Seller, free and clear of all liens and encumbrances, except any lien or encumbrance to be released prior to or concurrent with Closing, and shall commit to issue a standard owner's policy of title insurance, with standard coverage, insuring Buyer's interest in the Riverside Property subject only to the execution and recordation of a Trustee's or other appropriate deed.

(c) Compliance with Covenants. As of Closing, Seller shall have complied with all conditions, covenants and agreements required of Seller under this Agreement.

(d) Delivery of Documents. On Closing, Seller shall have executed and delivered, as appropriate, a trustee's or other appropriate deed, a bill of sale, any lease assignments, any assignment and other documents required to transfer Seller's and Debtor's rights to trademarks, copyrights, patents and other intangible property, and any other documents reasonably necessary to effectuate the transfer of the Assets to Buyer, all to be in a form approved by Buyer prior to Closing.

(e) Representations and Warranties. Seller's representations and warranties shall be true and correct on the date of Closing; and

(f) Release of Liens. All security interests in, liens on and encumbrances of any kind with respect to the Assets, including but not limited to the security interests and liens of First Bank & Trust Company, shall be fully released and extinguished by virtue of, among other things, the order granting the Sale Motion.

5.04 Seller's Conditions to Closing. The obligation of Seller to complete the transactions contemplated by this Agreement is subject to the fulfillment on or prior to Closing of the following conditions, all but the first of which may be waived by Seller:

- (a) Entry of Order. Entry of the Order and immediate consummation of the transactions contemplated by this Agreement.
- (b) Compliance with Covenants. As of Closing, Buyer shall have complied with all conditions, covenants and agreements required of Buyer under this Agreement.
- (c) Payment of Purchase Price. Buyer shall have delivered the full Purchase Price to Seller; and
- (d) Buyer's Representations and Warranties. Buyer's representations and warranties made herein shall be true and correct on the date of Closing.

5.05 Termination of Agreement. This Agreement may be terminated at the time scheduled for Closing, at the election of either party, if any one or more of the conditions to Closing has not been fulfilled or waived as of Closing.

5.06 Termination/Lack of Court Approval. If this Agreement is not approved by the Bankruptcy Court or is terminated and the transactions contemplated hereby are not consummated, this Agreement shall become null and void, except for Seller's obligation to refund Buyer's deposit as described in paragraph 3.02.

VI Risk of Loss

6.01 Until the Closing, Seller shall bear all risk of loss, injury, damage to or destruction of the Assets. If any loss, injury, damage or destruction substantially impairs the value of the Assets prior to Closing, Buyer may either terminate this Agreement, or proceed with the closing of the transactions contemplated hereby on terms and conditions mutually acceptable to Buyer and Seller. For purposes of this paragraph 6.01, "substantially impairs" shall mean \$25,000 or more based on current, fair market value.

6.02 Upon Closing, Buyer shall have access to all premises and locations where the Assets are located at times mutually acceptable to Buyer and Seller, but in no event more than twenty (20) days following Closing. Seller shall have a representative at each such location to make sure that no leased and non-assigned equipment or other personal property is removed by Buyer, and to confirm that Buyer has not caused damage to the premises from which the Assets are removed, or, if so, to make a record of any such damage. Buyer shall be responsible for all occupancy costs after such twenty (20) day period unless Buyer's failure to remove any of the Assets is the result of Seller's failure to comply with this Agreement, including Seller's failure to provide Buyer with reasonable access to the Assets during the twenty (20) day period following Closing.

VII
Costs Associated with Transaction

7.01 Costs. Each party shall bear and pay its own costs associated with the transactions contemplated by this Agreement, except as herein provided. With respect to assignment of any personal property leases or real property leases, Buyer shall negotiate with any equipment lessor or real property lessor with whom it chooses. In that event, Buyer shall be liable for any amounts Buyer agrees to pay in order to secure the consent of the lessor(s) to the assignment(s). However, as to all personal property leases and real property leases as to which Buyer chooses not to accept an assignment, Buyer shall have no liability to Seller or any lessor.

7.02 Prorations; Transfer Fees. All current taxes and utilities associated with the Riverside Property shall be prorated as of Closing. Seller and Buyer shall share any documentary transfer tax, recordation, notary and any other fees, charges or costs associated with the transfer to Buyer of the Riverside Property and any of the other Assets.

