

<i>SUMMARY OF CURRENT DOCUMENT</i>	
Name of Issuing Party or Person:	John Deere Limited and John Deere Credit Inc.
Date of Document:	____ February 2003
Summary of Order/Relief Sought or Statement of Purpose in Filing:	Reply Memorandum of Fact and Law of John Deere Limited and John Deere Credit Inc., to the Interlocutory Application (Inter Partes) of Bombardier Capital Leasing Ltd.
Court Sub-File Number:	7:38

2002 01 T 0352

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*, RSNL 1990, c. J-4, as amended

AND IN THE MATTER OF the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended.

AFFIDAVIT OF DAVID R. BUGARESTI

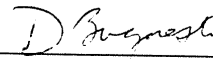
I, **David R. Bugaresti**, of the City of Toronto, in the Province of Ontario, make oath and say as follows:

1. That I am Chief Counsel and Secretary of John Deere Credit Inc., and as such have personal knowledge of the matters herein deposed.
2. That I make this Affidavit in support of a Memorandum of Fact and Law to be filed in the Supreme Court of Newfoundland and Labrador on behalf of John Deere Credit Inc. ("JDCI") and John Deere Limited ("JDL") (collectively "Deere") on February 7, 2003 (the "Memorandum") in reply to the Interlocutory Application (Inter Partes) of Bombardier Capital Leasing Ltd. ("Bombardier").

3. That the Bombardier Application is made in respect of the proceeds of the sale of the assets of Hickman Equipment, specifically the proceeds of the sale of the following assets:
 1. John Deere 330LC Excavator S/N FF0330X080456 ("Claimed Unit #1")
 2. John Deere 330LC Excavator S/N FF0330X080518 ("Claimed Unit #2")
 3. John Deere 200LC Excavator S/N FF0200X050655 ("Claimed Unit #3")
 4. John Deere 230LC Excavator S/N FF0230X060319 ("Claimed Unit #4")
 5. John Deere 892E Excavator S/N FF892EX007239 ("Claimed Unit #5")
4. That with respect to Claimed Unit #3, JDCI intends to rely on a Floor Plan Note dated November 7, 2001. Attached as Exhibit "A" to this my Affidavit is a true copy of the said Floor Plan Note.
5. That with respect to Claimed Unit #4, JDCI intends to rely on Floor Plan Notes dated October 12, 2001 and November 7, 2001. Attached as Exhibit "B" to this my Affidavit is a true copy of the said Floor Plan Note of October 12, 2001. Attached as Exhibit "C" to this my Affidavit is a true copy of the said Floor Plan Note of November 7, 2001.
6. That with respect to Claimed Unit #5, JDCI intends to rely on a Chattel Mortgage Agreement dated April 3, 2001. Attached as Exhibit "D" to this my Affidavit is a true copy of the said Chattel Mortgage Agreement.

SWORN to at Burlington, in the Province
of Ontario this 4th day of February
2003 before me:

Notary Public



DAVID R. BUGARESTI

FLOOR PLAN NOTE

Principal Sum: \$ 155.050.00

Name of Dealer: **HICKMAN EQUIPMENT (1985) LIMITED**

Contract Number : 130-113874-166

DATED the 7TH day of November, 2001

Equipment Description						Program
New / Used	Year	Make	Model	VIN/Serial No.	Optional Equipment & Accessories	
Used	1998	John Deere	200LC	FF0200X050655		Used

(Complete equipment description for units to be floor planned and indicate floor plan program selected: "New" for non-rental fleet inventory financed under the New Program, "Rent" for rental fleet inventory financed under the New Program; "Hamm" for units financed under the Hamm Program; "TC" for non-rental fleet inventory financed under the Tigercat Program; "TC Rent" for rental fleet inventory financed under the Tigercat Program; or "Used" for units financed under the Used Program)

