

SUMMARY OF CURRENT DOCUMENT													
Name of Issuing Party or Person	DaimlerChrysler Financial Services (debis) Canada Inc. (hereinafter "DCFS")												
Date of Document	____ January 2003												
Summary of Order/Relief Sought or Statement of Purpose in Filing	Application of DCFS for the payment to DCFS of the Proceeds from the sale by the Receiver of: <table><tr><td>Stock #</td><td>Make</td><td>Serial #</td><td>Proceeds</td></tr><tr><td>160LC</td><td>John Deere</td><td>P00160X041361</td><td><u>\$110,000</u></td></tr><tr><td></td><td></td><td></td><td><u>\$110,000</u></td></tr></table>	Stock #	Make	Serial #	Proceeds	160LC	John Deere	P00160X041361	<u>\$110,000</u>				<u>\$110,000</u>
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160LC	John Deere	P00160X041361	<u>\$110,000</u>										
			<u>\$110,000</u>										
Court Sub-File Number													

2002 01 T0352

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

IN THE MATTER OF a Court ordered Receivership of Hickman Equipment (1985) Limited ("Hickman Equipment") pursuant to Rule 25 of the *Rules of the Supreme Court, 1986* under the *Judicature Act*, R.S.N.L. 1990, c. J-4, as amended

AND IN THE MATTER OF the *Bankruptcy and Insolvency Act*, Chapter B-3 of the Revised Statutes of Canada, 1985, as amended (the "BIA")

INTERLOCUTORY APPLICATION
(Inter Partes)

The Application of DaimlerChrysler Financial Services (debis) Canada Inc. (the "Applicant") says as follows:

1. By Order of this Honourable Court granted on the 13th day of March 2002 and filed with the Court on the 14th day of March 2002 it was ordered that Pricewaterhouse Coopers Inc. ("PWC") be appointed Receiver of Hickman Equipment (the "Receivership Order").

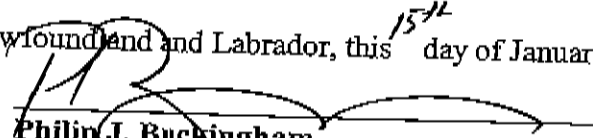
2. By a Receiving Order (the "Receiving Order") made on the 13th day of March 2002, pursuant to the provisions of the BIA and filed with the Supreme Court of Newfoundland and Labrador in Bankruptcy and Insolvency on the 14th day of March, Hickman Equipment was adjudged bankrupt and PWC appointed as trustee of the estate of the bankrupt in bankruptcy (the "Trustee").
3. By Order of this Honourable Court made on the 14th day of May, 2002 and filed on the 17th of May, 2002, the Claims Plan of the Receiver was approved. Under paragraph 6 and paragraph 7 of the Claims Plan, the determination of the rights and entitlement of creditors and claimants to the assets of Hickman Equipment involved a two stage process, as follows:
 - (a) a determination of whether a claimant had a valid, perfected and enforceable ownership or security interests in the assets of Hickman Equipment or the proceeds arising therefrom; and
 - (b) a determination of the priority of a claimant's interest vis-à-vis other claimants.
4. Under paragraph 20 of the Claims Plan, PWC proposed that the order of priority of claims to an asset of Hickman Equipment or to the proceeds arising therefrom be determined using the priority rules established by the *Personal Property Security Act*, S.N.L. 1998, c. P-7.1 ("PPSA") and other applicable law.
5. Under paragraph 21 of the Claims Plan, issues of priority and entitlement to collateral between secured claimants may, upon Application, be brought before this Court for determination, pursuant to the provisions of section 68 of the PPSA.
6. Pursuant to the Order dated the 14th of May, 2002 PWC commenced and thereafter completed the liquidation of substantially all of the assets of Hickman Equipment by auction on the 12th day of July, 2002, including the following unit:

<u>Model No.</u>	<u>Make</u>	<u>Serial No.</u>
160LC	John Deere	P00160X041361

(hereinafter referred to as the "DCFS Unit").

7. That on May 12, 2000, the Applicant gave value for, *inter alia*, the DCFS Unit by virtue of payment to Hickman Leasing Limited of the amounts of \$999,739.55 as evidenced by a wire transfer on even date.
8. That as of March 11th 2002, the Applicant was owed \$2,324,926.76 for, *inter alia*, the DCFS Unit.
9. The Applicant has a first charge security interest in the DCFS Units by virtue of registration no: 284372 on the 16th of May, 2000 pursuant to the *Personal Property Security Act* ("PPSA").
10. That in accordance with paragraph 14 of the Claims Plan the Receiver determined on December 11, 2002, that DCFS has a valid secured claim in relation to all assets as asserted and in particular the DCFS Unit.
11. That the Applicant is aware of a potential dispute existing as between DCFS and Culease Financial Services with respect to 2000 JD 160 LC Excavator, serial number: P00160X041361.
12. The Applicant therefore applies pursuant to paragraph 21 of the Claims Plan and Section 68 of the PPSA to this Honourable Court for an Order to determine the priority of the security interest of DCFS vis-à-vis Culease; and to thereafter approve the payment to the Applicant by the Receiver of the proceeds from the auction and sale of the DCFS Unit.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 15th day of January, 2003.


Philip J. Buckingham

Goodland O'Flaherty

Solicitors for DaimlerChrysler Financial Services

Whose address for service is:

205 Water Street, 2nd Floor

St. John's, NL A1C 1B4

ISSUED at the City of St. John's, in the Province of Newfoundland and Labrador, this day
of January, 2003.

Clerk of the Court
Supreme Court of Newfoundland and Labrador

2002 01 T0352

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IN THE MATTER OF a Court ordered Receivership
of Hickman Equipment (1985) Limited
("Hickman Equipment") pursuant to Rule 25 of
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the *Judicature Act*, R.S.N.L. 1990, c. J-4,
as amended

AND IN THE MATTER OF the *Bankruptcy and
Insolvency Act*, Chapter B-3 of the Revised
Statutes of Canada, 1985, as amended (the "BIA")

NOTICE

You are hereby notified that the foregoing application will be made to the Judge presiding in chambers at the Court House, Duckworth Street, St. John's, Newfoundland and Labrador on Tuesday, the 11th day of February, 2003 at 10:00 a.m. or so soon thereafter as the application can be heard.

TO: See attached distribution list.

SCHEDULE "A"
PARTIES WHO HAVE BEEN SERVED

ABM Amro Bank Canada/ ABN Amro Leasing & Tramac Equipment Ltd.	Aubrey L. Bonnell, Q.C./ Brian Winsor Terence J. Dolan/John Salmas abonnell@curtislawe.nf.ca tdolan@mccarthy.ca	722-7521 416-868-0673
Bombardier Capital Leasing & Culease Financing Services	J. Vernon French, Q.C.	754-2701
Caterpillar Equipment	Colin D. Grant	905-849-1023
Cedarrapids	Les Baumbach fbeizil@sharekreay.com	319-399-4760
CIBC	R. Wayne Myles gspencer@bensonmyles.com wmyles@bensonmyles.com	579-2647
CIBC Equipment Finance Ltd./CIT Financial Ltd./ Tyco Capital	Gregory W. Dickie gdickie@wob.nf.ca	722-9210
Contact Funding Group Inc.	Mark G. Klar mark-k@chaiton.com	416-218-1831
Daimler Chrysler Financial Services/Daimler Chrysler Capital Services/Mercedes- Benz of Canada Inc.	Philip Buckingham/ Peter O'Flaherty Elaine Gray pjb@goodlaw.nf.ca elaine.gray@gowlings.com	722-4720 416-863-3527
Fabtek Corp.	Linc A. Rodgers Rhodie E. Mercer, Q.C. rmerc@mmvf.nf.ca linc.rogers@blakes.com	416-863-2653 726-5705
General Motors Acceptance Corporation of Canada, Limited	Thomas Kendell, Q.C.	722-1763

GE Capital	Harvey Chaiton Frederick Scalabrini	416-218-1849 905-319-4855
Group Holdings Ltd./ Hickman Equipment/ Hickman Leasing Ltd.	Griffith D. Roberts rstack@coxhanson.ca groberts@coxhanson.ca	726-2992
Ingersoll-Rand Canada Inc.	R. Barry Learnmonth, Q.C. Jonathan Wigley ldc@nflid.net jonathan.h.wigley@bakernet.com	739-8151 416-863-6275
John Deere Ltd./ John Deere Credit Inc.	Neil L. Jacobs/Bruce Grant Maureen Ryan BugarestiDavidR@JohnDeere.com Njacobs@smss.com	722-4565
MTC Leasing Inc./ National Leasing Group Inc.	R. Paul Burgess pburgess@mwhslaw.nf.com	754-0915
ORIX Financing Services Canada Ltd.	Donald Yaeck	416-236-3010
Goodman Associates	Paul G. Goodman	902-425-3777
Royal Bank of Canada	Thomas O. Boyne, Q.C. tboyne@boyneclarke.ns.ca	902-463-7500
TD Asset Finance Corp.	D. Bradford L. Wicks bwicks@wrnm.nf.net	753-5221
Wells Fargo Equipment Finance Co.	Richard Jones Jrlaw@istar.ca	416-361-6303
Pricewaterhouse Coopers Trustee in Bankruptcy	Frederick Constantine James Kirby	722-0483 722-1428

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AND IN THE MATTER OF the *Bankruptcy and Insolvency Act*, Chapter B-3 of the Revised Statutes of Canada, 1985, as amended (the "BIA")

AFFIDAVIT

I, Timothy Gilligan, of the City of Burlington, in the Province of Ontario, make oath and say:

1. That I am a Commercial Credit Analyst for DaimlerChrysler Services Canada Inc. formerly DaimlerChrysler Financial Services (debis) Canada Inc. ("DCFS"), a creditor of Hickman Equipment (1985) Limited ("Hickman Equipment") and as such have knowledge of the statements made in this affidavit.

2. This Affidavit is made in support of the Application by DCFS to receive payment of the proceeds from the sale by the Receiver of Hickman Equipment for the following unit:

<u>Model No.</u>	<u>Make</u>	<u>Serial No.</u>	<u>Proceeds</u>
160LC	John Deere	P00160X041361	\$110,000

(hereinafter referred to as the "DCFS Unit").

3. The indebtedness of Hickman Equipment to DCFS arises out of a Master Lease Agreement dated March 14, 2000, and the Schedules thereto between DCFS, as lessor, and Hickman Equipment, as lessee (collectively, the "Lease Agreements"), whereby DCFS agreed to lease certain equipment and motor vehicles to Hickman Equipment (collectively, the "DCFS Collateral"). True copies of the Master Lease Agreement and Schedules are attached as Exhibit "A", including:

- (a) a Lease Agreement dated February 14, 2000;
- (b) a Lease Agreement dated March 14, 2000; and,
- (c) a Lease Agreement dated March 14, 2000;

4. As at March 13, 2002 Hickman Equipment owed DCFS \$2,324,926.76 plus taxes calculated as follows:

Lease	Initial Cost	Payments	Balance O/S
Schedule 1	\$824,378.68	\$563,260.34	\$519,105.85
Schedule 2	\$2,348,268.69	\$1,411,484.18	\$1,307,983.66
Schedule 3	\$869,338.74	\$512,538.00	\$497,837.25
Total	\$4,041,986.11	\$2,487,282.52	\$2,324,926.76

5. That I have been informed by Mary Monardo, Operations Analyst that DCFS disbursed the

sum of \$4,041,986.11, plus applicable taxes in favour of Hickman Equipment and that these funds were wire transferred on the following dates: February 14, 2000, March 13, 2000 and May 12, 2000 and that the account of DCFS has been debited for those amounts on those dates.

6. That I have been informed by Philip Buckingham ("Buckingham") of Goodland O'Flaherty that DCFS caused registrations of its interest in the DCFS Collateral, including the DCFS Unit, to be registered under the Personal Property Security Act (the "PPSA") on the 16th day of May, 2000 bearing PPSA Registration No. 284372 (the "DCFS Registration"). A true copy of the Search Results Report dated March 26, 2002 for the DCFS Unit evidencing the DCFS Registration is attached hereto as Exhibit "B".
7. That I have caused a Proof of Claim and an Amended Proof of Claim to be filed as required by paragraph 11 of the Claims Plan. A true copy of the Proof of Claim dated October 9, 2002 without exhibits and the Supplementary Affidavit sworn November 19, 2002 are attached hereto as Exhibit "C".
8. I have also reviewed the Receiver's Final Determination for DCFS issued on December 11, 2002 pursuant to paragraph 14 of the Claims Plan whereby the Receiver determines that DCFS has a security interest in the DCFS unit. A true copy of the Final Determination is attached hereto as Exhibit "D".
9. That I have been informed by Buckingham that of the DCFS Collateral only the DCFS Unit has been recovered and sold by the Receiver of Hickman Equipment.
10. That I have been further informed by Buckingham that Culease Financial Services ("Culease") claims an interest in the DCFS Unit in priority to DCFS.
11. That I have been informed by Tammy Oldfield, Customer Service Representative that by facsimile sent December 31, 2001 Culease requested DCFS to acknowledge that the DCFS

Registration did not extend to the following unit:

<u>Model No.</u>	<u>Make</u>	<u>Serial No.</u>
160LC	John Deere	FF0160X041361

(hereinafter referred to as the "Culease Unit"). That I have been further informed by Ms. Oldfield that she provided the acknowledgement requested after she compared the serial number of the Culease Unit to the serial numbers of the DCFS Collateral and found the former was not among the latter. A true copy of this request and acknowledgement is attached hereto as Exhibit "E".

12. I swear this affidavit in support for DCFS's claim for priority to the DCFS Unit pursuant to paragraph 21 of the Claims Plan and section 68 of the PPSA and for no other or improper purpose.

SWORN before me at the City of
Mississauga, in the Province of Ontario,
this 15th day of January, 2003

Mark R. [Signature]
A Notary Public

[Signature]
Timothy Gilligan

This is exhibit A referred to in the affidavit of
Timothy Gilligan sworn before me,
this 15th day of January, 2023
Mark [Signature]
A Notary Public



THIS LEASE, dated Feb 14/00 is by and between

☐ Individual ☒ Corporation ☐ Partnership

Lessor: debis Financial Services, a division of
Mercedes-Benz Credit of Canada Inc,
6701 Financial Drive, Suite 200,
Mississauga, Ontario L5N 7J7
Tel: (800)903-3247
Fax: (800)903-2373

and Lessee: Hickman Equipment (1985) Limited
Name
1269 Topsail Road
Address
Mount Pearl, Nfld A1N 3C8
City/Province/PC
(709)368-9660
Telephone

(hereinafter called "Lessor")

(hereinafter called "Lessee")

In consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Lessor and Lessee hereby agree as follows:

1. **LEASE.** Lessor hereby agrees to lease to Lessee and Lessee hereby agrees to lease from Lessor the unit or units of equipment, machinery, instrumentation, or other personal property (hereinafter called the "Equipment") described in any Schedule now or hereafter executed by Lessee that references this Lease (together or singularly hereinafter referred to as "Schedule").
2. **ACCEPTANCE.** Forthwith after acceptance of the Equipment, Lessee shall execute and deliver to Lessor, Lessor's form of Equipment Acceptance Certificate.
3. **TERM.** This Lease shall be effective upon the execution hereof by Lessor. The term of the lease for the Equipment shall be as set forth in the Schedule applicable to the Equipment and shall commence on the date specified in the Schedule (the "Commencement Date"), and, subject to the terms hereof, shall continue for the period of time set forth in the Schedule.
Early Termination Option
Lessee may end this Lease early if Lessee is not in default by sending 30 days prior written notice to Lessor that Lessee wishes to terminate this Lease and purchase the Equipment. The early purchase option price will be the sum of the following amounts: (i) the present value of the Rent payable for the balance of the term of the Lease calculated by discounting such amounts at 5% per annum, plus (ii) the value of the Equipment as set forth in paragraph 22 or, if there is no purchase option, the Lessor's estimated residual value of the Equipment at the end of the lease term; plus (iii) any other sum due under this Lease, plus (iv) all applicable taxes. From this early purchase option price will be deducted any credits owed by Lessor to Lessee, such as the amount, if any, held as a security deposit by Lessor.
4. **RENTAL.** Lessee shall pay to Lessor total rent equal to (i) the periodic rent payments specified in the Schedule multiplied by (ii) the number of rent payment specified in the Schedule. Installment payments of rent shall be due monthly in advance of each monthly period, commencing on the Commencement Date. All rent shall be paid to Lessor, or at such other address as Lessor may specify by written notice to Lessee.
If any rent or other sums due hereunder are not paid within ten (10) days of the due date thereof, Lessee shall, subject to applicable law, pay to Lessor on demand, as additional rent, a late charge thereon equal to five percent (5%) of the amount of said payment. Payments received shall be applied first to delinquent amounts due, including late charges, and then to current installments.
Lessee's obligation to pay all amounts due hereunder shall be to absolute and unconditional and shall not be affected by any circumstance, including, without limitation (i) any set-off, counterclaim, defense, or other right which Lessee may have against Lessor, (ii) any alleged or actual defect in the condition, design, operation, or fitness for use of, or any damage to or loss or destruction of, the Equipment, or any interruption or cessation in the use or possession thereof by Lessee, or (iii) any insolvency, bankruptcy, reorganization, or similar proceedings by or against Lessee.
Each rent payment made by Lessee shall be final and Lessee will not seek to recover all or any part of such payment from Lessor for any reason whatsoever.
5. **SECURITY DEPOSIT.** If a security deposit (in the amount set forth in the Schedule) is required, it may be applied at Lessor's option toward any obligation of Lessee hereunder that is not paid when due. If Lessor applies the security deposit toward an obligation of Lessee, Lessee agrees to pay that sum to Lessor upon demand or at the time of the next scheduled Rent payment, whichever is earlier, in order to maintain the amount of security deposit required by the Schedule. The existence of the security deposit shall in no way excuse the performance of any of Lessee's obligations hereunder.
6. **TAXES AGAINST LESSOR OR EQUIPMENT.** This Lease is a net lease and Lessee acknowledges and agrees that Lessee's obligations hereunder, including, without limitation, its obligations to pay all rent and other sums payable hereunder, shall be absolute and unconditional. Lessee agrees to pay and to indemnify and hold Lessor harmless from all license and registration fees and sales, use, personal property, stamp, or other taxes, levies, imposts, duties, charges, or withholdings of any nature whatsoever, together with any penalties, fines or interest thereon (collectively referred to as "taxes, fees or other charges") imposed against Lessor, Lessee or the Equipment or any part thereof by any federal, provincial, or local government or taxing authority during the term or in connection with the termination of this Lease, upon or with respect to the Equipment or any part thereof or upon the purchase, ownership, delivery, leasing, possession, use, operation, return, or other disposition thereof, or upon the rent payments, receipts or earnings arising therefrom or upon or with respect to this Lease (excluding, however, any taxes imposed on, based on, or measured by, the net income of Lessor or any taxes based on the net worth or gross income of Lessor if such taxes are in lieu of a net income tax). For greater certainty, all payments of rent under this Lease by Lessee to Lessor shall be net of: (i) the goods and services tax imposed under Part IX of the *Excise Tax Act* (Canada) or any tax introduced in replacement thereof ("GST") by way of Lessee increasing the payments to Lessor by 7%, or then prevailing rate of GST if different; and (ii) any applicable provincial sales or use taxes.
If Lessee is required by law to make any deduction or withholding from any payment hereunder for or on account of any taxes, fees or other charges in Canada, it shall do so and the sum due from Lessee in respect of such payment shall be increased to the extent necessary to ensure that, after making such deduction or withholding and after making any and all additional deductions or withholdings that may be required as a result of the payment by Lessee being increased hereunder, Lessor receives and retains (free of and net of any such deduction and withholding and any taxes, fees or other charges in Canada on, in respect of, or a consequence of such increase in the amount otherwise payable hereunder) a net sum equal to the sum it would have received and retained had no deduction or withholding been required to be made. If at any time Lessee is required by law to make any such deduction or withholding from any sum payable by it hereunder (or if thereafter there is any change in the rates at which or the manner in which such deductions or withholdings are calculated), Lessee shall promptly notify Lessor

accordingly. If Lessee makes any payment hereunder in respect of which it is required by law to make any deduction or withholding it shall pay the full amount to be deducted or withheld to the relevant taxation or other authority within the time allowed for such payment under applicable law and shall deliver to Lessor the appropriate receipt or certificate issued by the applicable authority evidencing the payment to such authority of all amounts so required to be deducted or withheld from such payment within thirty (30) days after receipt of such receipt or certificate.