VIII
Representations, Warranties and Covenants

8.01 Preservation of Assets. From the date hereof through Closing, Seller shall take reasonable steps to preserve the Assets, ensure that no shrinkage of inventory or other disappearance occurs, and maintain in force appropriate policy or policies of insurance covering the Assets.

8.02 Further Assurances. Each of the parties to this Agreement agrees to perform any further acts and execute any documents that may be reasonably necessary to carry out the intent and provisions of this Agreement.

8.03 Additional Representations of Seller. Seller represents, warrants and covenants to Buyer that, on the date of Closing:

(a) Seller has no knowledge of the existence or prior existence on the Riverside Property of any hazardous substances, nor the existence or prior existence of any above or below ground storage tank or tanks;

(b) There are no claims or legal proceedings pending or threatened which may adversely affect the Assets and that will not be extinguished upon entry of the Order;

(c) Seller is the duly appointed Chapter 7 Trustee for the estate of the Debtor and has full authority to enter into this Agreement and, subject to obtaining the Order, to sell, free and clear of all security interests, liens and encumbrances, all of the Assets (and to assume and assign, or simply assign, as applicable, all of the leasehold interests selected by Buyer).

(d) This Agreement is valid and binding upon Seller in accordance with the terms hereof and the performance of Seller's obligations hereunder shall not cause, of a material nature, a breach or violation of, or a default under, any statute, regulation, agreement or judgment by which Seller is bound.

8.04 Additional Representations of Buyer. Buyer hereby represents, warrants and covenants to Seller that:

(a) Buyer is a corporation duly organized, existing and in good standing under the laws of the State of Ohio; and

(b) To the best of Buyer's knowledge, this Agreement is valid and binding upon Buyer in accordance with the terms hereof and the performance of Buyer's obligations hereunder shall not cause, of a material nature, a breach or violation of, or a default under, any statute, regulation, agreement or judgment by which Buyer is bound or under its Articles of Incorporation or Bylaws.

8.05 Survival of Representations, Warranties and Covenants. The respective representations, warranties and covenants made by Seller and Buyer in this Agreement shall, to the extent consistent with the intent and purpose of this Agreement, survive Closing.

IX
Miscellaneous

9.01 Governing Law, Severability, Amendment. This Agreement shall be interpreted, construed and governed according to the laws of the State of California. The Bankruptcy Court shall have sole jurisdiction for resolving any disputes under this Agreement. The Recitals form a part of this Agreement. If any term, clause, word, condition, provision or agreement in this Agreement is held to be invalid, void or unenforceable, so long as such unenforceable element is not "material" to Buyer, the remainder of the terms, clauses, words, conditions, provisions and agreements shall remain in full force and effect and the invalid, void or unenforceable term, clause, word, condition, provision and agreement shall be reformed in order to give its intended effect or meaning. For purposes of this paragraph 9.01, a "material" provision would include, but not be limited to, the value of the Assets, the transfer of the Assets free and clear of liens, the overbid procedures, and Buyer's expense reimbursement. In the event a "material" element of this Agreement is held to be invalid, void or unenforceable, or is not approved by the Bankruptcy Court, this Agreement may be terminated by either party. Both Buyer and Seller agree that this Agreement constitutes the entire agreement between them respecting the transactions contemplated herein, and supercedes all prior understandings or agreements, written or oral, with respect thereto. The provisions of this Agreement may not be amended, waived or supplemented except by written instrument of the parties.

9.02 Attorneys' Fees. In the event legal proceedings are instituted to enforce or interpret, or for the breach of, any of the terms of this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

9.03 Brokerage Commission. Each party hereto warrants and represents that neither party has incurred any liability for the payment of any brokerage fee or commission in connection with the transactions contemplated herein.

9.04 Notices. All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to be duly given: on the day of service personally on the party to whom directed; seventy-two (72) hours after mailing by first-class mail registered or certified postage pre-paid and properly addressed to the party at the address set forth below or any other address that such party may designate by written notice to the other; or the next business day after the time of sending a facsimile if confirmed by letter sent by first class mail or courier not later than the next business day.