Reference is made to the John Deere Credit Wholesale Finance Program for Construction Dealers (as amended from time to time) (the "Program Agreement") entered into between the dealer named above (the "Dealer") and John Deere Credit Inc. ("JDCI"). Capitalized terms used but not otherwise defined in this Note shall have the meanings given thereto in the Program Agreement. In consideration of JDCI financing the equipment described above, the Dealer hereby promises to pay to or to the order of JDCI, at 1001 Champlain Avenue, Suite 401, Burlington, Ontario L7L 5Z4 (or to such other person or at such other place as JDCI may in writing direct), the principal sum noted above (the "Principal Sum") together with interest thereon as follows (check one):

☐ in accordance with the terms of the Program Agreement; or

☒ the Principal Sum shall be paid as follows and interest thereon shall be paid in accordance with the terms of the Program Agreement:

No. of Payments	First Payment Due Date	Payment Amount	No. of Payments	First Payment Due Date	Payment Amount
3	December 1, 2001	\$ 0.00			
14	March 1, 2002	\$ 6,202.00			
1	May 1, 2003	\$ 68,222.00			

All payments hereunder shall be made payable to JDCl, unless otherwise directed in writing by JDCl.

As security for the Dealer's obligations under this Note, the Dealer has executed and delivered to JDCI an Inventory Security Agreement dated May 9, 2000 (the "ISA").

If the Dealer fails to pay any amount when due under the terms of this Note or any other event of default occurs under the ISA (a "Default"), JDCI may, in addition to the remedies under the ISA, declare all amounts then due under this Note and all unpaid and future payments under this Note to be immediately due and payable, without any additional notice or demand of any kind, and in such event the Dealer shall forthwith pay to JDCI the aggregate of (a) the Principal Sum outstanding, and (b) all accrued and unpaid interest.

Payments received by JDCI shall be applied first in payment of unpaid accrued interest and the balance, if any, to the reduction of the Principal Sum. The Dealer waives diligence, presentment, demand, notice, protest, notice of protest and notice of dishonour. The Dealer shall pay all costs arising or incurred by JDCI as a result of a Default, including reasonable legal fees on a solicitor and his own client basis. This Note has been written in the English language at the express request of the parties. Le présent document a été rédigé en langue anglaise à la demande expresse des parties.

This Note can be assigned by JDCI to any third party without notice to or consent of the Dealer. The Dealer may not assign this Note without JDCI's prior written consent. This Note shall be governed by and construed in accordance with the laws of the Province of Ontario.

JDCI is hereby irrevocably authorized and directed to pay HICKMAN EQUIPMENT (1985) LIMITED the Principal Sum less applicable documentation fees and the Dealer acknowledges and confirms that upon JDCI making such payment as directed, the Dealer shall become indebted to JDCI for the Principal Sum and interest thereon pursuant to the terms and conditions hereof.

Table is Exhibit "A" referred to in the

HICKMAN EQUIPMENT (1985) LIMITED

Per:

Name:

Title:

Under Power of Attorney



FLOOR PLAN NOTE

Principal Sum: \$ 168,050.00

Name of Dealer: HICKMAN EQUIPMENT (1985) LIMITED

DATED the 12th day of October, 2001

130-113874-157

Equipment Description						Program
New / Used	Year	Make	Model	VIN/Serial No.	Optional Equipment & Accessories	
Used	1998	John Deere	230LC	FF0230X060319		Used

(Complete equipment description for units to be floor planned and indicate floor plan program selected: "New" for non-rental fleet inventory financed under the New Program, "Rent" for rental fleet inventory financed under the New Program; "Hamm" for units financed under the Hamm Program; "TC" for non-rental fleet inventory financed under the Tigercat Program; "TC Rent" for rental fleet inventory financed under the Tigercat Program; or "Used" for units financed under the Used Program)

Reference is made to the John Deere Credit Wholesale Finance Program for Construction Dealers (as amended from time to time) (the "Program Agreement") entered into between the dealer named above (the "Dealer") and John Deere Credit Inc. ("JDCI"). Capitalized terms used but not otherwise defined in this Note shall have the meanings given thereto in the Program Agreement. In consideration of JDCI financing the equipment described above, the Dealer hereby promises to pay to or to the order of JDCI, at 1001 Champlain Avenue, Suite 401, Burlington, Ontario L7L 5Z4 (or to such other person or at such other place as JDCI may in writing direct), the principal sum noted above (the "Principal Sum") together with interest thereon as follows (check one):