In case any report or return is required to be made with respect to any obligation of Lessee under this Section or arising out of this Section, Lessee will either make such report or return in such manner as will show the ownership of the Equipment in Lessor and send a copy of such report or return to Lessor or will notify Lessor of such requirement and make such report or return in such manner as shall be satisfactory to Lessor. All of the obligations of Lessee under this Section with respect to any taxes, fees or other charges (except to the extent resulting solely from the negligent actions or omissions of Lessor, its employees, or agents) imposed or accrued before the expiration or other termination of this Lease shall continue in full force and effect notwithstanding such expiration or other termination and are expressly made for the benefit of, and shall be enforceable by, Lessor.

7. **USE.** Lessee shall use, operate, maintain, and store the Equipment in a careful and proper manner and shall comply with all laws, ordinances, and regulations in any way relating to the possession, use, operation, or maintenance of the Equipment. Lessee shall put the Equipment only to the use contemplated by the manufacturer. Upon demand by Lessor, Lessee shall give Lessor written notice of the exact location of the Equipment. Lessee may operate the Equipment only in the normal course of Lessee's business operations.

8. **NEGATIVE COVENANTS.** Unless Lessor has expressly allowed such action in writing, Lessee will not:
- (a) take the Equipment or any part of it, or allow it to be taken, outside of the Province set out in the applicable Schedule or into areas which are not covered by Lessee's insurance on the Equipment; change the location of Lessee's chief executive office or the primary location of the Equipment before Lessee has notified Lessor of the intended change in writing and Lessor has had a reasonable opportunity to perfect its interest in the Equipment in the new location;
 - (b) lends, assigns, sells, encumbers, leases, subleases, rents, or otherwise transfers possession or control of all or any part of the Equipment;
 - (c) makes any alterations to the Equipment;
 - (d) fails to meet any requirements of applicable law; or
 - (e) uses the Equipment when Lessee does not have in effect all licenses, permits or other forms of governmental consent necessary under any law or regulation for use or operation of the Equipment.
- Lessee will notify Lessor if it changes its name, business structure, or identity, use any new trade name, or merge into or consolidate with any other person or entity.

9. **MAINTENANCE AND REPAIR.** Lessee, at its sole cost and expense, shall keep the Equipment in good operating order, repair, condition, and appearance and shall furnish any and all parts, mechanisms, or devices required to keep the Equipment in good mechanical and working order. In accordance with said requirement and except as otherwise provided herein, Lessee shall (i) maintain, inspect, service and repair, overhaul, and test the Equipment in accordance with applicable law and the manufacturer's recommended service, operation, and maintenance bulletins and procedures, so as to keep the Equipment in as good operating condition as when delivered to Lessee hereunder, ordinary wear and tear excepted; and (ii) maintain all records, logs, and other materials required by applicable laws to be maintained in respect of the Equipment. Upon installation of any part, mechanism or device on the Equipment as herein provided, title thereto shall, without further act, vest immediately in Lessor and such part, mechanism or device shall form part of the Equipment. Provided that title to any replacement part, mechanism or device installed on the Equipment vests in Lessor free and clear of all liens and encumbrances and that such replacement part, mechanism or device has a value and utility greater than the part, mechanism or device removed, title to such removed part, mechanism or device shall, without further act, vest immediately in Lessee and such part, mechanism or device shall no longer form part of the Equipment from which it is removed.

10. **INSPECTION; LEASE REPORTS.** Lessor shall at any time during normal business hours after reasonable advance notice to Lessee, have the right to enter the premises where the Equipment may be located for the purpose of inspecting and examining the Equipment, its condition, use, and operation, to inspect the books, logs and records of Lessee pertaining thereto, and to ensure compliance by Lessee with its obligations hereunder, provided, however, that Lessor shall have no duty to inspect and shall not incur any liability or obligation by reason of not making any such inspection.

Lessee shall immediately notify Lessor of any accident connected with the use, operation, or malfunction of the Equipment, including in such report the time, place, and nature of the accident, the damage caused to property, the names and addresses of persons injured and of witnesses, and such other information as may be pertinent to Lessor's investigation of such accident.

Lessee shall immediately notify Lessor in writing after any attachment, tax lien, or other judicial process shall attach to the Equipment.

Lessee shall, as soon as practicable after the close of each quarter and fiscal year of Lessee, furnish to Lessor copies of Lessee's financial statements prepared by it as of the close of the period ended, including Lessee's balance sheet and profit and loss statement, with said fiscal year reports certified by a recognized firm of certified chartered accountants, unless otherwise agreed by the Lessor in writing. Further, Lessee agrees to furnish Lessor from time to time such other information as Lessor may reasonably request.

11. **NO WARRANTIES.** LESSOR IS NOT A MANUFACTURER OR VENDOR OF THE EQUIPMENT OR A DEALER IN SIMILAR EQUIPMENT AND HAS NOT INSPECTED THE EQUIPMENT PRIOR TO DELIVERY TO AND ACCEPTANCE BY LESSEE, BY VIRTUE OF ANY NEGOTIATIONS IN RESPECT TO THIS LEASE, LESSOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN OR CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, DURABILITY, SUITABILITY, OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR THE WORKMANSHIP OF THE EQUIPMENT OR THE CONFORMITY OF THE EQUIPMENT TO THE SPECIFICATIONS AND DRAWINGS, OR TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE ORDER OR ORDERS RELATING THERETO, AND LESSOR HEREBY DISCLAIMS ANY SUCH REPRESENTATION OR WARRANTY OR ANY OTHER WARRANTY WHATSOEVER, EXPRESS OR IMPLIED (WHICH DISCLAIMER LESSEE HEREBY ACKNOWLEDGES), WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LESSOR SHALL NOT BE LIABLE OR RESPONSIBLE FOR ANY DEFECTS, EITHER PATENT OR LATENT (WHETHER OR NOT DISCOVERABLE BY LESSEE), IN THE EQUIPMENT OR FOR ANY DIRECT OR INDIRECT INJURY OR DAMAGE TO PERSONS OR PROPERTY RESULTING THEREFROM, OR FOR LESSEE'S LOSS OF USE OF THE EQUIPMENT OR FOR ANY INTERRUPTION IN LESSEE'S BUSINESS CAUSED BY LESSEE'S INABILITY TO USE THE EQUIPMENT FOR ANY REASON WHATSOEVER. THE EQUIPMENT IS LEASED HEREUNDER "AS IS".

Lessee hereby waives any claim it might have against Lessor for any loss, damage, or expense caused by the Equipment or by any defect therein (alleged or actual), or the use or maintenance thereof, or servicing or adjustment thereto.

12. **INSURANCE.** Lessee agrees to pay for and maintain insurance on the Equipment during the term of this Lease against all risks (including, without limitation, comprehensive, public liability, bodily injury, property damage, vandalism, product liability, fire, burglary, theft and third-party liability) in a form and with an insurance carrier satisfactory to Lessor, provided that the amount of direct damage insurance is not at any time less than the aggregate unpaid Rent due and to become due hereunder or the full replacement cost of the Equipment as of such date, whichever is greater. Lessor shall be named as both an additional insured and

primary loss payee, and such policy shall provide that the policy may not be modified or cancelled without thirty (30) day's prior written notice to Lessor. Lessee shall promptly deliver to Lessor upon demand satisfactory evidence of insurance coverage. Insurance proceeds, whether resulting from loss, damage, return of premium, or otherwise, shall be applied at Lessor's option either toward the replacement or repair of the Equipment or toward the payment of Lessee's obligations hereunder.

13. **LOSS OR DAMAGE.** Risk of loss, damage to, or destruction of the Equipment shall pass to Lessee upon the Equipment's being made available to Lessee or its agent. After risk of loss has passed to Lessee, loss or damage to all or part of the Equipment shall not impair any obligation of Lessee hereunder, and Rent shall not be prorated or abated as a result thereof. If any of the Equipment is totally or partially destroyed or otherwise rendered unfit for use, then, at Lessor's option, Lessee shall pay to Lessor all Rent for the remainder of the term of this Lease together with any other sums payable hereunder.

14. **INDEMNITY.** Lessee agrees to defend at its own cost and to indemnify and hold harmless Lessor, its agents and employees, from and against any and all losses, claims, infringements, costs, expenses (including reasonable legal fees), awards, damages, judgments and liabilities, however caused, resulting directly or indirectly in any manner from the manufacture, construction, ordering, purchase, assignment of Lessee's purchase order, acceptance or rejection, ownership, delivery, lease, re-lease, possession, use, operation, maintenance, storage, removal, return, disposition, sale to third parties, or directly or indirectly from or pertaining to the use, condition (including without limitation latent or other defects whether or not discoverable), or operation of the Equipment or any portion thereof or the performance of this Lease including, without limitation such losses, claims, costs, expenses, awards, damages, judgments and liabilities arising from: (i) loss or damage to any property or death or injury to any person, (ii) patent or latent defects in the Equipment (whether or not discoverable by Lessee), (iii) any claims based on strict liability in tort or otherwise, (iv) any claims based on trade secret, patent, trademark, or copyright infringement, and (v) any claims based on liability arising under any applicable environmental or noise or pollution control law or regulation or any failure on the part of Lessee to perform or comply with any of the terms of this Lease. Lessee shall give Lessor prompt notice of any occurrence, event, or condition known to Lessee as a consequence of which Lessor may be entitled to indemnification hereunder. Lessee shall forthwith upon demand of Lessor reimburse Lessor for expenses incurred by Lessor in connection with any of the foregoing or pay such amounts directly. Lessee shall be subrogated to Lessor's rights in any matter with respect to which Lessee has actually reimbursed Lessor for amounts expended by it or has actually paid such amounts directly pursuant to this Section. In case any action, suit or proceeding is brought against Lessor in connection with any claim indemnified against hereunder, Lessor will, after receipt of notice of the commencement of such action, suit, or proceeding, notify Lessee thereof, enclosing a copy of all papers served upon Lessor. Lessee may, and upon Lessor's request will, at Lessee's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by Lessee and reasonably satisfactory to Lessor and in the event of any failure by Lessee to do so, Lessee shall pay all costs and expenses (including, without limitation, legal fees and expenses) incurred by Lessor in connection with such action, suit or proceeding.

This indemnification shall apply from the date of the execution of this Lease, notwithstanding that the lease term has not yet commenced, and shall survive the expiration or other termination of this Lease for the benefit of, and be enforceable by, Lessor.

15. **TITLE** Lessee acknowledges that the Equipment shall at all times be and remain the sole and exclusive property of Lessor, and Lessee shall have no lessorship or equity interest in the Equipment (unless and until Lessee is permitted to purchase the Equipment at the end of the term of this Lease in accordance with paragraph 22). The parties hereto intend that only the relationship of Lessor and Lessee is created hereby. Notwithstanding the foregoing, if a court of competent jurisdiction determines that this Lease Agreement is a "lease agreement intended as security", then Lessee hereby grants a security interest in and to the Equipment as security for all Lessee's obligations to Lessor of every kind and nature whatsoever. Lessee shall execute and/or furnish to Lessor any further instruments and assurances reasonably requested from time to time by Lessor to protect its interest (including, without limitation, bills of sale in respect of any parts, mechanisms or devices to which title has automatically vested in Lessor pursuant to the terms hereof), and shall otherwise cooperate to defend the title of Lessor and to maintain the status of the Equipment as personal property, including, without limitation, the execution of financing statements. Lessor may file or record any such financing statements, waivers, or other instruments in order to protect its interest. Lessee shall at its own cost and expense affix to the Equipment and keep and maintain, permanently and conspicuously, upon the Equipment the following words: "Owned by debis Financial Services, a division of Mercedes-Benz Credit of Canada Inc., Owner-Lessor". Lessee appoints Lessor as Lessee's Attorney-in-fact to do, at Lessor's option and at Lessee's expense, all acts and things which Lessor may deem necessary to perfect and continue the perfection of Lessor's security interest in the Equipment.

Except as above provided, Lessee will not allow the name of any person, association, or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that Lessee may cause the Equipment to be lettered with its corporate name and/or corporate symbol, as an appropriate and convenient way to identify the interest of Lessee.

16. **QUIET ENJOYMENT.** So long as Lessee shall not be in default and fully performs all of its obligations hereunder, neither Lessor nor anyone rightfully claiming through Lessor will interfere with the quiet use and enjoyment of the Equipment by Lessee.

17. **RETURN.** Lessee will provide Lessor with not less than 90 days prior written notice prior to expiry of lease of Lessee's intent to return the equipment. Upon the expiration of this Lease with respect to the Equipment, Lessee, at its own risk and expense, will return the Equipment to Lessor, pursuant to Lessor's instructions, to any location within Canada or the continental United States.

Notwithstanding anything to the contrary, in no event shall Lessee's responsibilities to repair, maintain and insure the Equipment terminate prior to written notice from Lessor that the Equipment has been returned and/or placed in the condition called for hereunder.

At the time of return, the Equipment shall:

- (1) Be in the same condition, working order and appearance as it was when received, reasonable wear and tear from proper use excepted.
- (2) All records, logs and other materials required to be maintained with respect to the Equipment shall be promptly furnished to Lessor if so required by Lessor.
- (3) Be free and clear of all mortgages, liens, security interests, charges, encumbrances and claims except those arising from the actions or inactions of Lessor.
- (4) Be free of all advertising or insignia placed thereon by Lessee.
- (5) Be otherwise in full compliance with the terms of this Lease.

Lessee shall pay for all repairs and replacements necessary to place the Equipment in the conditions described above, which repairs and replacements shall be effectuated immediately. In the event any necessary repairs or replacements are not completed within fifteen (15) days from the expiration or early termination date, Lessee shall pay to Lessor interim rent equal to the daily rent equivalent of the periodic rent set forth in the Schedule covering the Equipment for each day in excess of the lease term, until such repairs and replacements are completed and the Equipment is returned to Lessor. Said payment shall be made on the date the Equipment is returned to Lessor (but not less frequently than monthly).

If Lessee does not purchase the Equipment, Lessor will sell the Equipment at a public or private sale in the wholesale or retail market, the choice of which is at the Lessor's discretion, with or without notice to Lessee. If the amount received from the sale (less sales tax payable, reasonable sales commissions and restoration costs, if any) is less than the Residual Value of the Equipment set forth in the Schedule, the Lessee shall be liable for, and shall pay upon demand the amount of such deficiency to Lessor.

18. **LESSEE'S WARRANTIES.** Lessee represents and warrants to Lessor that:

- (a) Lessee is and shall at all times hereafter be duly organized and existing in good standing under the laws of its incorporation;
 - (b) this Lease has been duly and validly authorized, executed and delivered by an officer of Lessee and constitutes and will constitute the legal, valid and binding obligation of Lessee in accordance with its terms;
 - (c) the execution and performance of this Lease by Lessee will not violate any law or regulations or Lessee's corporate charter or bylaws, nor will it constitute a default under any agreement to which Lessee is a party;
 - (d) the execution and performance of this Lease and the leasing and use of the Equipment by Lessee do not require the approval of, giving of notice to, or taking of any other action in respect of, any federal, provincial, or other governmental authority or agency (other than such as had been duly obtained, given or taken);
 - (e) all financial statements and information which have been or may hereafter be submitted to Lessor relating to Lessee have been and will be complete, true, and correct, and have been and will be prepared in accordance with generally accepted accounting principles;
 - (f) there has been no material adverse change in the financial condition of Lessee since the last submission of such financial information to Lessor;
 - (g) the Equipment is being leased by Lessee solely for Lessee's business or commercial purposes;
 - (h) no mortgage, deed of trust, or other lien which now covers or affects, or which may hereafter cover or affect, any property or interest therein of Lessee, now attaches or hereafter will attach to the Equipment, or in any manner affects or will affect adversely Lessor's right, title, and interest therein;
 - (i) there is no litigation or other proceedings now pending or, to the knowledge of Lessee, threatened, against or affecting Lessee, in any court or before any regulatory commission, board, or other administrative governmental agency which would directly or indirectly, adversely affect or impair the title of Lessor to the Equipment, or which, if decided adversely to Lessee, would materially adversely affect the business operations or financial condition of Lessee;
 - (j) Lessee has filed all Canadian federal and provincial income tax returns which are required to be filed, and has paid, or made provisions for the payment of, all taxes which have or may become due pursuant to said returns or pursuant to any assessment received by Lessee, except such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided;
 - (k) Lessee's principal place of business and chief executive office is as listed at the beginning of this Lease;
 - (l) Lessee's full legal name is as set forth at the beginning of this Lease and Lessee is not known by any assumed business name other than any name shown in the identification of Lessee set forth at the beginning of this Lease; and
 - (m) the description of the Equipment and its parts described in the Schedules attached to or referring to this Lease is accurate and complete in all respects.
- Lessee agrees to deliver to Lessor at any time or times hereafter such documents, including, without limitation, certified resolutions and legal opinions, as Lessor may reasonably request to substantiate Lessee's compliance with the foregoing. Each of the above warranties shall be continuing during the term of this Lease.

19. **RIGHT TO PERFORM OBLIGATIONS.** If Lessee shall fail to make any payment or perform any act or obligation required of Lessee hereunder, Lessor may (but need not) at any time make such payment or perform such act or obligation at the expense of Lessee; provided however, that no such payment or performance shall be declared to cure any Event of Default hereunder. Any expense so incurred by Lessor shall constitute additional rent hereunder payable by Lessee to Lessor upon demand and shall bear interest at the Overdue Rate from the date such payment was due until the date of payment by Lessee.