(i) If to Buyer, to:

Performance Enterprises, Inc.
c/o Sandra J. Pickut
4670 Allen Road
Stow, Ohio 44224
Telephone: (330) 929-0161
Facsimile: (330) 929-0178

-and-

William G. Wilson, Esq.
Jones, Day, Reavis & Pogue
555 West Fifth Street, Ste 4600
Los Angeles, California 90013-1025
Telephone: (213) 489-3939
Facsimile: (213) 243-2539

(ii) If to Seller, to:

Timothy J. Yoo,
Chapter 7 Trustee for the Estate of Dick Cepek, Inc.
c/o Gary E. Klausner, Esq.
Troop Steuber Pasich Reddick & Tobey, LLP
2029 Century Park East, 24th Floor
Los Angeles, California 90067-3010
Telephone: (310) 728-3000
Facsimile: (310) 728-3238

RECEIVED: 07/07/00 10:20
SENT BY:

6- 8- 0 : 3:33PM : MACHINE 3 JONES DAY-

330 929 0178:# 2/ 2

9.05 Binding Effect. Upon Bankruptcy Court approval, this Agreement shall be binding upon, and shall inure to the benefit of, the parties to it and their respective successors and legal representatives. The assignment by either party of any of its obligations hereunder shall not relieve that party from the same.

9.06 Interpretation. In the event of a dispute regarding this Agreement, or any term contained herein, this Agreement shall not be construed against the party that drafted this Agreement. This is in recognition of the fact that both parties were represented by counsel during the negotiation of the terms of this Agreement.

9.07 Headings. The headings in this Agreement are for reference only, and shall not affect the interpretation of this Agreement.

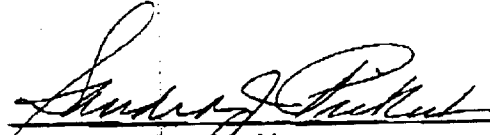
9.08 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

"BUYER"

PERFORMANCE ENTERPRISES, INC.,
an Ohio Corporation

By:


Sandra J. Pickut, President

"SELLER"

TIMOTHY J. YOO,
Chapter 7 Trustee for the Estate of
Dick Cepek, Inc.

By:

Timothy J. Yoo, Chapter 7 Trustee

9.05 Binding Effect. Upon Bankruptcy Court approval, this Agreement shall be binding upon, and shall inure to the benefit of, the parties to it and their respective successors and legal representatives. The assignment by either party of any of its obligations hereunder shall not relieve that party from the same.

9.06 Interpretation. In the event of a dispute regarding this Agreement, or any term contained herein, this Agreement shall not be construed against the party that drafted this Agreement. This is in recognition of the fact that both parties were represented by counsel during the negotiation of the terms of this Agreement.

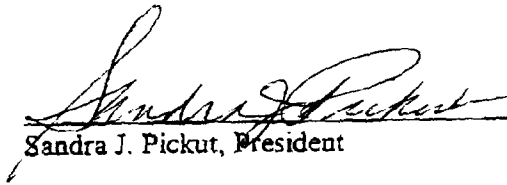
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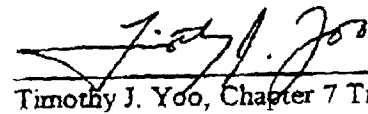
"BUYER"

PERFORMANCE ENTERPRISES, INC.,
a Dick Corporation

By: 
Sandra J. Pickut, President

"SELLER"

TIMOTHY J. YOO,
Chapter 7 Trustee for the Estate of
Dick Cepek, Inc.

By: 
Timothy J. Yoo, Chapter 7 Trustee

SCHEDULE 3.03

ALLOCATION OF PURCHASE PRICE

1.	Inventory	\$769,000.00
2.	Tire Molds	\$20,000.00
3.	Fictitious Business Names, Trade Names, Goodwill and Other Intangible Rights; Telephone Lines; Customer and other Lists	\$8,000.00
4.	Computer Equipment	\$1,000.00
5.	Vehicles	\$2,000.00
6.	Equipment	\$2,000.00
7.	Leaseholds-Personal Property	-0-
8.	Riverside Property	\$800,000.00
9.	Leaseholds-Real Property	-0-
	Total:	<u>\$1,600,000.00</u>

* If Buyer does not take an assignment of Seller's interest in personal property or real property leases, the portion(s) of the Purchase Price allocated to such assets will instead be allocated to inventory.