☐ in accordance with the terms of the Program Agreement; or

☒ the Principal Sum shall be paid as follows and interest thereon shall be paid in accordance with the terms of the Program Agreement:

No. of Payments	First Payment Due Date	Payment Amount	No. of Payments	First Payment Due Date	Payment Amount
3	November 1, 2001	\$ 0.00			
14	February 1, 2002	\$ 6,722.00			
1	April 1, 2003	\$ 73,942.00			

All payments hereunder shall be made payable to JDCI, unless otherwise directed in writing by JDCI.

As security for the Dealer's obligations under this Note, the Dealer has executed and delivered to JDCI an Inventory Security Agreement dated May 9, 2000 (the "ISA").

If the Dealer fails to pay any amount when due under the terms of this Note or any other event of default occurs under the ISA (a "Default"), JDCI may, in addition to the remedies under the ISA, declare all amounts then due under this Note and all unpaid and future payments under this Note to be immediately due and payable, without any additional notice or demand of any kind, and in such event the Dealer shall forthwith pay to JDCI the aggregate of (a) the Principal Sum outstanding, and (b) all accrued and unpaid interest.

Payments received by JDCI shall be applied first in payment of unpaid accrued interest and the balance, if any, to the reduction of the Principal Sum. The Dealer waives diligence, presentment, demand, notice, protest, notice of protest and notice of dishonour. The Dealer shall pay all costs arising or incurred by JDCI as a result of a Default, including reasonable legal fees on a solicitor and his own client basis. This Note has been written in the English language at the express request of the parties. Le présent document a été rédigé en langue anglaise à la demande expresse des parties.

This Note can be assigned by JDCI to any third party without notice to or consent of the Dealer. The Dealer may not assign this Note without JDCI's prior written consent. This Note shall be governed by and construed in accordance with the laws of the Province of Ontario.

JDCI is hereby irrevocably authorized and directed to pay HICKMAN EQUIPMENT (1985) LIMITED the Principal Sum less applicable documentation fees and the Dealer acknowledges and confirms that upon JDCI making such payment as directed, the Dealer shall become indebted to JDCI for the Principal Sum and interest thereon pursuant to the terms and conditions hereof.

For the Dealer, David R. Buguest

HICKMAN EQUIPMENT (1985) LIMITED

Per: [Signature]

Name: [Signature]

Title: [Signature]

Under Power of Attorney



JOHN DEERE
CREDIT

Deere Credit Inc.
1001 Champlain Avenue, Suite 401
Burlington, Ontario, L7L 5Z4
Phone: 905-319-9100

FLOOR PLAN NOTE

Principal Sum: \$ 170,550.00

Name of Dealer: HICKMAN EQUIPMENT (1985) LIMITED

Contract Number: 130-113874-167

DATED the 7TH day of November, 2001

Equipment Description						Program
New / Used	Year	Make	Model	VIN/Serial No.	Optional Equipment & Accessories	
Used	1998	John Deere	230LC	FF0230X060319		Used

(Complete equipment description for units to be floor planned and indicate floor plan program selected: "New" for non-rental fleet inventory financed under the New Program; "Rent" for rental fleet inventory financed under the New Program; "Hamm" for units financed under the Hamm Program; "TC" for non-rental fleet inventory financed under the Tigercat Program; "TC Rent" for rental fleet inventory financed under the Tigercat Program; or "Used" for units financed under the Used Program)

Reference is made to the John Deere Credit Wholesale Finance Program for Construction Dealers (as amended from time to time) (the "Program Agreement") entered into between the dealer named above (the "Dealer") and John Deere Credit Inc. ("JDCI"). Capitalized terms used but not otherwise defined in this Note shall have the meanings given thereto in the Program Agreement. In consideration of JDCI financing the equipment described above, the Dealer hereby promises to pay to or to the order of JDCI, at 1001 Champlain Avenue, Suite 401, Burlington, Ontario L7L 5Z4 (or to such other person or at such other place as JDCI may in writing direct), the principal sum noted above (the "Principal Sum") together with interest thereon as follows (check one):