20. **EVENTS OF DEFAULT.** Lessee shall be in default hereunder and an "Event of Default" shall have occurred if:

- (a) Lessee shall fail to pay when due any installment payment of rent or other sum due hereunder and such failure shall continue for more than ten (10) days;
- (b) Lessee fails to maintain any insurance with respect to the Equipment as required hereunder;
- (c) Lessee shall fail to observe or perform any other provision, covenant, condition, or agreement of this Lease or any Schedule and such failure shall continue for more than ten (10) days after written notice from Lessor;
- (d) any representation or warranty made by Lessee herein or in any document or certificate furnished by Lessee to Lessor in connection with this Lease shall prove to be incorrect, untrue, or misleading in any material respect;
- (e) Lessee or any Guarantor shall become insolvent, make an assignment for the benefit of creditors, consent to or have appointed a trustee or receiver, fail to pay its debts as they mature, cease doing business, dissolve, or commit any act of bankruptcy;
- (f) any bankruptcy, reorganization, arrangement, insolvency, receivership, or like proceeding shall be instituted by or against Lessee or any Guarantor, or all or substantially all of its or their property and not withdrawn or dismissed within ninety (90) days thereafter;
- (g) Lessee or any Guarantor shall default under any agreement providing for the payment of borrowed money or the deferred purchase price of property or rent under any lease of real or personal property, unless such default is being contested by Lessee, in good faith and by appropriate proceedings, and for the payment of which adequate reserves have been established;
- (h) Lessee or any Guarantor shall default under any other agreement with Lessor or any corporation affiliated with Lessor;
- (i) a prior notice is given by a creditor holding a security interest or claim or by a hypothecary creditor of its intention to exercise its security interest, claim a hypothecary right or any other security, or if such security interest, right or claim is exercised or if a secured creditor takes possession of or appoints a receiver with respect to the Equipment or any part thereof; or
- (j) if a seizure is brought against the Equipment or any part thereof.

21. (A) **REMEDIES:** Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, Lessor, at its option, may, but is not obligated to, do one or more of the following, as appropriate, with respect to the Equipment: (1) terminate this Lease, without prejudice to any other rights or remedies of Lessor hereunder, and whether or not this Lease has been terminated, enter the premises of Lessee and take immediate possession of the Equipment and remove the same by summary proceedings, or otherwise, or cause Lessee to surrender and deliver possession of the Equipment all without liability to Lessor; (2) proceed by appropriate court action or actions either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease and to recover damages for the breach thereof; (3) repossess and without terminating this Lease hold the Equipment until Lessee shall have complied with all obligations under this Lease; (4) repossess with or without notice and sell, relet, use, hold, or otherwise dispose of the Equipment; (5) without repossessing, declare all unpaid rent immediately due and payable; (6) appoint, by deed or by document under the hand of any of its officers, attorneys or substitute attorneys, a person from time to time to act as Receiver of the Equipment and to remove a person so appointed from his appointment and to appoint another in his place. Lessee hereby waives immunity from, and consents to the enforcement of, such remedies as Lessor may choose.

(B) **DAMAGES:** Lessee and Lessor acknowledge that any actual injury suffered by Lessor as a result of the occurrence of an Event of Default will be very difficult to prove for many reasons, including, but not limited to, the uncertainties of re-leasing, costs during periods that the Equipment may remain idle, and the timing of disposition. Lessee and Lessor further recognize that it may be inconvenient or infeasible for Lessor to obtain an adequate remedy if an Event of Default should occur. Accordingly, it is agreed that Lessor shall be entitled to liquidated damages upon an Event of Default to be determined by subtracting the sum of:

- (a) Lessee's security deposit, if any;

- (b) Rent actually paid, including sales tax paid thereon;
- (c) net proceeds of Equipment sold (or, if it is not sold, the fair market value of Equipment, as determined by a person selected by Lessor who manufactures, sells, or distributes similar property or who is otherwise qualified to value the Equipment (the "Appraiser");
- (d) proceeds received by Lessor from any insurance provided pursuant to Section 12 of this Lease, if such proceeds are not used to repair or replace the Equipment; and
- (e) any net proceeds of re-leasing the Equipment during the term of the Lease; from the sum of:
 - (i) the Rent payable for the full term of the Lease;
 - (ii) interest, late charges, and other charges or payments for which Lessor is entitled to be reimbursed;
 - (iii) Lessor's fees and expenses authorized pursuant to paragraph 23; and
 - (iv) the value of Equipment as set forth in paragraph 22 or, if there is no purchase option, the anticipated fair market value of the Equipment (as determined by the Appraiser) at the end of the term of the Lease as if the Lease was not terminated.

The net proceeds from the sale or re-leasing of the Equipment shall be calculated by deducting Lessor's expenses of repossession, repair, preparation and disposition (together with other costs of sale or re-leasing) from the gross proceeds.

(C) REMEDIES CUMULATIVE: Each and every power and remedy herein specifically given to Lessor shall be in addition to every other power and remedy specifically so given or now or hereafter existing at law or in equity, and each and every power or remedy may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by Lessor. Upon payment by Lessee of the damages set forth in subsection (B) above, Lessor will have no further rights or claims against Lessee with respect to such Event of Default and this Lease shall terminate. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of Lessor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. In the event that Lessor shall bring any suit or action to enforce any of its rights hereunder, then in such suit or action Lessor may recover reasonable expenses, including legal fees, and the amount thereof shall be included in such judgment.

(D) POWER OF ATTORNEY: Lessee hereby appoints Lessor as Lessee's irrevocable agent and attorney-in-fact to execute all documents deemed necessary to re-lease, terminate, and void Lessee's interest in any Equipment leased hereunder and to file said documents for recordation with appropriate agencies, provided that an Event of Default has occurred, and Lessor in good faith deems use of this agency necessary to effect any remedy Lessor chooses to take.

(E) WAIVER OF LIMITATIONS ON ENFORCEMENT: To the extent permitted by law and to the extent the same extends to and relates to this Lease as amended or renewed, Lessee hereby waives the benefit of all provisions of any applicable law that would in any manner, affect, restrict, or limit the rights or remedies of Lessor hereunder, impose any additional obligations on Lessor or render any of the provisions of this Lease unenforceable.

- 22. **PURCHASE OPTION.** Provided that no Event of Default has occurred and is continuing, Lessee shall have the option at the scheduled expiration of the Lease, exercisable upon not less than 30 days' prior written notice to Lessor, to purchase the Equipment, on an "as is, where is" basis, and without warranty by Lessor, for the Residual Value set out in the Schedule (plus any applicable taxes and Lessor's costs and expenses).
- 23. **LEGAL FEES.** Lessee, in addition to all other sums which Lessee may be called upon to pay, will pay to Lessor its reasonable legal fees incurred with respect to entry into this Lease, any amendments hereto or the enforcement hereof (whether or not litigation is commenced). Lessee shall reimburse Lessor for the cost (including legal fees) of all recordings, registrations and filings related to this Lease and any mortgage, security interest, waiver, license, permit, or certificate incident thereto, required by law or deemed reasonably necessary by Lessor to protect its interests in the Equipment.
- 24. **NOTICES.** All notices required under the terms and provisions hereof shall be in writing and shall be deemed duly given when delivered personally or mailed, by first class, registered, or certified mail, to the respective address of the parties set forth at the beginning of this Lease or any other address designated by notice served in accordance herewith.
- 25. **CONDITIONS PRECEDENT.** As conditions precedent to Lessor's duties under this Lease, Lessee shall furnish Lessor on or before the delivery of this Lease all such documents as Lessor may require.
- 26. **APPLICABLE LAW.** This Lease shall be governed by and construed in according to the laws of the Province in which the Lessee's above specified address is located and the federal laws of Canada applicable therein. Lessee hereby consents to the jurisdiction of the courts of such Province in any action or proceeding relating to this Lease and waives any and all claims that such forums are inconvenient or that there is a more convenient forum located elsewhere.
- 27. **APPLICATION OF APPLICABLE LEGISLATION.** Notwithstanding anything herein to the contrary, to the extent that the provisions of any applicable legislation impose obligations upon or restrict the rights or remedies herein contained operating in favour of Lessor, and which have been waived or varied by Lessee herein, whether expressly or by implication, but which are by the provisions of such applicable legislation incapable of waiver or variance by Lessee, the provisions of such applicable legislation shall govern and the affected provisions hereof shall be deemed to be amended to the extent necessary to give effect to the said provisions of such applicable legislation without in any way affecting any other provisions hereof.
- 28. **AMENDMENTS.** The terms hereof (including the Schedule) shall not be waived, varied, contradicted, explained, amended, or changed in any other manner except by an instrument in writing of even or subsequent date hereto, executed by both parties.
- 29. **ASSIGNMENT.** Lessee hereby consents to any assignment at any time by Lessor and any reassignment of this Lease, in whole or part, or rents hereunder with or without notice, except that Lessor agrees that it will endeavor to give notice of any such assignment to Lessee within a reasonable time after such assignment. Lessee agrees that the rights of any assignee shall not be subject to any abatement, defense, setoff, counterclaim, or recoupment whatsoever and that any such assignee shall have all of Lessor's rights hereunder, but none of Lessor's obligations, except when Lessor assigns this Lease in total to any third party and not just as collateral to secure any financing or similar arrangement. Lessee will not incur any additional costs associated with any such assignment.

Neither this Lease nor any of Lessee's rights hereunder shall be assignable by Lessee, either by its own act or by operation of law, without the prior written consent of Lessor, and any such attempted assignment shall be void.

Subject to the terms hereof, this Lease shall be binding upon and inure to the benefit of Lessor and Lessee and their respective personal representatives, successors, and assigns.

30. **WAIVER.** Lessor's failure to insist on performance of any of the terms or conditions contained herein, or to exercise any right or privileges or Lessor's waiver of any breach hereunder shall not thereafter waive any such terms, conditions, rights, or privileges, whether of the same or similar type.
- Lessee hereby waives to the extent permitted by applicable law, any and all rights which it may not have or which at any time hereafter may be conferred upon it by statute or otherwise to terminate, cancel, quit or surrender this Lease.
31. **HEADINGS:** Headings, as used herein, are for convenience of reference only and shall not be construed to limit or extend the language of the provisions to which such headings may refer.
- (A) **INTERPRETATION:** The necessary grammatical changes required to make the provisions hereof apply to corporations, partnerships, and/or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.
- (B) **DEFINITIONS.** For purposes of this Lease the following definitions apply:
- "Guarantor":** Any guarantor of Lessee's obligations hereunder.
- "Overdue Rate":** Eighteen percent (18%) per annum calculated daily.
32. **TIME.** Time is of the essence hereof.
33. **RECEIPT OF AGREEMENT.** Lessee hereby acknowledges receipt of an executed copy of this Lease. Lessee hereby waives its right to receive copies of financing, financing change or verification statements with respect to the Lessor's interest hereunder.
34. **SEVERABILITY.** If any provision of this Lease or the application thereof is hereafter held invalid or unenforceable, the remainder of the Lease shall not be affected thereby, and to this end the provisions of this Lease are declared severable.
35. **LANGUAGE.** The parties confirm that they have requested that this Agreement and all correspondence in connection therewith be written in English. Les parties déclarent que cette entente fut rédigée en anglais à leur demande expresse.
36. **COUNTERPARTS.** This Lease may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be original and such counterparts together shall constitute one and the same instruments.

THIS LEASE IS SUBMITTED TO LESSOR FOR ITS ACCEPTANCE OR REJECTION AND WILL NOT BECOME EFFECTIVE UNTIL ACCEPTED BY LESSOR IN WRITING. THIS LEASE IS IRREVOCABLE BY LESSEE FOR THE FULL TERM HEREOF AND FOR THE AGGREGATE RENT HEREIN RESERVED. The individuals executing this Lease on behalf of Lessee personally warrant that they are doing so pursuant to due authorization and that by so executing this Lease, Lessee is being fully bound hereby.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their duly authorized officers on the day and year first written above.

LESSOR:

LESSEE:

debis Financial Services, a division of
Mercedes - Benz Credit of Canada Inc.

Hickman Equipment (1985) Limited

By: _____

By: 

Title: _____

Title: Sale Manager

To and part of the Master Equipment Lease Agreement dated Feb 14/00, between debis Financial Services, a division of Mercedes-Benz Credit of Canada Inc. ("Lessor") and Hickman Equipment (1985) Limited ("Lessee").

Equipment Description:

Vendor Name & Address: JOHN DEERE LIMITED (CANADA), GRIMSBY, ONTARIO

Unit	Make / Model	Description	Serial Number	Cost
1 One (1) New	John Deere 624H	4WD Loader	DW624HX574946	\$ 174,933.66 CDN
2 One (1) New	John Deere 200LC	Excavator	FF0200X501010	\$ 203,552.16 CDN
3 One (1) New	John Deere 270LC	Excavator	FF0270X070608	\$ 275,407.82 CDN
4 Two (2) New	John Deere 35	Compact Excavators	FF035ZX230108 & FF035ZX230109	\$ 46,673.56 CDN \$ 46,673.56 CDN
5 Two (2) New	John Deere 27	Compact Excavators	FF027ZX220096 & FF027ZX220097	\$ 38,568.96 CDN \$ 38,568.96 CDN

Term (months)	Equipment Cost	Residual Value	Monthly Payment*	Commencement Date
1 48 months	\$824,378.68 CDN	\$ 10.00	\$ 21,295.28 Plus HST (3,194.29) = \$ 24,489.57	Feb 14/00

Equipment Location: _____

Address of Lessee: Mount Pearl, Newfoundland

Lessee hereby agrees that its warranties and covenants made in the Lease Agreement are approved, ratified, and affirmed in all aspects as of the date of this Lease Schedule and confirms that the representations made in the Lease Agreement and statement are, as of the date of this Lease Schedule, true, accurate and complete in all aspects. Lessor and Lessee hereby characterize this Lease Schedule as a separate Lease with respect to each of the equipment set forth herein.

Lessee: Hickman Equipment (1985) Limited

By: [Signature]
Name: JOHN KING
Title: SALES MANAGER


Date: _____

EQUIPMENT ACCEPTANCE CERTIFICATE

In accordance with the terms and conditions of that certain Equipment Lease Agreement by and between debis Financial Services, a division of Mercedes-Benz Credit of Canada Inc. ("Lessor") and Hickman Equipment (1985) Limited ("Lessee") dated _____ (the "Lease") and Schedule No. 1 thereto (the "Schedule"), the undersigned Lessor hereby acknowledges receipt of all of the equipment described in the Schedule (the "Equipment") and acknowledges that based upon its inspection, the Equipment is in good operating condition and repair, conforms in all material respects to all specifications, and is satisfactory in all other respects. Lessor hereby unconditionally accepts the Equipment, the Lease and the Schedule as of the date hereof. Lessor expressly confirms all of its obligations under the Lease.

Date _____

Debtor: Hickman Equipment (1985) Ltd.

By: 
Name: JOHN KINK
Title: SALES MANAGER




debis
Financial Services

DISBURSEMENT OF FUNDS APPROVAL

The undersigned hereby authorizes and directs debis Financial Services, a division of Mercedes-Benz Credit of Canada Inc. ("debis"), to disburse funds in the amount of \$ 824,378.68 CDN directly to Hickman Equipment (1985) Limited pursuant to the terms of the lease documents dated Feb 14/00 and amendments thereto between debis and the undersigned. By doing such, Hickman Equipment (1985) Limited acknowledges they will forward directly to John Deere Limited (Canada) the full payout of the equipment outlined on the lease agreement.

Lessee:



Hickman Equipment (1985) Limited

Date

MASTER EQUIPMENT LEASE AGREEMENT

THIS LEASE, dated March 14, 2000 is by and between

— Individual — ☒ Corporation — Partnership

Lessor: debis Financial Services, a division of
Mercedes-Benz Credit of Canada Inc.
6701 Financial Drive, Suite 200,
Mississauga, Ontario L5N 7J7
Tel: (800)903-3247
Fax: (800)903-2373

and

Lessee: Hickman Equipment (1985) Limited
Name
1269 Topsail Road
Address
Mount Pearl, Nfld A1N 3C8
City/Province/PC
(709)368-9660
Telephone

(hereinafter called "Lessor")

(hereinafter called "Lessee")

In consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Lessor and Lessee hereby agree as follows:

1. **LEASE.** Lessor hereby agrees to lease to Lessee and Lessee hereby agrees to lease from Lessor the unit or units of equipment, machinery, instrumentation, or other personal property (hereinafter called the "Equipment") described in any Schedule now or hereafter executed by Lessee that references this Lease (together or singularly hereinafter referred to as "Schedule").
2. **ACCEPTANCE.** Forthwith after acceptance of the Equipment, Lessee shall execute and deliver to Lessor, Lessor's form of Equipment Acceptance Certificate.
3. **TERM.** This Lease shall be effective upon the execution hereof by Lessor. The term of the lease for the Equipment shall be as set forth in the Schedule applicable to the Equipment and shall commence on the date specified in the Schedule (the "Commencement Date"), and subject to the terms hereof, shall continue for the period of time set forth in the Schedule.
Early Termination Option. Lessee may end this Lease early if Lessee is not in default by sending 30 days prior written notice to Lessor that Lessee wishes to terminate this Lease and purchase the Equipment. The early purchase option price will be the sum of the following amounts: (i) the present value of the Rent payable for the balance of the term of the Lease calculated by discounting such amounts at 5% per annum, plus (ii) the value of the Equipment as set forth in paragraph 22 or, if there is no purchase option, the Lessor's estimated residual value of the Equipment at the end of the lease term; plus (iii) any other sum due under this Lease, including the prepayment penalty, plus (iv) all applicable taxes. From this early purchase option price will be deducted any credits owed by Lessor to Lessee, such as the amount, if any, held as a security deposit by Lessor.
Prepayment Penalty. Should this Lease be terminated early, whether by reason of the exercise of the Early Termination Option, the sale of the Equipment, or otherwise, Lessee shall owe Lessor a "Prepayment Penalty". If the Lease is terminated during the first year of the term, the Prepayment Penalty shall be three (3%) percent of the original Equipment cost (as identified in the Schedule). During the second year, the Prepayment Penalty shall be two (2%) percent, during the third year, it shall be one (1%) percent.
4. **RENTAL.** Lessee shall pay to Lessor total rent equal to (i) the periodic rent payments specified in the Schedule multiplied by (ii) the number of rent payment specified in the Schedule. Installment payments of rent shall be due monthly in advance of each monthly period, commencing on the Commencement Date. All rent shall be paid to Lessor, or at such other address as Lessor may specify by written notice to Lessee. If any rent or other sums due hereunder are not paid within ten (10) days of the due date thereof, Lessee shall, subject to applicable law, pay to Lessor on demand, as additional rent, a late charge thereon equal to five percent (5%) of the amount of said payment. Payments received shall be applied first to delinquent amounts due, including late charges, and then to current installments. Lessee's obligation to pay all amounts due hereunder shall be to absolute and unconditional and shall not be affected by any circumstance, including, without limitation (i) any set-off, counterclaim, defense, or other right which Lessee may have against Lessor, (ii) any alleged or actual defect in the condition, design, operation, or fitness for use of, or any damage to or loss or destruction of, the Equipment, or any interruption or cessation in the use or possession thereof by Lessee, or (iii) any insolvency, bankruptcy, reorganization, or similar proceedings by or against Lessee. Each rent payment made by Lessee shall be final and Lessee will not seek to recover all or any part of such payment from Lessor for any reason whatsoever.
5. **SECURITY DEPOSIT.** If a security deposit (in the amount set forth in the Schedule) is required, it may be applied at Lessor's option toward any obligation of Lessee hereunder that is not paid when due. If Lessor applies the security deposit toward an obligation of Lessee, Lessee agrees to pay that sum to Lessor upon demand or at the time of the next scheduled Rent payment, whichever is earlier, in order to maintain the amount of security deposit required by the Schedule. The existence of the security deposit shall in no way excuse the performance of any of Lessee's obligations hereunder.
6. **TAXES AGAINST LESSOR OR EQUIPMENT.** This Lease is a net lease and Lessor acknowledges and agrees that Lessee's obligations hereunder, including, without limitation, its obligations to pay all rent and other sums payable hereunder, shall be absolute and unconditional. Lessee agrees to pay and to indemnify and hold Lessor harmless from all license and registration fees and sales, use, personal property, stamp, or other taxes, levies, imposts, duties, charges, or withholdings of any nature whatsoever, together with any penalties, fines or interest thereon (collectively referred to as "taxes, fees or other charges") imposed against Lessor, Lessee or the Equipment or any part thereof by any federal, provincial, or local government or taxing authority during the term or in connection with the termination of this Lease, upon or with respect to the Equipment or any part thereof or upon the purchase, ownership, delivery, leasing, possession, use, operation, return, or other disposition thereof, or upon the rent payments, receipts or earnings arising therefrom or upon or with respect to this Lease (excluding, however, any taxes imposed on, based on, or measured by, the net income of Lessor or any taxes based on the net worth or gross income of Lessor if such taxes are in lieu of a net income tax). For greater certainty, all payments of rent under this Lease by Lessee to Lessor shall be net of: (i) the goods and services tax imposed under Part IX of the *Excise Tax Act* (Canada) or any tax introduced in replacement thereof ("GST") by way of Lessee increasing the payments to Lessor by 7%, or then prevailing rate of GST if different; and (ii) any applicable provincial sales or use taxes.