~~K:\wdalbert\Cepak\Performance Agt.wpd
TROUP STEUBER PASICH REDDICK & TOBBS, LLP~~

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UNITED STATES BANKRUPTCY COURT
Central District of California



I hereby attest and certify that on 08-24-00 the
attached reproduction(s), containing 17 pages, is a
full, true and correct copy of the complete document entitled:
ORDER REMOTION FOR ORDER
AUTHORIZING SALE ...
LA 99-19373-EC

which includes: Exhibits Attachments

on file in my office in my personal custody at the marked location:

- | | |
|---|---|
| <input checked="" type="checkbox"/> 300 North Los Angeles Street
Los Angeles, CA 90001 | <input type="checkbox"/> 3420 Twelfth Street, Suite 125
Riverside, CA 92501-3819 |
| <input type="checkbox"/> 411 West 4th Street, Suite 404
Santa Ana, CA 92701-4504 | <input type="checkbox"/> 1415 State Street
Santa Barbara, CA 93101-2511 |
| <input type="checkbox"/> 21041 Burbank Boulevard
Woodland Hills, CA 91367 | |

Jon D. Ceretto, Clerk of Court

By: *Debra McFarlane*

Deputy Clerk

**THIS CERTIFICATION IS VALID ONLY WITH THE
UNITED STATES BANKRUPTCY COURT SEAL.**

ORIGINAL

1 GARY E. KLAUSNER (State Bar No. 69077)
JEFFREY W. DULBERG (State Bar No. 181200)
2 TROOP STEUBER PASICH REDDICK & TOBEY, LLP
2029 Century Park East, 24th Floor
3 Los Angeles, California 90067
Main Telephone: (310) 728-3200
4 Main Telecopier: (310) 728-2200
5 Attorneys for Timothy J. Yoo, Chapter 7 Trustee

FILED
JUN - 9 2000
CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
Deputy Clerk

ENTERED
JUN 12 2000
CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
Deputy Clerk

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

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In re



Bk. No. LA 99-19373-EC

Chapter 7

DICK CEPEK, INC., a California corporation,

ORDER RE MOTION FOR ORDER AUTHORIZING SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES OUTSIDE THE ORDINARY COURSE OF BUSINESS

Debtor.

Date: May 31, 2000
Time: 1:30 p.m.
Place: Courtroom "1639"
Roybal Fed. Bldg.
255 East Temple Street
Los Angeles, CA 90012

"LOGGED"

00 JUN -6 PM 3:49
CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
DT DEPUTY

The motion of Timothy J. Yoo, the duly appointed, authorized and acting Chapter 7 Trustee (the "Trustee") for the bankruptcy estate of Dick Cepek, Inc. (the "Debtor") for an order authorizing the Trustee to sell substantially all of the Debtor's assets free and clear of liens, claims and encumbrances outside the ordinary course of business (the "Sale Motion") came on regularly for hearing on May 31, 2000 at 1:30 p.m., in Courtroom "1639", Roybal Federal Building, 255 E. Temple Street, Los Angeles,

TROOP STEUBER PASICH REDDICK & TOBEY, LLP
2029 Century Park East
14th Floor
Los Angeles, California
90067-3010
Voice (310) 728-3200
Fax (310) 728-2200

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1 California. The Trustee appeared through his counsel of record
2 Troop Steuber Pasich Reddick & Tobey, LLP, by Gary E. Klausner and
3 Jeffrey W. Dulberg. All other appearances were as noted on the
4 record.

5 The Court, having reviewed the Sale Motion, the attached
6 points and authorities, the declaration and exhibits filed in
7 support thereof, the notice filed in support thereof and the
8 Statement of Position filed by Triad Systems Financial Corporation
9 ("Triad"), and having received no objection to the Motion, and
10 having considered the arguments and representations of counsel, and
11 good cause appearing, finds as follows:

12 A. The proposed sale of the estate's right, title and
13 interest in the Assets (as defined in the Sale Motion), including,
14 but not limited to, the real property commonly known as 7341
15 Indiana Avenue, Riverside, California (the "Riverside Store"),
16 legally described as set forth on Exhibit "1" attached hereto, for
17 a cash purchase price of \$1.6 million (the "Purchase Price"), is
18 made in good faith, is in the Trustee's best business judgment and
19 is in the best interests of the estate;