If Lessee is required by law to make any deduction or withholding from any payment hereunder for or on account of any taxes, fees or other charges in Canada, it shall do so and the sum due from Lessee in respect of such payment shall be increased to the extent necessary to ensure that, after making such deduction or withholding and after making any and all additional deductions or withholdings that may be required as a result of the payment by Lessee being increased hereunder, Lessor receives and retains (free of and net of any such deduction and withholding and any taxes, fees or other charges in Canada on, in respect of, or a consequence of such increase in the amount otherwise payable hereunder) a net sum equal to the sum it would have received and retained had no deduction or withholding been required to be made. If at any time Lessee is required by law to make any such deduction or withholding from any sum payable by it hereunder (or if thereafter there is any change in the rates at which or the manner in which such deductions or withholdings are calculated), Lessee shall promptly notify Lessor accordingly. If Lessee makes any payment hereunder in respect of which it is required by law to make any deduction or withholding it shall pay the full amount to be deducted or withheld to the relevant taxation or other authority within the time allowed for such payment under applicable law and shall deliver to Lessor the appropriate receipt or certificate issued by the applicable authority evidencing the payment to such authority of all amounts so required to be deducted or withheld from such payment within thirty (30) days after receipt of such receipt or certificate. In case any report or return is required to be made with respect to any obligation of Lessee under this Section or arising out of this Section, Lessee will either make such report or return in such manner as will show the ownership of the Equipment in Lessor and send a copy of such report or return to Lessor or will notify Lessor of such requirement and make such report or return in such manner as shall be satisfactory to Lessor. All of the obligations of Lessee under this Section with respect to any taxes, fees or other charges (except to the extent resulting solely from the negligent actions or omissions of Lessor, its employees, or agents) imposed or accrued before the expiration or other termination of this Lease shall continue in full force and effect notwithstanding such expiration or other termination and are expressly made for the benefit of, and shall be enforceable by, Lessor.

7. USE. Lessee shall use, operate, maintain, and store the Equipment in a careful and proper manner and shall comply with all laws, ordinances, and regulations in any way relating to the possession, use, operation, or maintenance of the Equipment. Lessee shall put the Equipment only to the use contemplated by the manufacturer. Upon demand by Lessor, Lessee shall give Lessor written notice of the exact location of the Equipment. Lessee may operate the Equipment only in the normal course of Lessee's business operations.

8. **NEGATIVE COVENANTS.** Unless Lessor has expressly allowed such action in writing, Lessee will not:
- (a) take the Equipment or any part of it, or allow it to be taken, outside of the Province set out in the applicable Schedule or into areas which are not covered by Lessee's insurance on the Equipment; change the location of Lessee's chief executive office or the primary location of the Equipment before Lessee has notified Lessor of the intended change in writing and Lessor has had a reasonable opportunity to perfect its interest in the Equipment in the new location;
 - (b) lends, assigns, sells, encumbers, leases, subleases, rents, or otherwise transfers possession or control of all or any part of the Equipment;
 - (c) makes any alterations to the Equipment;
 - (d) fails to meet any requirements of applicable law; or
 - (e) uses the Equipment when Lessee does not have in effect all licenses, permits or other forms of governmental consent necessary under any law or regulation for use or operation of the Equipment.
- Lessee will notify Lessor if it changes its name, business structure, or identity; use any new trade name, or merge into or consolidate with any other person or entity.

9. **MAINTENANCE AND REPAIR.** Lessee, at its sole cost and expense, shall keep the Equipment in good operating order, repair, condition, and appearance and shall furnish any and all parts, mechanisms, or devices required to keep the Equipment in good mechanical and working order. In accordance with said requirement and except as otherwise provided herein, Lessee shall (i) maintain, inspect, service and repair, overhaul, and test the Equipment in accordance with applicable law and the manufacturer's recommended service, operation, and maintenance bulletins and procedures, so as to keep the Equipment in as good operating condition as when delivered to Lessee hereunder, ordinary wear and tear excepted; and (ii) maintain all records, logs, and other materials required by applicable laws to be maintained in respect of the Equipment. Upon installation of any part, mechanism or device on the Equipment as herein provided, title thereto shall, without further act, vest immediately in Lessor and such part, mechanism or device shall form part of the Equipment. Provided that title to any replacement part, mechanism or device installed on the Equipment vests in Lessor free and clear of all liens and encumbrances and that such replacement part, mechanism or device has a value and utility greater than the part, mechanism or device removed, title to such removed part, mechanism or device shall, without further act, vest immediately in Lessee and such part, mechanism or device shall no longer form part of the Equipment from which it is removed.

10. **INSPECTION; LEASE REPORTS.** Lessor shall at any time during normal business hours after reasonable advance notice to Lessee, have the right to enter the premises where the Equipment may be located for the purpose of inspecting and examining the Equipment, its condition, use, and operation, to inspect the books, logs and records of Lessee pertaining thereto, and to ensure compliance by Lessee with its obligations hereunder, provided, however, that Lessor shall have no duty to inspect and shall not incur any liability or obligation by reason of not making any such inspection.

Lessee shall immediately notify Lessor of any accident connected with the use, operation, or malfunction of the Equipment, including in such report the time, place, and nature of the accident, the damage caused to property, the names and addresses of persons injured and of witnesses, and such other information as may be pertinent to Lessor's investigation of such accident.

Lessee shall immediately notify Lessor in writing after any attachment, tax lien, or other judicial process shall attach to the Equipment.

Lessee shall, as soon as practicable after the close of each quarter and fiscal year of Lessee, furnish to Lessor copies of Lessee's financial statements prepared by it as of the close of the period ended, including Lessee's balance sheet and profit and loss statement, with said fiscal year reports certified by a recognized firm of certified chartered accountants, unless otherwise agreed by the Lessor in writing. Further, Lessee agrees to furnish Lessor from time to time such other information as Lessor may reasonably request.

11. **NO WARRANTIES.** LESSOR IS NOT A MANUFACTURER OR VENDOR OF THE EQUIPMENT OR A DEALER IN SIMILAR EQUIPMENT AND HAS NOT INSPECTED THE EQUIPMENT PRIOR TO DELIVERY TO AND ACCEPTANCE BY LESSEE. BY VIRTUE OF ANY NEGOTIATIONS IN RESPECT TO THIS LEASE, LESSOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN OR CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, DURABILITY, SUITABILITY, OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. THE QUALITY OF THE MATERIAL OR THE WORKMANSHIP OF THE EQUIPMENT OR THE CONFORMITY OF THE EQUIPMENT TO THE SPECIFICATIONS AND DRAWINGS, OR TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE ORDER OR ORDERS RELATING THERETO, AND LESSOR HEREBY DISCLAIMS ANY SUCH REPRESENTATION OR WARRANTY OR ANY OTHER WARRANTY WHATSOEVER, EXPRESS OR IMPLIED (WHICH DISCLAIMER LESSEE HEREBY ACKNOWLEDGES), WITHOUT LIMITING THE GENERALITY OF THE FOREGOING. LESSOR SHALL NOT BE LIABLE OR RESPONSIBLE FOR ANY DEFECTS, EITHER PATENT OR LATENT (WHETHER OR NOT DISCOVERABLE BY LESSEE), IN THE EQUIPMENT OR FOR ANY DIRECT OR INDIRECT INJURY OR DAMAGE TO PERSONS OR PROPERTY RESULTING THEREFROM, OR FOR LESSEE'S LOSS OF USE OF THE EQUIPMENT OR FOR ANY INTERRUPTION IN LESSEE'S BUSINESS CAUSED BY LESSEE'S INABILITY TO USE THE EQUIPMENT FOR ANY REASON WHATSOEVER. THE EQUIPMENT IS LEASED HEREUNDER "AS IS"

Lessee hereby waives any claim it might have against Lessor for any loss, damage, or expense caused by the Equipment or by any defect therein (alleged or actual), or the use or maintenance thereof, or servicing or adjustment thereof.

12. **INSURANCE.** Lessee agrees to pay for and maintain insurance on the Equipment during the term of this Lease against all risks (including, without limitation, comprehensive, public liability, bodily injury, property damage, vandalism, product liability, fire, burglary, theft and third-party liability) in a form and with an insurance carrier satisfactory to Lessor, provided that the amount of direct damage insurance is not at any time less than the aggregate unpaid Rent due and to become due hereunder or the full replacement cost of the Equipment as of such date, whichever is greater. Lessor shall be named as both an additional insured and primary loss payee, and such policy shall provide that the policy may not be modified or cancelled without thirty (30) day's prior written notice to Lessor. Lessee shall promptly deliver to Lessor upon demand satisfactory evidence of insurance coverage. Insurance proceeds, whether resulting from loss, damage, return of premium, or otherwise, shall be applied at Lessor's option either toward the replacement or repair of the Equipment or toward the payment of Lessee's obligations hereunder.
13. **LOSS OR DAMAGE.** Risk of loss, damage to, or destruction of the Equipment shall pass to Lessee upon the Equipment's being made available to Lessee or its agent. After risk of loss has passed to Lessee, loss or damage to all or part of the Equipment shall not impair any obligation of Lessee hereunder, and Rent shall not be prorated or abated as a result thereof. If any of the Equipment is totally or partially destroyed or otherwise rendered unfit for use, then, at Lessor's option, Lessee shall pay to Lessor all Rent for the remainder of the term of this Lease together with any other sums payable hereunder.
14. **INDEMNITY.** Lessee agrees to defend at its own cost and to indemnify and hold harmless Lessor, its agents and employees, from and against any and all losses, claims, infringements, costs, expenses (including reasonable legal fees), awards, damages, judgments and liabilities, however caused, resulting directly or indirectly in any manner from the manufacture, construction, ordering, purchase, assignment of Lessee's purchase order, acceptance or rejection, ownership, delivery, lease, re-lease, possession, use, operation, maintenance, storage, removal, return, disposition, sale to third parties, or directly or indirectly from or pertaining to the use, condition (including without limitation latent or other defects whether or not discoverable), or operation of the Equipment or any portion thereof or the performance of this Lease including, without limitation such losses, claims, costs, expenses, awards, damages, judgments and liabilities arising from: (i) loss or damage to any property or death or injury to any person, (ii) patent or latent defects in the Equipment (whether or not discoverable by Lessee), (iii) any claims based on strict liability in tort or otherwise, (iv) any claims based on trade secret, patent, trademark, or copyright infringement, and (v) any claims based on liability arising under any applicable environmental or noise or pollution control law or regulation or any failure on the part of Lessee to perform or comply with any of the terms of this Lease. Lessee shall give Lessor prompt notice of any occurrence, event, or condition known to Lessee as a consequence of which Lessor may be entitled to indemnification hereunder. Lessee shall forthwith upon demand of Lessor reimburse Lessor for expenses incurred by Lessor in connection with any of the foregoing or pay such amounts directly. Lessee shall be subrogated to Lessor's rights in any matter with respect to which Lessee has actually reimbursed Lessor for amounts expended by it or has actually paid such amounts directly pursuant to this Section. In case any action, suit or proceeding is brought against Lessor in connection with any claim indemnified against hereunder, Lessor will, after receipt of notice of the commencement of such action, suit or proceeding, notify Lessee thereof, enclosing a copy of all papers served upon Lessor. Lessee may, and upon Lessor's request will, at Lessee's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by Lessee and reasonably satisfactory to Lessor and in the event of any failure by Lessee to do so, Lessee shall pay all costs and expenses (including, without limitation, legal fees and expenses) incurred by Lessor in connection with such action, suit or proceeding.

This indemnification shall apply from the date of the execution of this Lease, notwithstanding that the lease term has not yet commenced, and shall survive the expiration or other termination of this Lease for the benefit of, and be enforceable by, Lessor.

15. **TITLE.** Lessee acknowledges that the Equipment shall at all times be and remain the sole and exclusive property of Lessor, and Lessee shall have no lessorship or equity interest in the Equipment (unless and until Lessee is permitted to purchase the Equipment at the end of the term of this Lease in accordance with paragraph 22). The parties hereto intend that only the relationship of Lessor and Lessee is created hereby. Notwithstanding the foregoing, if a court of competent jurisdiction determines that this Lease Agreement is a "lease agreement intended as security", then Lessee hereby grants a security interest in and to the Equipment as security for all Lessee's obligations to Lessor of every kind and nature whatsoever. Lessee shall execute and/or furnish to Lessor any further instruments and assurances reasonably requested from time to time by Lessor to protect its interest (including, without limitation, bills of sale in respect of any parts, mechanisms or devices to which title has automatically vested in Lessor pursuant to the terms hereof), and shall otherwise cooperate to defend the title of Lessor and to maintain the status of the Equipment as personal property, including, without limitation, the execution of financing statements. Lessor may file or record any such financing statements, waivers, or other instruments in order to protect its interest. Lessee shall at its own cost and expense affix to the Equipment and keep and maintain, permanently and conspicuously, upon the Equipment the following words: "Owned by debis Financial Services, a division of Mercedes-Benz Credit of Canada Inc., Owner-Lessor". Lessee appoints Lessor as Lessee's Attorney-in-fact to do, at Lessor's option and at Lessee's expense, all acts and things which Lessor may deem necessary to perfect and continue the perfection of Lessor's security interest in the Equipment.

Except as above provided, Lessee will not allow the name of any person, association, or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that Lessee may cause the Equipment to be lettered with its corporate name and/or corporate symbol, as an appropriate and convenient way to identify the interest of Lessee.

16. **QUIET ENJOYMENT.** So long as Lessee shall not be in default and fully performs all of its obligations hereunder, neither Lessor nor anyone rightfully claiming through Lessor will interfere with the quiet use and enjoyment of the Equipment by Lessee.

17. **RETURN.** Lessee will provide Lessor with not less than 90 days prior written notice prior to expiry of lease of Lessee's intent to return the equipment. Upon the expiration of this Lease with respect to the Equipment, Lessee, at its own risk and expense, will return the Equipment to Lessor, pursuant to Lessor's instructions, to any location within Canada or the continental United States.

Notwithstanding anything to the contrary, in no event shall Lessee's responsibilities to repair, maintain and insure the Equipment terminate prior to written notice from Lessor that the Equipment has been returned and/or placed in the condition called for hereunder.

At the time of return, the Equipment shall

- (1) Be in the same condition, working order and appearance as it was when received, reasonable wear and tear from proper use excepted
- (2) All records, logs and other materials required to be maintained with respect to the Equipment shall be promptly furnished to Lessor if so required by Lessor
- (3) Be free and clear of all mortgages, liens, security interests, charges, encumbrances and claims except those arising from the actions or inactions of Lessor.
- (4) Be free of all advertising or insignia placed thereon by Lessee
- (5) Be otherwise in full compliance with the terms of this Lease.

Lessee shall pay for all repairs and replacements necessary to place the Equipment in the conditions described above, which repairs and replacements shall be effectuated immediately. In the event any necessary repairs or replacements are not completed within fifteen (15) days from the expiration or early termination date, Lessee shall pay to Lessor interim rent equal to the daily rent equivalent of the periodic rent set forth in the Schedule covering the Equipment for each day in excess

of the lease term, until such repairs and replacements are completed and the Equipment is returned to Lessor. Said payment shall be made on the date the Equipment is returned to Lessor (but not less frequently than monthly).

If Lessee does not purchase the Equipment, Lessor will sell the Equipment at a public or private sale in the wholesale or retail market, the choice of which is at the Lessor's discretion, with or without notice to Lessee. If the amount received from the sale (less sales tax payable, reasonable sales commissions and restoration costs, if any) is less than the Residual Value of the Equipment set forth in the Schedule, the Lessee shall be liable for, and shall pay upon demand the amount of such deficiency to Lessor.

18. **LESSEE'S WARRANTIES.** Lessee represents and warrants to Lessor that:

- (a) Lessee is and shall at all times hereafter be duly organized and existing in good standing under the laws of its incorporation;
- (b) this Lease has been duly and validly authorized, executed and delivered by an officer of Lessee and constitutes and will constitute the legal, valid and binding obligation of Lessee in accordance with its terms;
- (c) the execution and performance of this Lease by Lessee will not violate any law or regulations or Lessee's corporate charter or bylaws, nor will it constitute a default under any agreement to which Lessee is a party;
- (d) the execution and performance of this Lease and the leasing and use of the Equipment by Lessee do not require the approval of, giving of notice to, or taking of any other action in respect of, any federal, provincial, or other governmental authority or agency (other than such as had been duly obtained, given or taken);
- (e) all financial statements and information which have been or may hereafter be submitted to Lessor relating to Lessee have been and will be complete, true, and correct, and have been and will be prepared in accordance with generally accepted accounting principles;
- (f) there has been no material adverse change in the financial condition of Lessee since the last submission of such financial information to Lessor;
- (g) the Equipment is being leased by Lessee solely for Lessee's business or commercial purposes;
- (h) no mortgage, deed of trust, or other lien which now covers or affects, or which may hereafter cover or affect, any property or interest therein of Lessee, now attaches or hereafter will attach to the Equipment, or in any manner affects or will affect adversely Lessor's right, title, and interest therein;
- (i) there is no litigation or other proceedings now pending or, to the knowledge of Lessee, threatened, against or affecting Lessee, in any court or before any regulatory commission, board, or other administrative governmental agency which would directly or indirectly, adversely affect or impair the title of Lessor to the Equipment, or which, if decided adversely to Lessee, would materially adversely affect the business operations or financial condition of Lessee;
- (j) Lessee has filed all Canadian federal and provincial income tax returns which are required to be filed, and has paid, or made provisions for the payment of, all taxes which have or may become due pursuant to said returns or pursuant to any assessment received by Lessee, except such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided;
- (k) Lessee's principal place of business and chief executive office is as listed at the beginning of this Lease;
- (l) Lessee's full legal name is as set forth at the beginning of this Lease and Lessee is not known by any assumed business name other than any name shown in the identification of Lessee set forth at the beginning of this Lease; and
- (m) the description of the Equipment and its parts described in the Schedules attached to or referring to this Lease is accurate and complete in all respects. Lessee agrees to deliver to Lessor at any time or times hereafter such documents, including, without limitation, certified resolutions and legal opinions, as Lessor may reasonably request to substantiate Lessee's compliance with the foregoing. Each of the above warranties shall be continuing during the term of this Lease.

19. **RIGHT TO PERFORM OBLIGATIONS.** If Lessee shall fail to make any payment or perform any act or obligation required of Lessee hereunder, Lessor may (but need not) at any time make such payment or perform such act or obligation at the expense of Lessee; provided however, that no such payment or performance shall be declared to cure any Event of Default hereunder. Any expense so incurred by Lessor shall constitute additional rent hereunder payable by Lessee to Lessor upon demand and shall bear interest at the Overdue Rate from the date such payment was due until the date of payment by Lessee.

20. **EVENTS OF DEFAULT.** Lessee shall be in default hereunder and an "Event of Default" shall have occurred if:

- (a) Lessee shall fail to pay when due any installment payment of rent or other sum due hereunder and such failure shall continue for more than ten (10) days;
- (b) Lessee fails to maintain any insurance with respect to the Equipment as required hereunder;
- (c) Lessee shall fail to observe or perform any other provision, covenant, condition, or agreement of this Lease or any Schedule and such failure shall continue for more than ten (10) days after written notice from Lessor;
- (d) any representation or warranty made by Lessee herein or in any document or certificate furnished by Lessee to Lessor in connection with this Lease shall prove to be incorrect, untrue, or misleading in any material respect;
- (e) Lessee or any Guarantor shall become insolvent, make an assignment for the benefit of creditors, consent to or have appointed a trustee or receiver, fail to pay its debts as they mature, cease doing business, dissolve, or commit any act of bankruptcy;
- (f) any bankruptcy, reorganization, arrangement, insolvency, receivership, or like proceeding shall be instituted by or against Lessee or any Guarantor, or all or substantially all of its or their property and not withdrawn or dismissed within ninety (90) days thereafter;
- (g) Lessee or any Guarantor shall default under any agreement providing for the payment of borrowed money or the deferred purchase price of property or rent under any lease of real or personal property, unless such default is being contested by Lessee, in good faith and by appropriate proceedings, and for the payment of which adequate reserves have been established;
- (h) Lessee or any Guarantor shall default under any other agreement with Lessor or any corporation affiliated with Lessor;
- (i) a prior notice is given by a creditor holding a security interest or claim or by a hypothecary creditor of its intention to exercise its security interest, claim a hypothecary right or any other security, or if such security interest, right or claim is exercised or if a secured creditor takes possession of or appoints a receiver with respect to the Equipment or any part thereof; or
- (j) if a seizure is brought against the Equipment or any part thereof

21. **(A) REMEDIES:** Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, Lessor, at its option, may, but is not obligated to, do one or more of the following, as appropriate, with respect to the Equipment: (1) terminate this Lease, without prejudice to any other rights or remedies of Lessor hereunder, and whether or not this Lease has been terminated, enter the premises of Lessee and take immediate possession of the Equipment and remove the same by summary proceedings, or otherwise, or cause Lessee to surrender and deliver possession of the Equipment all without liability to Lessor; (2) proceed by appropriate court action or actions either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease and to recover damages for the breach thereof; (3) repossess and without terminating this Lease hold the Equipment until Lessee shall have complied with all obligations under this Lease; (4) repossess with or without notice and sell, relet, use, hold, or otherwise dispose of the Equipment; (5) without repossessing, declare all unpaid rent immediately due and payable; (6) appoint, by deed or by document under the hand of any of its officers, attorneys or substitute attorneys, a person from time to time to act as Receiver of the Equipment and to remove a person so appointed from his appointment and to appoint another in his place. Lessee hereby waives immunity from, and consents to the enforcement of, such remedies as Lessor may choose.

(B) **DAMAGES:** Lessee and Lessor acknowledge that any actual injury suffered by Lessor as a result of the occurrence of an Event of Default will be very difficult to prove for many reasons, including, but not limited to, the uncertainties of re-leasing, costs during periods that the Equipment may remain idle, and the timing of disposition. Lessee and Lessor further recognize that it may be inconvenient or infeasible for Lessor to obtain an adequate remedy if an Event of Default should occur. Accordingly, it is agreed that Lessor shall be entitled to liquidated damages upon an Event of Default to be determined by subtracting the sum of:

- (a) Lessee's security deposit, if any;
- (b) Rent actually paid, including sales tax paid thereon;
- (c) net proceeds of Equipment sold (or, if it is not sold, the fair market value of Equipment, as determined by a person selected by Lessor who manufactures, sells, or distributes similar property or who is otherwise qualified to value the Equipment (the "Appraiser");
- (d) proceeds received by Lessor from any insurance provided pursuant to Section 12 of this Lease, if such proceeds are not used to repair or replace the Equipment; and
- (e) any net proceeds of re-leasing the Equipment during the term of the Lease; from the sum of:
 - (i) the Rent payable for the full term of the Lease;
 - (ii) interest, late charges, and other charges or payments for which Lessor is entitled to be reimbursed;
 - (iii) Lessor's fees and expenses authorized pursuant to paragraph 23; and
 - (iv) the value of Equipment as set forth in paragraph 22 or, if there is no purchase option, the anticipated fair market value of the Equipment (as determined by the Appraiser) at the end of the term of the Lease as if the Lease was not terminated.

The net proceeds from the sale or re-leasing of the Equipment shall be calculated by deducting Lessor's expenses of repossession, repair, preparation and disposition (together with other costs of sale or re-leasing) from the gross proceeds.

(C) **REMEDIES CUMULATIVE:** Each and every power and remedy herein specifically given to Lessor shall be in addition to every other power and remedy specifically so given or now or hereafter existing at law or in equity, and each and every power or remedy may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by Lessor. Upon payment by Lessee of the damages set forth in subsection (B) above, Lessor will have no further rights or claims against Lessee with respect to such Event of Default and this Lease shall terminate. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of Lessor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. In the event that Lessor shall bring any suit or action to enforce any of its rights hereunder, then in such suit or action Lessor may recover reasonable expenses, including legal fees, and the amount thereof shall be included in such judgment.

(D) **POWER OF ATTORNEY:** Lessee hereby appoints Lessor as Lessee's irrevocable agent and attorney-in-fact to execute all documents deemed necessary to re-lease, terminate, and void Lessee's interest in any Equipment leased hereunder and to file said documents for recordation with appropriate agencies, provided that an Event of Default has occurred, and Lessor in good faith deems use of this agency necessary to effect any remedy Lessor chooses to take.

(E) **WAIVER OF LIMITATIONS ON ENFORCEMENT:** To the extent permitted by law and to the extent the same extends to and relates to this Lease as amended or renewed, Lessee hereby waives the benefit of all provisions of any applicable law that would in any manner, affect, restrict or limit the rights or remedies of Lessor hereunder, impose any additional obligations on Lessor or render any of the provisions of this Lease unenforceable.

22 **PURCHASE OPTION.** Provided that no Event of Default has occurred and is continuing, Lessee shall have the option at the scheduled expiration of the Lease, exercisable upon not less than 30 days' prior written notice to Lessor, to purchase the Equipment on an "as is, where is" basis, and without warranty by Lessor, for the Residual Value set out in the Schedule (plus any applicable taxes and Lessor's costs and expenses).

23. **LEGAL FEES.** Lessee, in addition to all other sums which Lessee may be called upon to pay, will pay to Lessor its reasonable legal fees incurred with respect to entry into this Lease, any amendments hereto or the enforcement hereof (whether or not litigation is commenced). Lessee shall reimburse Lessor for the cost (including legal fees) of all recordings, registrations and filings related to this Lease and any mortgage, security interest, waiver, license, permit, or certificate incident thereto, required by law or deemed reasonably necessary by Lessor to protect its interests in the Equipment.

24. **NOTICES.** All notices required under the terms and provisions hereof shall be in writing and shall be deemed duly given when delivered personally or mailed, by first class, registered, or certified mail, to the respective address of the parties set forth at the beginning of this Lease or any other address designated by notice served in accordance herewith.

25. **CONDITIONS PRECEDENT.** As conditions precedent to Lessor's duties under this Lease, Lessee shall furnish Lessor on or before the delivery of this Lease all such documents as Lessor may require.

26. **APPLICABLE LAW.** This Lease shall be governed by and construed in according to the laws of the Province in which the Lessee's above specified address is located and the federal laws of Canada applicable therein. Lessee hereby consents to the jurisdiction of the courts of such Province in any action or proceeding relating to this Lease and waives any and all claims that such forums are inconvenient or that there is a more convenient forum located elsewhere.

27 **APPLICATION OF APPLICABLE LEGISLATION.** Notwithstanding anything herein to the contrary, to the extent that the provisions of any applicable legislation impose obligations upon or restrict the rights or remedies herein contained operating in favour of Lessor, and which have been waived or varied by Lessee herein, whether expressly or by implication, but which are by the provisions of such applicable legislation incapable of waiver or variance by Lessee, the provisions of such applicable legislation shall govern and the affected provisions hereof shall be deemed to be amended to the extent necessary to give effect to the said provisions of such applicable legislation without in any way affecting any other provisions hereof.

28. **AMENDMENTS.** The terms hereof (including the Schedule) shall not be waived, varied, contradicted, explained, amended, or changed in any other manner except by an instrument in writing of even or subsequent date hereto, executed by both parties.

29 **ASSIGNMENT.** Lessee hereby consents to any assignment at any time by Lessor and any reassignment of this Lease, in whole or part, or rents hereunder with or without notice, except that Lessor agrees that it will endeavor to give notice of any such assignment to Lessee within a reasonable time after such assignment. Lessee agrees that the rights of any assignee shall not be subject to any abatement, defense, setoff, counterclaim, or recoupment whatsoever and that any such assignee shall have all of Lessor's rights hereunder, but none of Lessor's obligations, except when Lessor assigns this Lease in total to any third party and not just as collateral to secure any financing or similar arrangement. Lessee will not incur any additional costs associated with any such assignment.

Neither this Lease nor any of Lessee's rights hereunder shall be assignable by Lessee, either by its own act or by operation of law, without the prior written consent of Lessor, and any such attempted assignment shall be void.

Subject to the terms hereof, this Lease shall be binding upon and inure to the benefit of Lessor and Lessee and their respective personal representatives, successors, and assigns.

30. **WAIVER.** Lessor's failure to insist on performance of any of the terms or conditions contained herein, or to exercise any right or privileges or Lessor's waiver of any breach hereunder shall not thereafter waive any such terms, conditions, rights, or privileges, whether of the same or similar type.

Lessee hereby waives to the extent permitted by applicable law, any and all rights which it may not have or which at any time hereafter may be conferred upon it, by statute or otherwise to terminate, cancel, quit, or surrender this Lease.

31. **HEADINGS:** Headings, as used herein, are for convenience of reference only and shall not be construed to limit or extend the language of the provisions to which such headings may refer.

(A) **INTERPRETATION:** The necessary grammatical changes required to make the provisions hereof apply to corporations, partnerships, and/or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

(B) **DEFINITIONS.** For purposes of this Lease the following definitions apply:

"Guarantor": Any guarantor of Lessee's obligations hereunder.

"Overdue Rate": Eighteen percent (18%) per annum calculated daily.

32. **TIME.** Time is of the essence hereof.

33. **RECEIPT OF AGREEMENT.** Lessee hereby acknowledges receipt of an executed copy of this Lease. Lessee hereby waives its right to receive copies of financing, financing change or verification statements with respect to the Lessor's interest hereunder.

34. **SEVERABILITY.** If any provision of this Lease or the application thereof is hereafter held invalid or unenforceable, the remainder of the Lease shall not be affected thereby, and to this end the provisions of this Lease are declared severable.

35. **LANGUAGE.** The parties confirm that they have requested that this Agreement and all correspondence in connection therewith be written in English. Les parties déclarent que cette entente fut rédigée en anglais à leur demande expresse.

36. **COUNTERPARTS.** This Lease may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be original and such counterparts together shall constitute one and the same instruments.

THIS LEASE IS SUBMITTED TO LESSOR FOR ITS ACCEPTANCE OR REJECTION AND WILL NOT BECOME EFFECTIVE UNTIL ACCEPTED BY LESSOR IN WRITING. THIS LEASE IS IRREVOCABLE BY LESSEE FOR THE FULL TERM HEREOF AND FOR THE AGGREGATE RENT HEREIN RESERVED. The individuals executing this Lease on behalf of Lessee personally warrant that they are doing so pursuant to due authorization and that by so executing this Lease, Lessee is being fully bound hereby.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their duly authorized officers on the day and year first written above.

LESSOR:

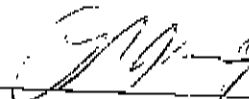
debis Financial Services, a division of
Mercedes - Benz Credit of Canada Inc.

LESSEE:

Hickman Equipment (1985) Limited

By: _____

Title: _____

By:  _____

Title:  _____

To and part of the Master Equipment Lease Agreement dated March 14, 2000, between debis Financial Services, a division of Mercedes-Benz Credit of Canada Inc. ("Lessor") and Hickman Equipment (1985) Limited ("Lessee").

Equipment Description:

Vendor Name & Address: JOHN DEERE LIMITED (CANADA), GRIMSBY, ONTARIO

Unit	Make / Model	Description	Serial Number	Cost
1 Two (2) New	John Deere 310E	Backhoe Loader	T0310EX883019	\$ 82,275.31 CDN
2 Two (2) New	John Deere 310SE	Backhoe Loader	T0310EX883008	\$ 82,275.31 CDN
3 Five (5) New	John Deere 644H	4WD Loader	T0310SE883022	\$ 91,961.17 CDN
			T0310SE883024	\$ 91,961.17 CDN
			DW644HX575363	\$ 238,409.74 CDN
			DW644HX575384	\$ 236,364.21 CDN
			DW644HX575403	\$ 236,364.21 CDN
4 Two (2) New	John Deere 200LC	Excavators	DW644HX575479	\$ 233,500.56 CDN
			DW644HX575494	\$ 233,500.56 CDN
			FF0200X501097	\$ 198,891.15 CDN
5 One (1) New	John Deere 450H	Crawler Dozer	FF0200X501094	\$ 198,891.15 CDN
6 One (1) New	John Deere 772CH	Motor Grader	T045HX883089	\$ 108,832.41 CDN
			DW772CH575287	\$ 315,041.74 CDN

Term (months)	Equipment Cost	Residual Value	Monthly Payment*	Commencement Date
1 48 months	\$ 2,348,268.69 CDN	\$ 10.00	\$ 60,194.81	<u>March 14, 2000</u>
			Plus HST (9,029.22)	
			= \$ 69,224.03	

Equipment Location: _____

Address of Lessee: Mount Pearl, Newfoundland

Lessee hereby agrees that its warranties and covenants made in the Lease Agreement are approved, ratified, and affirmed in all aspects as of the date of this Lease Schedule and confirms that the representations made in the Lease Agreement and statement are, as of the date of this Lease Schedule, true, accurate and complete in all aspects. Lessor and Lessee hereby characterize this Lease Schedule as a separate Lease with respect to each of the equipment set forth herein.

Lessee: Hickman Equipment (1985) Limited

By: [Signature]
 Name: John P. Smith
 Title: Sales Manager

Date: March 14, 2000

EQUIPMENT ACCEPTANCE CERTIFICATE

In accordance with the terms and conditions of that certain Equipment Lease Agreement by and between debis Financial Services, a division of Mercedes-Benz Credit of Canada Inc. ("Lessor") and Hickman Equipment (1985) Limited ("Lessee") dated March 19, 2000 (the "Lease") and Schedule No. 2 thereto (the "Schedule"), the undersigned Lessor hereby acknowledges receipt of all of the equipment described in the Schedule (the "Equipment") and acknowledges that based upon its inspection, the Equipment is in good operating condition and repair, conforms in all material respects to all specifications, and is satisfactory in all other respects. Lessor hereby unconditionally accepts the Equipment, the Lease and the Schedule as of the date hereof. Lessor expressly confirms all of its obligations under the Lease.

Date _____

Debtor: Hickman Equipment (1985) Ltd.

By: _____

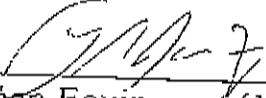
Name: John F. Fries

Title: Senior Manager

DISBURSEMENT OF FUNDS APPROVAL

The undersigned hereby authorizes and directs debis Financial Services, a division of Mercedes-Benz Credit of Canada Inc. ("debis"), to disburse funds in the amount of \$ 2,700,509.00 CDN directly to John Deere Limited (Canada) pursuant to the terms of the lease documents dated March 14, 2000 and amendments thereto between debis and the undersigned.

Lessee:



Hickman Equipment (1985) Limited

Date

March 14, 2000

To and part of the Master Equipment Lease Agreement dated March 14, 2000, between debis Financial Services, a division of Mercedes-Benz Credit of Canada Inc. ("Lessor") and Hickman Equipment (1985) Limited ("Lessee").

Equipment Description:

Vendor Name & Address: JOHN DEERE LIMITED (CANADA), GRIMSBY, ONTARIO

Unit	Make / Model	Description	Serial Number	Cost
1 One (1) New	John Deere 50	Compactor Excavator	FF050ZX240118	\$ 67,616.13 CDN
2 Two (2) New	John Deere 250C	Articulated Truck Tractors	BE250CT200116 BE250CT200117	\$ 278,208.00 CDN \$ 278,208.00 CDN
3 One(1) New	John Deere 160LC	Excavator	P00160X041361	\$ 154,770.91 CDN
4 One (1) New	John Deere 310SE	Backhoe Loader	T0310SE887336	\$ 90,535.70 CDN

Term (months)	Equipment Cost	Residual Value	Monthly Payment*	Commencement Date
1 48 months	\$ 869,338.74 CDN	\$ 10.00	\$ 22,284.26 Plus HST (3,342.64) = \$ 25,626.90	

Equipment Location: _____

Address of Lessee: Mount Pearl, Newfoundland

Lessee hereby agrees that its warranties and covenants made in the Lease Agreement are approved, ratified, and affirmed in all aspects as of the date of this Lease Schedule and confirms that the representations made in the Lease Agreement and statement are, as of the date of this Lease Schedule, true, accurate and complete in all aspects. Lessor and Lessee hereby characterize this Lease Schedule as a separate Lease with respect to each of the equipment set forth herein.

Lessee: Hickman Equipment (1985) Limited

By: _____

Name: John Kint


Title: SALES MANAGER

Date: May 12, 2000

DISBURSEMENT OF FUNDS APPROVAL

The undersigned hereby authorizes and directs debis Financial Services, a division of Mercedes-Benz Credit of Canada Inc. ("debis"), to disburse funds in the amount of \$ 999,739.55 CDN directly to John Deere Limited (Canada) pursuant to the terms of the lease documents dated March 14, 2000 and amendments thereto between debis and the undersigned.