20 B. Competitive bidding occurred at the hearing with
21 respect to the sale of the Assets and therefore the Purchase Price
22 represents the Assets' fair market value;

23 C. The sale to Performance Enterprises, Inc. ("Buyer"),
24 or DCSM Automotive Parts ("Back-up Buyer"), or their respective
25 designees or nominees, constitutes an arms-length transaction
26 between the parties and is not collusive;

27 ///

28 ///

OP
BER
CH
ICK
BEY, LLP
Century Park East
or
des, California
310
1101 728-3200
1101 728-2200

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1 D. Buyer's offer is the highest and best offer for the
2 Assets, and the sale of the Assets to Buyer (or Back-up Buyer) is
3 in the best interest of the estate;

4 E. The Assets are sold to Buyer or Back-up Buyer free
5 and clear of all liens, security interests, claims, charges,
6 encumbrances and interests of any nature whatsoever on the terms
7 and conditions set forth in the Motion and all exhibits attached
8 thereto in accordance with 11 U.S.C. § 363(f);

9 F. Buyer was the highest bidder for the Assets, and it
10 qualifies as a bona fide purchaser entitled to the protections of
11 11 U.S.C. § 363(m);

12 G. The Motion having been served upon all parties
13 asserting liens in the Assets as required by Federal Rule of
14 Bankruptcy Procedure 6004(c) and the Trustee's separately-filed
15 Notice of Motion having been served upon all creditors, all parties
16 asserting liens in the Assets, the Office of the United States
17 Trustee, and all parties requesting special notice, constitutes
18 adequate and appropriate notice under the circumstances.

19 On the basis of the foregoing, therefore, and good cause
20 appearing, the Court hereby

21 **ORDERS, ADJUDGES AND DECREES** as follows:

- 22 1. The Sale Motion is approved;
- 23 2. The Trustee is authorized to sell to Buyer or Back-
- 24 up Buyer the estate's right, title and interest in the Assets,
25 including that certain real property commonly known as 7341 Indiana
26 Avenue, Riverside, California, and legally described in Exhibit "1"
27 hereto, on the terms and conditions set forth in the Sale Motion
28 and all exhibits thereto, including but not limited to the Asset

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& TOBEY, LLP
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Fax (310) 728-2200

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1 Purchase Agreement (as defined in, and as amended pursuant to, the
2 Sale Motion), to Buyer, for the Purchase Price;

3 3. In the event Buyer fails to perform in accordance
4 with the terms of the Asset Purchase Agreement, the Trustee is
5 authorized to consummate the sale to Back-up Buyer for \$1,575,000,
6 subject to the terms and conditions set forth in this Order, the
7 Motion and all exhibits attached thereto;

8 4. The terms of the Asset Purchase Agreement are
9 approved and the Trustee is authorized to enter into the Asset
10 Purchase Agreement with Buyer, to execute and deliver any other
11 agreements, amendments or documents required to consummate the sale
12 and to perform the terms thereof;

13 5. The sale of the Assets to Buyer (or Back-up Buyer)
14 pursuant to the Sale Motion and sections 363(b) and 363(f) of the
15 Bankruptcy Code, free and clear of all liens, restrictions,
16 security interests, claims, charges, encumbrances and interests of
17 any nature whatsoever, is authorized and is hereby approved;

18 6. Notwithstanding any other provision hereof, all
19 liens, restrictions, security interests, claims, charges,
20 encumbrances and interests of any nature whatsoever against any of
21 the Assets shall be extinguished with respect to the Assets and the
22 same, if any, shall attach solely to the sale proceeds with the
23 same priority and validity as they had with respect to the Assets;

24 7. The Trustee is authorized to execute any documents
25 or instruments necessary or requested by Buyer or Back-up Buyer in
26 order to consummate the Purchase Agreement, and to perform all of
27 his obligations under such documents, without further approval of
28 this Court with respect to such performance;

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& TOBEY, LLP
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90067-3010
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Fax (310) 728-2200

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1 8. The Trustee is authorized to pay, from the sale
2 proceeds, the allowed amount of any valid and enforceable claims to
3 the extent said claims are secured by any of the Assets. The
4 holder of such claim shall have recourse solely to such proceeds
5 and shall have no claim against the Buyer or Back-up Buyer with
6 respect thereto;