Lessee:



Hickman Equipment (1985) Limited

Date

May 12, 2000

EQUIPMENT ACCEPTANCE CERTIFICATE

In accordance with the terms and conditions of that certain Equipment Lease Agreement by and between debis Financial Services, a division of Mercedes-Benz Credit of Canada Inc. ("Lessor") and Hickman Equipment (1985) Limited ("Lessee") dated March 14, 2000 (the "Lease") and Schedule No. 3 thereto (the "Schedule"), the undersigned Lessor hereby acknowledges receipt of all of the equipment described in the Schedule (the "Equipment") and acknowledges that based upon its inspection, the Equipment is in good operating condition and repair, conforms in all material respects to all specifications, and is satisfactory in all other respects. Lessor hereby unconditionally accepts the Equipment, the Lease and the Schedule as of the date hereof. Lessor expressly confirms all of its obligations under the Lease.

Date May 12, 2000

Debtor: Hickman Equipment (1985) Ltd.

By: _____

Name: JOHN KING

Title: SALES MANAGER

This is exhibit B referred to in the affidavit of
Timothy Gilligan sworn before me,
this 15th day of January, 2003.

Mark R. Di
A Notary Public

2002-02-26
19:53

Atlantic PPS
Search Results Report

/AAA002K1
page 1

A debtor or serial numbered collateral item remains searchable for 30 days after becoming inactive.

Province/Territory Searched : Newfoundland and Labrador

Searched By : M176912
Date/Time of Search : 2002-02-26 / 19:50
Type of Search : Serial Numbered Collateral
Search Criteria : Serial Number : P00160X041361

Summary of Results Found

Prov/Terr Searched	Exact Matches	Close Matches	Total Matches
Newfoundland and Labrador	1	1	2

1 registrations contained information that matched the search criteria exactly and the following table indicates which were selected to be included in or excluded from the registrations to be printed in detail.

Exact Matches selected to be included

NF 264372 P00160X041361, 2000 JOHN DEERE 160LC EXCAVATOR

Count: 1

1 registrations contained information that closely matched the search criteria and the following table indicates which were selected to be included in or excluded from the registrations to be printed in detail.

Close Matches selected to be included

NF 1544225 P00160X041361, 2000 JOHN DEERE 160LC EXCAVATOR

Count: 1

Registration Details

Province/Territory : Newfoundland and Labrador
Registration Type : PPSA Financing Statement
Registration Number : 1544225
Registration Date/Time : 2002-01-12 / 16:58
Expiry Date : 2007-01-12
Your File Number :

History of Registration Activity

Activity	Number	Date	Time	Expiry Date	Your File Number
Original	1544225	2002-01-12	16:58	2007-01-12	

2002-02-26

19:53

Atlantic PPRS
Search Results Report

/AAA002KA

page 2

Debtors

	ADDED	DELETED
Debtor Type : Enterprise		
HICKMAN EQUIPMENT (1985) LIMITED	1544225	
1269 TOPSOIL Road		
MOUNT PEARL NF Canada L1N3C8		

Secured Parties

	ADDED	DELETED
CREDIT UNION CENTRAL OF SASKATCHEWAN C/O CULEASE FINANCIAL SERVICES	1544225	
P.O. BOX 3030		
2055 ALBERT Street		
REGINA SK Canada S4P3G8		

CO-OPERATIVE TRUST COMPANY OF CANADA O/A CULEASE FINANCIAL SERVICES	1544225
JOHNSON, BRENT	
P.O. BOX 3030	
2055 ALBERT Street	
REGINA SK Canada S4P3G8	
Telephone : 900-409-2029	
Fax : 900-852-9097	

General Description Collateral

	ADDED	DELETED
CLASSIFICATION: CONSUMER GOODS, INVENTORY, EQUIPMENT, ACCOUNTS, OTHER		
PROCEEDS INCLUDING BUT NOT LIMITED TO: GOODS, CHATTEL PAPER, SECURITIES,		
DOCUMENTS OF TITLE, INSTRUMENTS, MONEY, INTANGIBLES, INSURANCE AND ALL OTHER		
PROCEEDS ARISING DIRECTLY OR INDIRECTLY FROM THE DISPOSITION, EXCHANGE, LOSS,		
REPLACEMENT, RENEWAL, DESTRUCTION OF OR DEALING WITH THE COLLATERAL.		

Serial Numbered Collateral

Collateral Type		ADDED	DELETED
Serial Number	Description		
Motor Vehicle	2001 JOHN DEERE 1050C DOZER	1544225	
LU1050C005288			
Motor Vehicle	2000 JOHN DEERE 160LC EXCAVATOR	1544225	
FF0160X041361			
Motor Vehicle	2001 JOHN DEERE 850C DOZER	1544225	
T0850CX900908			
Motor Vehicle	2001 JOHN DEERE 200LC EXCAVATOR	1544225	
FF0200X5D2017			
Motor Vehicle	2001 JOHN DEERE 160LC EXCAVATOR	1544225	

2002-02-26
15:53

Atlantic PPRS
Search Results Report

/Alta002kl
page 3

P00160XD041793		
Motor Vehicle	2001 JOHN DEERE 160LC EXCAVATOR	1544225
P00160XD041792		
Motor Vehicle	2001 JOHN DEERE 160LC EXCAVATOR	1544225
P00160XD041741		

Additional Information

ADDED

AMOUNT SECURED: \$2,151,952.63
NO FIXED DATE OF MATURITY

1544225

Registration Details

Province/Territory	:	Newfoundland and Labrador
Registration Type	:	PPSA Financing Statement
Registration Number	:	284372
Registration Date/Time	:	2000-05-16 / 16:56
Expiry Date	:	2005-05-16
Your File Number	:	17007-M21

History of Registration Activity

Activity	Number	Date	Time	Expiry Date	Your File Number
Original	284372	2000-05-16	16:56	2005-05-16	17007-M21

Debtors

ADDED

DELETED

Debtor Type : Enterprise
HICKMAN EQUIPMENT (1985) LIMITED

284372

1269 TOPSAIL RD
Mount Pearl NF Canada A1N 3C8

Secured Parties

ADDED

DELETED

DaimlerChrysler Financial Services (debt) Canada Inc.

284372

200 - 6701 Financial Drive
Mississauga ON Canada L5N 7J7

DaimlerChrysler Capital Services

284372

200 - 6701 Financial Drive
Mississauga ON Canada L5N 7J7

General Description Collateral

ADDED

284372

ONE (1) NEW 2000 JOHN DEERE COMPACTOR EXCAVATOR Serial Number

2002-02-26
19:53

Atlantic PPR5
Search Results Report

/AAla002ka
page 4

FFD502X240118, ONE (1) NEW 2000 JOHN DEERE 250C Serial Number
BE250CT200116, ONE (1) NEW 2000 JOHN DEERE 250C Serial Number
BE250CT200117, ONE (1) NEW 2000 JOHN DEERE 160LC EXCAVATOR Serial
Number P00160X041361, ONE (1) NEW 2000 JOHN DEERE 310SE LOADER
Serial Number T0310SE887336. TOGETHER WITH ALL ENGINES,
COMPONENTS, ACCESSORIES, PARTS, ADDITIONS, ATTACHMENTS,
REPLACEMENTS AND SUBSTITUTIONS WHICH ARE INTENDED TO, ARE NOW OR
MAY HEREAFTER BE ATTACHED THERETO, ALL BOOKS, RECORDS AND
DOCUMENTS RELATING TO THE PROPERTY REFERRED TO ABOVE, ALL LEASES
OR SUBLEASES WITH RESPECT TO THE PROPERTY REFERRED TO ABOVE, ALL
REPRESENTATIONS, WARRANTIES, COVENANTS AND INDEMNITIES OF ANY
MANUFACTURER OR VENDOR OF AND WITH RESPECT TO THE PROPERTY
REFERRED TO ABOVE, PROCEEDS: GOODS, INVENTORY, CHATTEL PAPER,
SECURITIES, DOCUMENTS OF TITLE, INSTRUMENTS, MONEY, INTANGIBLES
AND ACCOUNTS (ALL AS DEFINED IN THE PERSONAL PROPERTY SECURITY
ACT) AND INSURANCE PROCEEDS.

Serial Numbered Collateral		ADDED	DELETED
Collateral Type	Description		
Motor Vehicle	2000 JOHN DEERE COMPACTOR EXCAVATOR	284372	
FFD502X240118			
Motor Vehicle	2000 JOHN DEERE 250C	284372	
BE250CT200116			
Motor Vehicle	2000 JOHN DEERE 250C	284372	
BE250CT200117			
Motor Vehicle	2000 JOHN DEERE 160LC EXCAVATOR	284372	
P00160X041361			
Motor Vehicle	2000 JOHN DEERE 310SE LOADER	284372	
T0310SE887336			

*** End of Report ***

This is exhibit C referred to in the affidavit of
Timothy Gilligan sworn before me,
this 15th day of January, 2003.

Mark [Signature]
A Notary Public

PROOF OF CLAIM

(Subsections 50(13), 50.1(1) and 65.2(4), paragraphs 51(1)(e) and 66.14(b); subsections 81.2(1), 102(2), 124(2) and 128(1) of the Act)

In the Matter of the Bankruptcy of Hickman Equipment (1985) Limited, in the Province of Newfoundland and Labrador and the claim of DaimlerChrysler Financial Services (debis) Canada Inc., a creditor.

I, Timothy Gilligan, of the City of Burlington, in the Province of Ontario, do hereby certify:

1. That I am a Commercial Credit Analyst for DaimlerChrysler Financial Services (debis) Canada Inc. ("DCFS").
2. That I have knowledge of all the circumstances connected with the claim referred to in this form.
3. That Hickman Equipment (1985) Limited ("Hickman") was at the date of bankruptcy, namely the 13th day of March, 2002, and still is indebted to DCFS in the amount of \$2,324,926.76 plus taxes as shown by the affidavit attached hereto and marked **Schedule "A"**, after deducting any counterclaims to which the debtor is entitled. *(The attached statement of account or affidavit must specify the vouchers or other evidence in support of the claim)*
4. *(Check and complete appropriate category.)*
 - ☐ A. *(Check appropriate description.)*
 - ☐ I do not claim a right to a priority
 - ☐ I claim a right to a priority under section 136 of the *Bankruptcy and Insolvency Act*. *(Set out on an attached schedule details to support priority claim.)*
 - ☒ B. That in respect of the said debt, I have a secured interest in assets of Hickman valued at \$

See Schedule "A".

(Give full particulars of the security, including the date on which the security was given and the value at which the creditor assesses the security, and attach a copy of the security documents.)

☐ C. CLAIM BY FARMER, FISHERMAN, OR AQUACULTURIST

That I hereby make a claim under subsection 81.2(1) of the *Bankruptcy and Insolvency Act* for the unpaid amount of \$. *(Attach a copy of sales agreement and delivery documents.)*

N/A

5. That I am not related to Hickman within the meaning of section 4 of the *Bankruptcy and Insolvency Act*.
6. That the following are the payments that I have received from and the credits that I have allowed to Hickman within the twelve months *(or, if the creditor and the debtor are related within the meaning of section 4 of the Bankruptcy and Insolvency Act, within the 12 months)* immediately preceding the date of bankruptcy:

See Schedule "A"

DATED at Mississauga, Ontario, this 9th day of October, 2002.

Witness: Jacqueline D Thompson

Name: Timothy Gilligan

Note:

Witness:

Jacqueline D. Thompson, Notary Public
Registered in the Province of Ontario
attestation of instruments and the taking of
affidavits for DaimlerChrysler Financial Services

Subsection 201(1) of the *Bankruptcy and Insolvency Act* provides severe penalties for making any false claim, proof, declaration or statement of account.

SCHEDULE "A"

AFFIDAVIT SHOWING THE INDEBTEDNESS OF HICKMAN EQUIPMENT (1985) LIMITED TO DAIMLERCHRYSLER FINANCIAL SERVICES CANADA INC.

I, Timothy Gilligan, of the City of Burlington, in the Province of Ontario, make oath and say:

1. I am a Commercial Credit Analyst for DaimlerChrysler Financial Services (debt) Canada Inc. ("DCFS"), a creditor of Hickman Equipment (1985) Limited ("Hickman") and as such have knowledge of the statements made in this affidavit.

2. The indebtedness of Hickman to DCFS arises out of:

- (a) a master lease agreement dated February 14, 2000;
- (b) a master lease agreement dated March 14, 2000; and
- (c) a master lease agreement dated March 14, 2000;

between DCFS, as lessor, and Hickman, as lessee (collectively, the "Lease Agreements"), whereby DCFS agreed to lease certain motor vehicles to Hickman. True copies of the Lease Agreements are attached as Exhibit "A" hereto.

3. As at March 13, 2002, Hickman owed DCFS \$2,324,926.76 plus taxes calculated as follows:

Lease	Initial Cost	Payments	Balance O/S
Schedule 1	\$824,378.68	\$563,260.34	\$519,105.85
Schedule 2	\$2,348,268.69	\$1,411,484.18	\$1,307,983.66
Schedule 3	\$869,338.74	\$512,538.00	\$497,837.25
Total	\$4,041,986.11	\$2,487,282.52	\$2,324,926.76

4. I am informed by Philip Buckingham of Goodland O'Flaherty, DCFS' solicitors herein and believe that DCFS has a perfected security interest with respect to the personal property of Hickman referred to in the Lease Agreements as DCFS caused registrations of such interest to be registered under the *Personal Property Security Act* (the "PPSA") as follows:

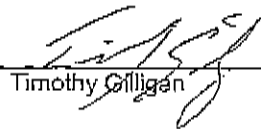
Date of Registration	Registration Number	Asset
March 23, 2000	17554	John Deere 310E Loader T0310EX883008 T0310EX883019 John Deere 310SE Loaders T0310SE883022 T0310SE883024 John Deere 644H Loaders DW644HX575353 DW644HX575394 DW644HX575403 DW644HX575479 DW644HX575494 John Deere 200LC Excavators FF0200X501094 FF0200X501097 John Deere 772CH Grader DW772CH575287
April 6, 2000	201913	John Deere 624H Loader DW624HX574946

		John Deere 200LC Excavator FF0200X501010 John Deere 270LC Excavator FF0200X501010 John Deere 35 Excavators FF035ZX230108 FF035ZX230109 John Deere 27 Excavators FF027ZX220096 FF027ZX220097
May 16, 2000	284372	John Deere 50 Excavator FF050ZX240118 John Deere 250C Trucks BE250CT200116 BE250CT200117 John Deere 160LC Excavator P00160X041351 John Deere 310SE Loaders T0310SE887336
February 5, 2002	1585733	John Deere 450H Dozer T0450HX883089

True copies of the enquiry response certificate current to February 26, 2002 evidencing continuous registration of the above security interests of DFS are attached as Exhibit "B" hereto.

5. DCFS has received payments totalling \$84,426.57 in the three months preceding the date of Hickman's bankruptcy on March 13, 2002.
6. I swear this affidavit in support of DCFS' proof of claim and for no other or improper purpose.

SWORN before me at the City of)
Mississauga, in the Province of Ontario,)
this 9th day of October, 2002)


Timothy Gilligan


Jacqueline D. Thompson, a Notary Public
in and for the Province of Ontario

Jacqueline Donna-Maria Thompson, Notary Public
Regional Municipality of Peel, limited to the
attestation of Instruments and the taking of
affidavits, for DaimlerChrysler Financial Services
(debt) Canada Inc. Expires July 25, 2005.

SUMMARY OF CURRENT DOCUMENT	
Name of Issuing Party or Person	Daimler Chrysler Financial Services (debs) Canada Inc.
Date of Document:	November 18, 2002
Summary of Order/Relief Sought Or Statement of Purpose in Filing:	
Court Sub-File Number	

2002 01T 0352
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION

IN THE MATTER OF a Court ordered Receivership
Of Hickman Equipment (1985) Limited ("Hickman
Equipment") pursuant to Rule 25 of the *Rules of the
Supreme Court*, 1986 under the *Judicature Act*,
R.S.N.L. 1990, c-J-4, as amended

AND IN THE MATTER OF the *Bankruptcy and
Insolvency Act*, Chapter B-3 of the Revised Statutes
of Canada, 1985, as amended

SUPPLEMENTARY AFFIDAVIT EVIDENCING THE INDEBTEDNESS OF
HICKMAN EQUIPMENT (1985) LIMITED TO DAIMLERCHRYSLER
FINANCIAL SERVICES (DEBS) CANADA INC.

I, Timothy Gilligan, of the City of Burlington, in the Province of Ontario, make oath and
say:

1. I am a Commercial Credit Analyst for DaimlerChrysler Financial Services (debs)
Canada Inc. ("DCFS"), a creditor of Hickman Equipment (1985) Limited
("Hickman") and as such have knowledge of the statements made in this affidavit.

2. I swear this affidavit further to my affidavit sworn October 9, 2002 (the "October Affidavit").

3. As stated in paragraph 2 of the October Affidavit, the indebtedness of Hickman to DCFS arises out of:

- (a) a master lease agreement dated February 14, 2000;
- (b) a master lease agreement dated March 14, 2000; and,
- (c) a master lease agreement dated March 14, 2000;

between DCFS, as lessor, and Hickman, as lessee (collectively, the "Lease Agreements"), whereby DCFS agreed to lease certain equipment and motor vehicles to Hickman. True copies of the Lease Agreements were attached at Exhibit "A" to the October Affidavit.

4. As stated in paragraph 3 of the October Affidavit, Hickman owed DCFS \$2,324,926.76 plus taxes as at March 13, 2002 calculated as follows:

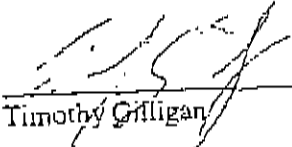
Lease	Initial Cost	Payments	Balance O/S
Schedule 1	\$824,378.68	\$563,260.34	\$519,105.85
Schedule 2	\$2,348,268.69	\$1,411,484.18	\$1,307,983.66
Schedule 3	\$869,338.74	\$512,538.00	\$497,837.25
Total	\$4,041,986.11	\$2,487,282.52	\$2,324,926.76

5. Pursuant to Disbursements of Funds Approval, dated February 14, 2000, March 14, 2000 and May 12, 2000, respectively. DCFS disbursed funds totaling \$4,041,986.11 in favour of Hickman. Copies of the Disbursement of Funds Approval were attached at Exhibit "A" of the October Affidavit and enclosed under cover of letter dated October 25, 2002 from counsel for DCFS to counsel

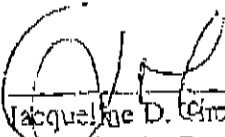
for the Trustee of Hickman. A true copy of this letter and enclosures is attached as Exhibit "A" hereto.

6. I have been informed by Mary Monardo, Operations Analyst that DCFS disbursed the sum of \$4,041,986.11, plus applicable taxes in favour of Hickman and that these funds were wire transferred on the following dates: February 14, 2000, March 13, 2000 and May 12, 2000 and that the account of DCFS was debited for those amounts on those dates.
7. As stated in paragraph 5 of the October Affidavit, DCFS received payments totaling \$34,426.57 in the three months preceding the date of Hickman's bankruptcy on March 13, 2002.
8. I swear this affidavit in further support of the proof of claim of DCFS and at the request of the Trustee in Bankruptcy to address the requirement of s. 13(1)(a) of *Personal Property Security Act*, S.N.L. 1998 Chapter 7.1 that DCFS provided value to Hickman and for no other or improper purpose.