7 9. Buyer (or Back-up Buyer) is purchasing, and when the
8 sale transaction is consummated will have purchased, the Assets in
9 "good faith" as defined in section 363(m) of the Bankruptcy Code;

10 10. The provisions of this Order are self-executing and
11 neither the Trustee nor Buyer (or Back-up Buyer) shall be required
12 to execute or file releases, termination statements, assignments,
13 consents or other instruments in order to effectuate, consummate,
14 and implement the foregoing provisions hereof; provided, however,
15 that this provision shall not excuse such parties from performing
16 any and all of their respective obligations regarding the sale;

17 11. The notice given by Trustee in connection with the
18 Sale Motion and the hearing thereon is adequate, sufficient and
19 proper and complies with all applicable provisions of the
20 Bankruptcy Code and the Federal Rules of Bankruptcy Procedure;

21 12. The provisions of Rule 6004(g) of the Federal Rules
22 of Bankruptcy Procedure do not apply to the effectiveness of the
23 Order and no stay of the Order shall be in effect;

24 13. The Trustee is not authorized to sell the computer
25 hardware and software subject to Triad's lease with the Debtor and
26 the Trustee shall not transfer possession of such computer hardware
27 or software to Buyer (or Back-up Buyer); and

28 ///

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STEUBER
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1 14. This Court retains sole and exclusive jurisdiction
2 over the Trustee and the Buyer (or Back-up Buyer), as well as over
3 any adverse claimants to the Assets, to enforce the Asset Purchase
4 Agreement and to hear and determine any dispute relating to the
5 Asset Purchase Agreement or any adverse claim to the Assets.

6
7 DATED: 6/9/00

Ellen Carroll

8 ELLEN CARROLL

United States Bankruptcy Judge

9
10 PRESENTED BY:
11 TROOP STEUBER PASICH REDDICK & TOBEY LLP

12
13 By: *Gary E. Klausner*

GARY E. KLAUSNER
JEFFREY W. DULBERG
Attorneys for Timothy J. Yoo,
Chapter 7 Trustee

14
15
16 APPROVED AS TO FORM AND CONTENT:

17 JONES, DAY, REAVIS & POGUE

18
19 By: _____

WILLIAM G. WILSON
Attorneys for
Performance Enterprises, Inc.

20
21
22
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3 any adverse claimants to the Assets, to enforce the Asset Purchase
4 Agreement and to hear and determine any dispute relating to the
5 Asset Purchase Agreement or any adverse claim to the Assets.

7 DATED:

8 ELLEN CARROLL
United States Bankruptcy Judge

10 PRESENTED BY:
TROOP STEUBER PASICH REDDICK & TOBEY LLP

12 By: _____
13 GARY E. KLAUSNER
14 JEFFREY W. DULBERG
Attorneys for Timothy J. Yoo,
15 Chapter 7 Trustee

16 APPROVED AS TO FORM AND CONTENT:
17 JONES, DAY, REAVIS & FOGUE

18
19 By: William G. Wilson
WILLIAM G. WILSON
20 Attorneys for
Performance Enterprises, Inc.

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& TOBEY, LLP
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90047-1300
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Fax (714) 726-2100

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EXHIBIT "1"

LEGAL DESCRIPTION

THAT PORTION OF LOT 41 AND HOOVER STREET (LOT "D") OF MADISON PARK AS SHOWN BY MAP ON FILE IN BOOK 14 OF MAPS, AT PAGES 82 AND 83 THEREOF, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID LOT 41;

THENCE N. 34° 00' 00" W., ALONG THE SOUTHWESTERLY LINE OF SAID LOT 41, A DISTANCE OF 4.00 FEET TO A POINT ON A LINE PARALLEL WITH AND 44.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES FROM THE CENTERLINE OF INDIANA AVENUE AS SHOWN ON SAID MADISON PARK, SAID POINT BEING THE POINT OF BEGINNING OF THE PARCEL OF LAND TO BE DESCRIBED;