SWORN before me at the City of
Mississauga, in the Province of Ontario,
this 19th day of November, 2002



Timothy Gilligan



Jacqueline D. Thompson, a Commissioner of Oaths
in and for the Province of Ontario

Jacqueline Donna-Marie Thompson, Notary Public
Regional Municipality of Peel, limited to the
attestation of instruments and the taking of
affidavits, for DaimlerChrysler Financial Services
(debit) Canada Inc. Expires July 25, 2003.

Gowling Lafleur Henderson LLP

Barristers & Solicitors

Patent & Trade Mark Agents

GOWLING

Incorporating the practice of SMITH LYONS

October 25, 2002

Via Facsimile and Courier

Ms. Anna Locke
 Patterson Palmer
 Scotia Centre
 235 Water Street
 P.O. Box 610
 St. John's, NF
 A1C 5L3

Dear Ms. Locke:

This is exhibit A referred to in the affidavit of
Timothy Gilligan sworn before me,
 this 19th day of November, 2002.

Jacqueline Danna-Martin Notary Public, Regional
 Municipality of Peel, limited to the attestation of
 instruments and the taking of affidavits, for
 DaimlerChrysler Financial Services (debt) Canada Inc.
 Expires July 25, 2005.

Suite 4500
 Commerce Court West
 Toronto, Ontario
 Canada M5L 1J3
 Telephone (416) 862-7525
 Facsimile (416) 862-7661
 www.gowlings.com

Heath P. L. Whitley
 Direct (416) 862-4300
 Assistant (416) 862-3552
 heath.whitley@gowlings.com
 File T93602E

Re: Hickman Equipment (1985) Limited

I write further to my letter dated October 10, 2002 enclosing a copy of our client's Proof of Claim together with Schedule "A".

I understand from Philip Buckingham of Goodland O'Flaherty that the Trustee is of the opinion that:

1. DaimlerChrysler Financial Services (debt) Canada Inc. ("DCFS") has not provided evidence of value as defined in s. 2(tt) of the *Personal Property Security Act* of Newfoundland and Labrador; and
2. Culease does have a perfected security interest in a John Deere 160LC Excavator having serial number P00160X041361 notwithstanding that the financing statement registered by Culease specifically identifies a different serial number.

DCFS Security

With respect to the Trustee, DCFS has provided evidence of value as follows:

1. Timothy Gilligan, a representative of DCFS, has stated under oath that Hickman owes DCFS in excess of \$2,300,000 in connection with three master lease agreements; and

2. Mr. Gilligan has attached to his affidavit the "Disbursement of Funds Approval" signed by Hickman in connection with these lease agreements.

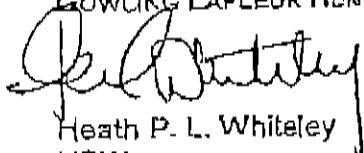
I enclose a further copy of the "Disbursement of Funds Approval" documents in the event that the Trustee overlooked them in examining the proof of claim.

Culease

Again with due respect to the Trustee, I have serious concerns about the correctness of the Trustee's opinion that the security interest of Culease has priority over the Trustee. Please provide a copy of the proof of claim of Culease at your earliest opportunity. I rely on s. 126(1) of the *Bankruptcy and Insolvency Act* in requesting same.

Yours very truly,

GOWLING LAFLEUR HENDERSON LLP



Heath P. L. Whiteley

HPW:vw

Encls.

c. P. Buckingham

TOR_LAW\5155827 v1

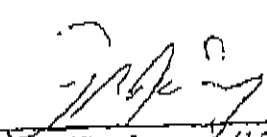


debis
Financial Services

DISBURSEMENT OF FUNDS APPROVAL

The undersigned hereby authorizes and directs debis Financial Services, a division of Mercedes-Benz Credit of Canada Inc. ("debis"), to disburse funds in the amount of \$ 824,378.68 CDN directly to Hickman Equipment (1985) Limited pursuant to the terms of the lease documents dated Feb 14/00 and amendments thereto between debis and the undersigned. By doing such, Hickman Equipment (1985) Limited acknowledges they will forward directly to John Deere Limited (Canada) the full payout of the equipment outlined on the lease agreement.

Lessee:



Hickman Equipment (1985) Limited

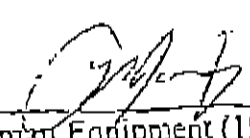
Date



DISBURSEMENT OF FUNDS APPROVAL

The undersigned hereby authorizes and directs debis Financial Services, a division of Mercedes-Benz Credit of Canada Inc. ("debis"), to disburse funds in the amount of \$ 999,739.55 CDN directly to John Deere Limited (Canada) pursuant to the terms of the lease documents dated March 14, 2000 and amendments thereto between debis and the undersigned.

Lessee:


Hickman Equipment (1985) Limited

Date

May 17, 2000

This is exhibit D referred to in the affidavit of
Timothy Gilligan sworn before me,
this 15th day of January, 2003.

Mark Polina
A Notary Public

PricewaterhouseCoopers Inc.
Atlantic Place, Box 75,
215 Water Street, Suite 602
St. John's, NL
Canada A1C 6C9
Telephone: +1 (709) 722 3883
Facsimile: +1 (709) 722 1428

REGISTERED MAIL

Mr. Philip J. Buckingham
Goodland O'Flaherty
205 Water Street, 2nd Floor
St. John's, NL
A1C 1B4

December 11, 2002

Dear Sir:

Re: Hickman Equipment (1985) Ltd. – In Receivership
Claim of DAIMLER CHRYSLER
Amended Final Determination

PricewaterhouseCoopers Inc. acts as Court Appointed Receiver of Hickman Equipment (1985) Limited pursuant to a court order dated March 13, 2002. Hickman Equipment (1985) Limited was placed into bankruptcy by way of the Receiving Order also issued on March 13, 2002. Copies of the Court Orders and other related information may be obtained from our website at www.pwcglobal.com/brs-hel.

By Court Order dated May 14, 2002 a Claims Plan was approved. A copy of this plan can also be found on the above website.

Paragraph 14 of the Claims Plan provided as follows "...the Trustee will issue the Final Determination of the Claim in question, either allowing it as a valid secured claim under Section 135(4) of the *Bankruptcy and Insolvency Act* or disallowing it as a valid secured claim...". Paragraphs 15 and 16 of the Claims Plan provide the details of appeal rights both from rejected claims or those that may be accepted for other creditors. Paragraph 17 of the Claims Plan provides other options where the Trustee believes determination of the claims requires a trial or other legal process.

Attached is our 'Amended' Final Determination relating to security claimed by DAIMLER CHRYSLER.

Pursuant to Paragraph 16 of the Claims Plan where the Trustee has allowed a claim as a valid secured claim, the Court will be asked to confirm this determination after which the Trustee's final determination will be final and binding on all claimants. Notice of the court hearing for confirmation of the Trustee's final determination will be forwarded to all known secured creditors at least five (5) days prior to the court hearing.

Yours very truly,
PricewaterhouseCoopers Inc.

Рег:

James A. Kirby, C.A., C.I.R.P.
Senior Vice-President

JAK/STAT

Encl.

FinalDetermination-Anchored-Det1.doc

SCHEDULE A

FINAL DETERMINATION

(Issued in accordance with paragraph 14 of the Claims Plan)

Secured Party: **DAIMLER CHRYSLER ("Chrysler")**

1. Introduction

PWC as Receiver continues to hold the Assets of HEL under the terms of the Receivership Order granted on March 13, 2002. The Claims Plan is intended to provide a mechanism by which Claimants assert Claims to these Assets.

Pursuant to paragraph 14 of the Claims Plan a Final Determination is to be made by the PWC as Trustee either allowing or disallowing a Claim as a valid secured claim under section 135(4) of the BIA. This is the Trustee's Final Determination in respect of CFSL.

Capitalized terms used in this Final Determination shall have the meaning ascribed to them in the Claims Plan unless otherwise defined herein.

2. Summary Final Determination

As Chrysler's claim is allowed as a valid secured claim in all of the Assets, the Trustee claims no interest in the assets that are the subject of the claim.

However, proceeds from the sale of assets, net of liquidation costs, are insufficient to satisfy the claims of secured creditors claiming an interest in each of the assets of the estate. Accordingly, no funds are available to satisfy any of the claims of unsecured creditors and the Trustee therefore has no prior claim to any of the assets.

3. Defined Terms

For ease of Reference in this Final Determination, the Trustee has applied the following definitions/ abbreviations:

"Debis"	-	Debis, a division of Mercedes Benz Credit of Canada Inc.
"HEL"	-	Hickman Equipment (1985) Ltd.
"JD"	-	John Deere
"PPR"	-	Personal Property Registry
"PPSA" or "Act"	-	<i>Personal Property Security Act</i> , S.N.L. 1998, c.P - 7.1
"PMSI"	-	Purchase Money Security Interest
"Province"	-	Newfoundland and Labrador

"Regulations" - Personal Property Security Regulations (103/99)
"s/n" - serial number

4. Assets

Chrysler has made a claim to 24 pieces of heavy equipment. At the time of bankruptcy only 1 of the pieces remained in the inventory of HEL (indicated by "**") and the rest had been sold to third parties.

- | | |
|--|---|
| 1) JD 624H Loader
(DW624HX574946) | 2) JD 200LC Excavator
(FF0200XX501010) |
| 3) JD 270LC Excavator
(FF0270X070608) | 4) JD 35 Compact Excavator
(FF035ZX230108) |
| 5) JD 35 Compact Excavator
(FF035ZX230109) | 6) JD 27 Compact Excavator
(FF027ZX220096) |
| 7) JD 27 Compact Excavator
(FF027ZX220097) | 8) JD 310E Loaders
(T0310EX883019) |
| 9) JD 310E Loader
(T0310EX883008) | 10) JD 310SE Loader
(T0310SE883022) |
| 11) JD 310SE Loader
(T0310SE883024) | 12) JD 644H Loader
(DW644HX575363) |
| 13) JD 644H Loader
(DW644HX575384) | 14) JD 644H Loader
(DW644HX575403) |
| 15) JD 644H Loader
(DW644HX575494) | 16) JD 644H Loader
(DW644HX575479) |
| 17) JD 200LC Excavator
(FF0200X501097) | 18) JD 200LC Excavator
(FF0200X501094) |
| 19) JD 450H Crawler Dozer
(TO450HX883089) | 20) JD 50 Compactor Excavator
(TFF050ZX240118) |
| 21) JD 250C Articulated Truck
(BE250CT200116) | 22) JD 250C Articulated Truck
(BE250CT200117) |
| 23) JD 160LC Excavator*
(P00160X041361) | 24) JD 310SE Loader
(T0310SE887336) |

5. Assumptions

In preparing this Final Determination, the Trustee has made the following assumptions:

- i) the genuineness of all signatures, the authenticity of all original Documents and the conformity to authentic originals of all Documents that are copies, whether facsimile, photostatic, certified or otherwise;
- ii) that each party to any of the Documents that create obligations for that party, has duly authorized, executed and delivered such Documents to which it is a party;
- iii) with the exception of security interests created by the Documents, the Documents that create obligations for parties, constitute legal, valid and binding obligations of each party thereto, enforceable against each of them in accordance with their terms;
- iv) that insofar as any obligation under any of the Documents is to be performed in any jurisdiction outside the Province, its performance will not be illegal or unenforceable by virtue of the laws of that other jurisdiction; and
- v) the accuracy and currency of the indices and filing systems maintained in relation to the public registries where we have searched or inquired or have caused searches or inquiries to be conducted.

6. Qualifications

Since there is no title registration system in the Province relating to personal property, any opinion respecting title is based solely upon the relevant Documentation.

For the purpose of determining the validity under prior law of security interests created and registered before the implementation of the PPSA and transitioned by registration in the PPR, the Trustee has only reviewed the security agreements and their registrations referenced in the PPR search report section entitled: "Pre-PPSA registration information continued by this registration", endorsements, if any, on the security agreements reviewed and the pre-PPSA legislation relating to their registration.

Both the PPSA, and the *Conditional Sales Act* (the latter statute being part of the "prior law") provide that property in goods pass to a purchaser from a seller or trader where the sale is in the ordinary course of business of the seller or trader. In some instances HEL transferred equipment subject to a security interest to a purchaser without discharging the security interest. In some cases the purchaser granted a security interest to another lender, while in other cases the purchaser transferred the equipment to a third party who, in turn granted a security interest to a lender. Due to the lack of evidence concerning all transactions involving the Assets, we are unable to determine if sales by HEL were "in the ordinary course of business" such as to enable the purchaser to receive clear title to the equipment in order to allow a subsequent lender to obtain a valid security interest or a subsequent transferee to obtain clear title.

No opinion is expressed as to the rank or priority of any security interest created by the Documentation.

No opinion is expressed with regard to any collateral covered by the Documentation, but not referred to in this Final Determination.

Pursuant to the terms of the Court Order establishing the Claims Plan, this Final Determination determines the validity of security claimed and whether such security has been properly perfected. For the assistance of readers, the Trustee has sometimes provided comments concerning the priority of such security vis-à-vis other parties but such priority-related comments are made without prejudice to any position which may be taken at any future date by any other party in regards to priorities.

Notwithstanding the findings in this Final Determination concerning the validity of the Claim as secured or otherwise, PricewaterhouseCoopers Inc. is not precluded by such determination from challenging the Claim as being reviewable or fraudulent pursuant to the provisions of the BIA or any applicable provincial legislation.

Except where a specific claim to proceeds has been made and material provided in support of that claim, the Trustee expresses no opinion with respect to claims to proceeds or claims involving tracing. An outline of the proceeds claims processes and issues are set out in s.13.

7. Overview of Claim

Chrysler claims it holds a first security position with respect to all the Assets listed above that were still in the possession of HEL at the time of bankruptcy. In addition, Chrysler claims a right to trace proceeds from the sale of the Assets that were not in the possession of HEL at the time of bankruptcy.

The Proof of Claim dated 16 April 2002, indicates a total claim of \$2,324,926.76 comprised entirely of a Secured Claim (Property) in the amount of \$2,324,926.76. The total claim results from 3 separate lease agreements:

1. Lease #1 (securing Assets #1-7). Balance outstanding of \$519,105.85.
2. Lease #2 (securing Assets #8-19). Balance outstanding of \$1,307,983.66.
3. Lease #3 (securing Assets #20-25). Balance outstanding of \$497,837.25.

8. Documentation

In preparing this final determination, the Trustee has considered and relied upon only the following information provided to it from all sources:

- i) PPR search conducted in the name of the debtor on March 21, 2002
- ii) Notice of Waiver of Twenty Day Notice Period to Dispose of Collateral to PricewaterhouseCoopers Inc. dated 26 April 2002
- iii) Spreadsheet with relevant information on the Assets listed above
- iv) A document entitled Schedule "D" listing 14 various Assets and their cost
- v) Correspondence from Phil Buckingham of Goodland, O'Flaherty to White, Ottenheimer & Baker dated March 21, 2002 requesting that the Trustee/Trustee in Bankruptcy make inquiries to determine what documents exist with respect to 14 various Assets (the same as in (iv) above)
- vi) Correspondence from Edward Head of HEL to Cindy Dewitt dated September 6, 2000 requesting a transfer from HEL to Holt Equipment Co. of Asset #20
- vii) Affidavit of Timothy Gilligan, dated 19 November 2002.
- viii) Correspondence dated 5 May 2000 from Debis to HEL enclosing the following documents:
 - Lease Schedule No. 3
 - Equipment Acceptance Certificate signed by HEL as Lessee
 - Disbursement of Funds Approval signed by HEL as Lessee
 - Invoice from Complete Goods dated 19 April 2000 for a Compact Excavator (FF050ZX240118) indicating that the recipient of the Excavator was HEL
 - Invoice from Complete Goods dated 26 April 2000 for a 250C Articulated Truck (BE250CT200117) indicating that the recipient of the Truck was HEL
 - Invoice from Complete Goods dated April 20, 2000 for a 250C Articulated Truck (BE250CT200116) indicating that the recipient of the Truck was HEL

- Invoice from Complete Goods dated April 28, 2000 for a 160LC Excavator (P00160X041361) indicating that the recipient of the Excavator was HEL
- Invoice from Complete Goods dated 28 April, 2000 for a 310SE Backhoe Loader (T0310SE887336) indicating that the recipient of the Backhoe was HEL

ix) We were provided with the following HEL invoices:

- Invoice from HEL to Hickey Construction for JD 624H Loader (DW624HX574946). Trade-in was a used CAT 930 Loader (41K03558)
- Invoice from HEL to Harbour Construction Limited for John Deere Excavator (FF0200XX501010). Trade-ins were a CAT 213 Excavator (1EJ00061) and a John Deere 644B Loader (JD644B350269)
- Invoice from HEL to Budgell's Equipment & Rental for a 240 LC Excavator (FF0270X070608). Trade-in was a Hitachi EX270 Excavator (158-6412)
- Invoice from HEL to RDO Equipment Co. for two Compact Excavators (FF035ZX230108) and (FF035ZX230109)
- Invoice from HEL to Rod White for an Excavator (FF027ZX200976)
- Unidentified computer printout for Compact Excavator (FF027ZX220097)
- Invoice from HEL to College of the North Atlantic for a Backhoe (T0310EX883019)
- Invoice from HEL to the Grand Concourse Authority for a Backhoe (T0310EX883008)
- Invoice from HEL to Stanley Bruce Murley operating as Corner Stone Construction for a Backhoe (T0310SE883022)
- Invoice from HEL to Donovan Homes Limited for Excavator (FF0200X501453), Backhoe (T0310SE883024); Trailer (2J9C3VSD2WK001160)
- Invoice from HEL to the College of the North Atlantic for Excavator (P00160X041295); Excavator (P00160X041308); Excavator (P00160X041309); Wheel Loader (DW644HX575363); Wheel Loader (DW644HX575384); Wheel Loader (DW644HX575403); Motor Grader (DW670CH575568); Motor Grader (DW670CH575569); Dozer (T0850CX883924); Dozer (T0850CX883656)
- Invoice from HEL to Butler's Sand & Stone Co. Limited for a Loader (DW644HX575479)
- Invoice from HEL to Ray Murrin Limited for a Loader (DW644HX575494). Trade-in was a CAT 966B Loader (57H00345)
- Invoice from HEL to Central Forest Products for an Excavator (FF0200X501097). Trade-in was a John Deere 690E Excavator (DW690EL549523)
- Invoice from HEL to Central Forest Products for an Excavator (FF0200X501094). Trade-in was a John Deere 690E Excavator (DW690EL556734)
- Invoice from HEL to Island Aggregates & Ready Mix for a Motor Grader (DW772CH579123); Crawler Dozer (T0450HX883089). Trade-ins were a

John Deere 450G Dozer (T0450GW809815) and a John Deere 772CH Grader (DW772CH567061)

- Invoice from HEL to Johnson's Construction for: Excavator (FF0450X090370); Excavator (FF0450X090412) Excavator (FF0330X080505); Loader (DW744HM572476); Motor Grader (DW772CH575287); Articulated Truck (A7761113); Articulated Truck (A7761144); Articulated Truck (A7761182) Articulated Truck (A77661181); Articulated Truck (A7761166)
- Invoice from HEL to Debis for Excavator (FF050ZX240118); Articulated Truck (BE250CT200116); Articulated Truck (BE250CT200117); Excavator (P00160X041361); Backhoe (T0310SE887336)
- Invoice from HEL to Complete Paving Ltd. for an Excavator (P00160X041361). Trade-in was a John Deere 590D Excavator (FF590DS001968)
- Invoice from HEL to Allard Distributing Limited for a 310SE Backhoe (T0310SE887336)

x) **Master Equipment Lease Agreement #1 (Assets #1-7)**

- Lease Agreement dated February 14, 2000 between HEL as Lessee and Debis as Lessor
- Lease Schedule No. 1 listing Assets #1-7 and indicating that it is a lease for a 48-month term, commencing February 14, 2000 at a cost of \$824,378.68 and a residual value of \$10.00
- Waiver letters:
 - From John Deere Limited to Cyberlease dated February 17, 2000 consenting to HEL granting Cyberlease a security interest in Assets #1-7 and further agreeing that Cyberlease's security as it relates to these seven pieces shall rank in priority to the John Deere Limited security
 - From John Deere Credit to Debis dated February 9, 2000 confirming that John Deere Credit holds no interest in Assets #1-7
 - From Debis to Canadian Imperial Bank of Commerce dated February 7, 2000; signed by CIBC on February 24, 2000; and stating that CIBC consents that its various present and future security interests in the assets of HEL do not and will not operate as a perfected security interest as against Debis with respect to Assets #1-7

xi) **Master Equipment Lease Agreement #2 (Assets #8-19)**

- Lease Agreement dated March 14, 2000 between HEL as Lessee and Debis as Lessor
- Lease Schedule No. 2 listing Assets #8-19 and indicating that it is a lease for a 48-month term, commencing March 14, 2000 at a cost of \$2,348,268.69 and a residual value of \$10.00
- Waiver letters:
 - From John Deere Credit to Debis dated March 13, 2000 confirming that John Deere Credit holds no interest in Assets #8-19
 - From John Deere Limited ("JDL") to Debis dated March 14, 2000

- consenting to HEL granting a security interest in Assets #8-19 to Debis and agreeing to subordinate JDL's security interest to Debis
 - o From Debis to Canadian Imperial Bank of Commerce dated March 7, 2000; signed by CIBC on March 13, 2000; and stating that CIBC consents that its various present and future security interests in the assets of HEL do not and will not operate as a perfected security interest as against Debis with respect to Assets #8-19
- xii) **Master Equipment Lease Agreement #3 (Assets #20-24)**
 - Lease Agreement dated March 14, 2000 between HEL as Lessee and Debis as Lessor
 - Lease Schedule No. 3 listing Assets #20-24 and indicating that it is a lease for a 48-month term, commencing March 14, 2000 at a cost of \$869,338.74 and a residual value of \$10.00
 - Waiver letters:
 - o From John Deere Credit to Debis dated May 9, 2000 confirming that John Deere Credit holds no interest in Assets #20-24
 - o From John Deere Construction Equipment Company to Debis dated 19 May 2000 stating that John Deere Construction Equipment Company subordinates its security interests to DEBIS with respect to Assets #20-24
 - o From Debis to Canadian Imperial Bank of Commerce dated May 9, 2000; signed by CIBC on May 11, 2000; and stating CIBC consents that its various present and future security interests in the assets of HEL do not and will not operate as a perfected security interest as against Debis with respect to Assets #20-24

9. Classification of the Assets

The actual subjective use to which the assets are put by the debtor dictates whether the assets will be classified as inventory, equipment or consumer goods. In this regard, it is the opinion of the Trustee that all 24 Assets were held by HEL for sale or lease and as such, form part of the inventory of HEL (s. 2(x) of the PPSA).

10. Application of the PPSA

As indicated by the above-noted documentation, the secured transactions between Chrysler and HEL were in the form of inventory leases. These leases, which secured specific pieces of heavy equipment (broken down above), were all for a term of more than one year and were, in essence, financing leases as opposed to true leases. Section 4 of the PPSA confirms that such secured transactions are governed by the PPSA.

11. PRE-PPSA/ Transitioning Issues

Not applicable in this instance as all transactions took place in 2000 and therefore were subsequent to the coming into force of the PPSA in the Province.

12. Perfection

Section 20 of the PPSA holds that there are two required elements to a perfected security interest in collateral, regardless of the order of occurrence. There must be:

(i) **attachment** in accordance with section 13, which requires:

1. Value must be given. Value is defined in s. 2(tt) to include any consideration sufficient to support a simple contract. However, a secured party need not have actually advanced the loan funds or the purchase money credit in order to satisfy the value requirement of section 13. Value is given as soon as a secured party makes a binding commitment to extend the loan or purchase money credited to the debtor.¹
2. The debtor must have rights in the collateral; and
3. There must be a security agreement that meets the requirements of s. 11.

(ii) a **perfection step** in accordance with section 25 (perfection by possession) or section 26 (perfection by registration of a financing statement in the Personal Property Registry (the "PPR")).

Is there attachment?

(i) Was value given?

YES The Trustee has been provided with affidavit evidence from Timothy Gilligan, Commercial Credit Analyst for Chrysler, which provides evidence of value passing from Chrysler to HEL with respect to these transactions.

(ii) Rights in the collateral?

YES HEL held possession of the Assets and any real right in the collateral that the debtor may have, including but not limited to, a right of possession is sufficient to meet the requirements of s. 13.²

¹ C. Walsh, *An Introduction to the New Brunswick Personal Property Act*, (1995) at p.83.

² *Ibid.* at 84.

Note: For the purposes of expressing an opinion with respect to HEL's rights in the collateral, the Trustee has not made any determination with respect to HEL's title in the collateral at issue nor with respect to the lawfulness of HEL's possession thereof.

(iii) Have the evidentiary requirements of s. 11 been met?

YES The evidentiary requirements of s. 11, required for attachment, are established by the 3 leases. Specifically, in accordance with s.11(1)(b), the 3 leases are in writing, they have been signed by HEL as the debtor and each provides an adequate description of the collateral that is secured.

Is there a perfection step?

Master Equipment Lease Agreement #1 (for Assets #1-7)

YES

Registration number 201913 contains the following information:

- **General Description of Collateral:** "2000 John Deere 624H Loader, serial number DW624HX574946, 2000 John Deere 200 LC Excavator, serial number FF0200X501010, 2000 John Deere 270 LC Excavator serial numbered FF0270X070608, 2000 John Deere 35 Excavator, serial number FF035ZX230109, 2000 John Deere 27 Excavator, serial number FF027ZX220096, 2000 John Deere 27 Excavator, serial number FF027ZX220097. Together with all engines, components, accessories, parts, additions, attachments, replacements and substitutions which are intended to, are nor or may hereafter be attached thereto, all books, records and documents relating to the property referred to above, all leases or subleases with respect to the property referred to above, all representations, warranties, covenants and indemnities of any manufacturer or vendor of and with respect to the property referred to above, proceeds: goods, inventory, chattel paper, securities, documents of title, instruments, money, intangibles and accounts (all as defined in the PPSA) and insurance proceeds."
- **Serial Numbered Collateral:** "JD 624H Loader (s/n DW624HX574946), JD 200LC Excavator (s/n FF0200XX501010), JD 270LC Excavator (s/n FF0270X070608), 2 - JD 35 Compact Excavators (s/n FF035ZX230108 & FF035ZX230109), 2 - JD 27 Compact Excavators (s/n FF027ZX220096 & FF027ZX220097)"

By operation of s.26 of the PPSA, this registration qualifies as a perfection step with respect to Chrysler's security interest in Assets #1-7. What constitutes an appropriate description of collateral comes from ss.23-24 of the Regulations. In particular, in accordance with s.23(1)(e) of the Regulations, items of inventory must be described in accordance with s.24(1) and s.24(2). It is the opinion of the Trustee that the collateral description in the above-noted financing statement does satisfy these requirements.

Master Equipment Lease Agreement #2 (for Assets #8-19)

YES

Registration number 175554 contains the following information:

- **General Description of Collateral:** "Two (2) new 2000 John Deere Backhoe Loader, model 310E, S/N T0310EX883019 and T0310EX883008. Two (2) new 2000 John Deere Backhoe Loader, model 310SE S/N T0310SE883022 and T0310SE883024. Five (5) new 2000 John Deere 4WD motor model 644H S/N DW644HX575363, DW644HX575384, DW644HX575403, DW644HX575479, DW644HX575494. Two (2) new 2000 John Deere Excavators, model 200LC S/N FF0200X501097 and FF0200X501094. One (1) new 2000 John Deere Crawler Dozer model 450H S/N T045HX883089. One (1) new John Deere Motor Grader Model 772CH S/N DW772CH575287. Together with all engines, components, accessories, parts, additions, attachments, replacements and substitutions which are intended to, are nor or may hereafter be attached thereto, all books, records and documents relating to the property referred to above, all leases or subleases with respect to the property referred to above, all representations, warranties, covenants and indemnities of any manufacturer or vendor of and with respect to the property referred to above, proceeds: goods, inventory, chattel paper, securities, documents of title, instruments, money, intangibles and accounts (all as defined in the PPSA) and insurance proceeds."
- **Serial Numbered Collateral:** Blank

Amendment number 201608 contains the following information:

- **General Description of Collateral:** "In addition to listing serial number collateral under the general collateral classification we are also listing the serial number collateral under vehicle/serial collateral classification."
- **Serial Numbered Collateral:** "JD 310E Loader (s/n T0310EX883008), 2 - JD 310SE Loaders (s/n T0310SE883022 & T0310SE883024), 5 - JD 644H Loaders (s/n DW644HX575363, DW644HX575384, DW644HX575403, DW644HX575494 & DW644HX575479), 2 - JD 200LC Excavators (s/n FF0200X501097 & FF0200X501094), JD 450H Crawler Dozer (s/n T045HX883089), JD 772CH Motor Grader (s/n DW772CH575287)"

Amendment number 696112 contains the following information:

- **Serial Numbered Collateral:** Deletes "JD 772CH Motor Grader (s/n DW772CH575287)"

Amendment number 1585546 contains the following information:

- **General Description of Collateral:** "In addition to listing serial number collateral under the general collateral classification we are also completing the listing of the serial number collateral under vehicle/serial collateral classification."
- **Serial Numbered Collateral:** Adds "JD 310E Loader (s/n T0310EX883019)"

By operation of s.26 of the PPSA, this registration qualifies as a perfection step with respect to Chrysler's security interest in Assets #8-18. There is a question as to the adequacy of the description of Asset #19 since it is described by an incorrect serial number in both the General Description and Serial Numbered Collateral. However, as the debtor name is correct in the financing statement and the incorrect serial number would appear as a Close Match when a search was conducted, the Trustee is of the opinion that this error is not a

seriously misleading error. What constitutes an appropriate description of collateral comes from ss.23-24 of the Regulations. In particular, in accordance with s.23(1)(e) of the Regulations, items of inventory must be described in accordance with s.24(1) and s.24(2). It is the opinion of the Trustee that the collateral descriptions, noting the special circumstances of Asset #19, in the above-noted financing statements satisfy these requirements.

Registration number 1585733 contains the following information:

- **General Description of Collateral:** "All attachments, accessories, additions, alterations, replacements & repairs (whether present or future) to the vehicle collateral. Proceeds: All cash and non-cash proceeds of the vehicle collateral including without limitation proceeds derived directly or indirectly from any dealing with the vehicle collateral or that indemnified or compensates the Debtor(s) for the destruction or damage to or loss of the vehicle collateral. The proceeds may take the form of any one or more of the following: goods, document of title, chattel paper, instruments, money, securities or intangibles. Accordingly, any of the Debtor(s) after-acquired personal property may be proceeds and therefore subject to the Secured Party's security interest."
- **Serial Numbered Collateral:** "JD 450H Crawler Dozer (s/n T0450HX883089)"

By operation of s.26 of the PPSA, this registration qualifies as a perfection step with respect to Chrysler's security interest in Asset #19. What constitutes an appropriate description of collateral comes from ss.23-24 of the Regulations. In particular, in accordance with s.23(1)(e) of the Regulations, items of inventory must be described in accordance with s.24(1) and s.24(2). It is the opinion of the Trustee that the collateral descriptions in the above-noted financing statements satisfy these requirements.

Master Equipment Lease Agreement #3 (for Assets #20-24)

YES

Registration number 284372 contains the following information:

- **General Description of Collateral:** One (1) new 2000 John Deere Compactor Excavator, serial number FF050ZX240118, One (1) new 2000 John Deere 250C, serial number BE250CT200116, One (1) new 2000 John Deere 250C, serial number BE250CT200117, One (1) new 2000 John Deere 160LC Excavator, serial number P00160X041361, One (1) new 2000 John Deere 310 SE Loader, serial number T0310SE887336. Together with all engines, components, accessories, parts, additions, attachments, replacements and substitutions which are intended to, are nor or may hereafter be attached thereto, all books, records and documents relating to the property referred to above, all leases or subleases with respect to the property referred to above, all representations, warranties, covenants and indemnities of any manufacturer or vendor of and with respect to the property referred to above, proceeds: goods, inventory, chattel paper, securities, documents of title, instruments, money, intangibles and accounts (all as defined in the PPSA) and insurance proceeds.
- **Serial Numbered Collateral:** JD 50 Compactor Excavator (s/n FF050ZX240118), 2 - JD 250C Articulated Trucks (s/n BE250CT200116 &

BE250CT200117), JD 160LC Excavator (s/n P00160X041361), JD 310SE Loader (s/n T0310SE887336)

By operation of s.26 of the PPSA, this registration qualifies as a perfection step with respect to Chrysler's security interest in Assets #20-24. What constitutes an appropriate description of collateral comes from ss.23-24 of the Regulations. In particular, in accordance with s.23(1)(e) of the Regulations, items of inventory must be described in accordance with s.24(1) and s.24(2). It is the opinion of the Trustee that the collateral description in the above-noted financing statement does satisfy these requirements.

13. Proceeds

Section 29(1) of the Act provides a secured party with an automatic and statutory interest in the proceeds from the disposition of a secured asset by the debtor. While this right is automatic as against the debtor, the entitlement to proceeds must be perfected, in order to protect the secured party's entitlement as against competing creditors.

The Trustee has not made any determination as to Chrysler's entitlement to proceeds with respect to other creditors as this is an issue of priority and not within the Trustee's mandate under the Claims Plan. However, the Trustee has outlined below the statutory requirements that must be met by a secured party in order to assert a claim to proceeds from the disposition of collateral as against other secured creditors.

The perfected status of a security interest in proceeds depends firstly on whether the security interest in the original collateral was perfected when the proceeds arose. If not, the secured party will have to perfect its security interest in the proceeds as original collateral either by registration or taking possession. If so, the question of whether the secured party must independently perfect its security interest in the proceeds depends on the method by which the security interest in the original collateral was perfected.³

Section 29(3) provides for 3 instances where perfection in proceeds is automatic and continuous. A security interest in proceeds is a continuously perfected security interest where the interest in the original collateral is perfected by a registration of a financing statement under Section 26 that:

- (a) Includes a description of the proceeds that would be sufficient to perfect a security interest in original collateral of the same kind;
- (b) Includes a description of the original collateral, where the proceeds are of a kind that are within the description of the original collateral; or

³ Ibid. at p.140.

- (c) Includes a description of the original collateral, where the proceeds consist of money, cheques or deposit accounts in a bank, credit union, or similar financial institutions.

If proceeds do not fall into one of these categories, s. 29(4) of the PPSA requires registration with respect to the proceeds collateral within fifteen days after such proceeds arise. Such registration would be in accordance with the same rules as the original collateral.⁴

As indicated above, collateral descriptions are governed by ss.23-24 of the Regulations. These rules extend to descriptions of collateral in the form of proceeds as well.

Note as well that the ability to assert a claim to proceeds is contingent upon two conditions. The debtor must have acquired rights in the proceeds and the proceeds themselves must be traceable (ref. s. s.2(ff)).

14. Additional Comments on Priorities

While it is not within the mandate of the Trustee or Trustee's counsel to determine priorities, we nevertheless offer the following comments, in order to provide assistance to any creditors who may also have a valid and perfected security interest in the assets and wish to determine, for their own benefit, their ranking with respect to same:

- There are instances whereby an inventory financier such as Chrysler may be entitled to claim a super-priority status (ref: s. 35(2)). As Chrysler is unable to provide evidentiary support for such an entitlement, its security interest is subject to the residual priority rules of the PPSA.
- As established by s. 36 of the PPSA, the relevant date for the determination of the priority of Chrysler's interest in the Assets are the dates of registration of the various financing statements on the PPR:
 - Lease Agreement #1 (for Assets #1-7) - 6 April 2000
 - Lease Agreement #2 (for Assets #9-19) - 3 March 2000
 - Lease Agreement #2 (for Asset #8) - 5 February 2002
 - Lease Agreement #2 (for Asset #19) - 5 February 2002
 - Lease Agreement #3 (for Assets #20-24) - 16 May 2000

15. Auction Results

The following Assets were sold at the Trustee's auction on July 12, 2002, in Halifax, Nova Scotia:

⁴ Ibid.

(Asset #23) 2000 JD 160LC Excavator (s/n P00160X041361) \$110,000

Net amount obtained (bid amount less LVG buyer's premium) \$110,000.00.

This is exhibit E referred to in the affidavit of
Timothy Gilligan sworn before me,
this 15th day of January, 2003.

Mark Peltier
A Notary Public

PPSA WAIVER LETTER



VIA FAX: 805-821-7850

December 31, 2001

Daimler Chrysler Capital Services
6701 - Financial Drive, Suite 200
Mississauga, ONT L5N 7J7

Dear Sir/Madam:

re: Hickman Equipment (1995) Limited and/or
Equipment Description: 1 (One) 2000 John Deere 160LC Excavator
FFB180X041381 (serial)

CULEASE FINANCIAL SERVICES has or is about to enter into a leasing or financing arrangement with the subject upon the equipment described above.

We note that you have a general security interest registered against the subject and/or a security interest in the equipment noted above.

Please indicate, by signing and returning a copy of this letter to fax number 403-296-0192, that you have no further interest in the equipment or that you postpone your interests in favor of CULEASE FINANCIAL SERVICES.

This letter may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which, when so executed, shall be deemed to be an original and all of which taken together shall constitute one and the same agreement and the execution and delivery of counterparts of this letter by telecopier by any party shall be binding upon the parties hereto.

Sincerely,
Mercado Capital Corporation

Acknowledged and agreed to this date:

By: _____

Name/Title: _____

[Handwritten signature]
Customer Service

100048

1/1

NO. 728

MERCADO-CREDIT

MERCADO CAPITAL CORPORATION

100048

DEC 31 '2001 9:30AM

Tel (403) 296-0191 Fax (403) 296-0192 295 2000 Glenora Trail S E Calgary Alberta, T2C 2G7