THENCE CONTINUING N. 34° 00' 00" W. ALONG THE SOUTHWESTERLY LINE OF SAID LOT 41, A DISTANCE OF 145.25 FEET TO THE SOUTHEASTERLY LINE OF THAT CERTAIN PARCEL OF LAND AS CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED JULY 10, 1956, AS INSTRUMENT NO. 47891, OFFICIAL RECORDS OF RIVERSIDE COUNTY CALIFORNIA;

THENCE N. 58° 52' 55" E. ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL OF LAND AS CONVEYED TO THE STATE OF CALIFORNIA, AND ITS NORTHEASTERLY PROLONGATION THEREOF, A DISTANCE OF 185.26 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF LOT 44 OF SAID MADISON PARK, SAID POINT BEING THE MOST SOUTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND AS CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED FEBRUARY 25, 1954, AS INSTRUMENT NO. 9527, IN BOOK 1558, PAGE 490, OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

THENCE S. 34° 00' 00" E. ALONG THE SOUTHWESTERLY LINE OF SAID LOT 44, A DISTANCE OF 135.94 FEET TO A LINE PARALLEL WITH AND 44.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES FROM THE CENTERLINE OF SAID INDIANA AVENUE;

THENCE S. 56° 00' 00" W. ALONG SAID PARALLEL LINE, A DISTANCE OF 185.03 FEET TO THE POINT OF BEGINNING.

EXHIBIT

1-7

TRADEMARK

REEL: 002257 FRAME: 0824

SPECIAL NOTICE
SERVICE LIST

Joseph E. Caceres
Office of the U.S. Trustee
221 N. Figueroa St., Suite 800
Los Angeles, CA 90012

Debtor

R. Thomas Cepek, Sr., Chairman
Dick Cepek, Inc.
301 California Avenue
Beaumont, CA 92223

Debtor

Jerry A. Gordon, President
Dick Cepek, Inc.
301 California Avenue
Beaumont, CA 92223

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Secured Creditor

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135 North Meramec
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U.S. Small Business Adm.
Santa Ana District Office
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Post Office Box 9115
Macon, GA 31208

American Express Travel Related
Services Co., Inc. Corp. Card
c/o Becket & Lee LLP
Post Office Box 3001 Dept. AA
Malvern, PA 19355-0701

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Los Angeles, CA 90012

Internal Revenue Service
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Sacramento, CA 95812-2952

State Board of Equalization
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Sacramento, CA 94279

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Dept. of Environmental Health
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Riverside, CA 92513-7600

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Stamford, CT 06904

Texton Financial Corp.
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Providence, RI 02940

Vehicular Technologies, Inc.
245 Fischer Avenue, Bldg B-4
Costa Mesa, CA 92626

Crown Credit Co.
40 S. Washington Street
New Bremen, OH 45869

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Livermore, CA 94509

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NOTE TO USERS OF THIS FORM:
Physically attach this form as the last page of the proposed Order or Judgment.
Do not file this form as a separate document.

In re DICK CEPEK, INC., a California corporation	CHAPTER <u>7</u>
Debtor.	CASE NUMBER: LA 99-19373-EC

**NOTICE OF ENTRY OF JUDGMENT OR ORDER
AND CERTIFICATE OF MAILING**

RECEIVED
00 JUN -6 PM 3:49
U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

TO ALL PARTIES IN INTEREST ON THE ATTACHED SERVICE LIST:

1. You are hereby notified, pursuant to Local Bankruptcy Rule 9021-1(1)(a)(v), that a judgment or order entitled *(specify)*:
ORDER RE MOTION FOR ORDER AUTHORIZING SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES OUTSIDE THE ORDINARY COURSE OF BUSINESS

was entered on *(specify date)*:

JUN 12 2000

2. I hereby certify that I mailed a copy of this notice and a true copy of the order or judgment to the persons and entities on the attached service list on *(specify date)*:

JUN 12 2000

Dated:

JUN 13 2000

JON D. CERETTO
Clerk of the Bankruptcy Court

By: *J. Pineda*
Deputy Clerk

NOTICE OF ENTRY
SERVICE LIST

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Office of the U.S. Trustee
221 N. Figueroa St., Suite 800
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Dick Cepek, Inc.
301 California Avenue
Beaumont, CA 92223

Debtor

Jerry A. Gordon, President
Dick Cepek, Inc.
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Secured Creditor

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