☐ in accordance with the terms of the Program Agreement; or

☒ the Principal Sum shall be paid as follows and interest thereon shall be paid in accordance with the terms of the Program Agreement:

No. of Payments	First Payment Due Date	Payment Amount	No. of Payments	First Payment Due Date	Payment Amount
3	December 1, 2001	\$ 0.00			
14	March 1, 2002	\$ 6,820.00			
1	May 1, 2003	\$ 75,070.00			

All payments hereunder shall be made payable to JDCI, unless otherwise directed in writing by JDCI.

As security for the Dealer's obligations under this Note, the Dealer has executed and delivered to JDCI an Inventory Security Agreement dated May 9, 2000 (the "ISA").

If the Dealer fails to pay any amount when due under the terms of this Note or any other event of default occurs under the ISA (a "Default"), JDCI may, in addition to the remedies under the ISA, declare all amounts then due under this Note and all unpaid and future payments under this Note to be immediately due and payable, without any additional notice or demand of any kind, and in such event the Dealer shall forthwith pay to JDCI the aggregate of (a) the Principal Sum outstanding, and (b) all accrued and unpaid interest.

Payments received by JDCI shall be applied first in payment of unpaid accrued interest and the balance, if any, to the reduction of the Principal Sum. The Dealer waives diligence, presentment, demand, notice, protest, notice of protest and notice of dishonour. The Dealer shall pay all costs arising or incurred by JDCI as a result of a Default, including reasonable legal fees on a solicitor and his own client basis. This Note has been written in the English language at the express request of the parties. Le présent document a été rédigé en langue anglaise à la demande expresse des parties.

This Note can be assigned by JDCI to any third party without notice to or consent of the Dealer. The Dealer may not assign this Note without JDCI's prior written consent. This Note shall be governed by and construed in accordance with the laws of the Province of Ontario.

JDCI is hereby irrevocably authorized and directed to pay HICKMAN EQUIPMENT (1985) LIMITED the Principal Sum less applicable documentation fees and the Dealer acknowledges and confirms that upon JDCI making such payment as directed, the Dealer shall become indebted to JDCI for the Principal Sum and interest thereon pursuant to the terms and conditions hereof.

David R. Bugaresti

HICKMAN EQUIPMENT (1985) LIMITED

Per:

Name:

Title:

ALAN DENGU
CREDIT MANAGER

Under Power of Attorney



1001 Champlain Avenue, Suite 401, Burlington, Ontario, L7L 5Z4

CHattel Mortgage Agreement

Contract No: 130-113874-122

THIS INDENTURE made in duplicate this 3rd day of April, 2001.

BETWEEN:

HICKMAN EQUIPMENT (1985) LIMITED

1261 TOPSAIL ROAD, MOUNT PEARL, NEWFOUNDLAND A1N 3C8 (the "Mortgagor") and
JOHN DEERE CREDIT INC., 1001 Champlain Ave, Suite 401, Burlington, Ontario, L7L 5Z4 (the "Mortgagee")

IN CONSIDERATION OF:

☒ A loan in the Principal Sum of \$ 150,050.00, being advanced by the Mortgagee to the Mortgagor;
☐ The Mortgagee dealing with the Mortgagor as _____ and to collaterally secure the Principal Sum
(insert: Lessee/Purchaser/Guarantor)
of \$ _____ due to the Mortgagee under a _____
(insert: Lease/Conditional Sale Agreement/Guarantee)
dated _____ (the "Guaranteed Agreement");

The Mortgagor, to secure payment of the Mortgagor's total indebtedness to the Mortgagee as set forth herein and the performance of all other obligations owing by the Mortgagor to the Mortgagee, hereby conveys, mortgages, charges and assigns to the Mortgagee, and grants to the Mortgagee a security interest in, the following chattels, all substitutions therefor, all additions, accessories and accessions thereto, all replacement parts and repairs and all alterations or improvements thereto and any proceeds thereof (all of which are hereinafter referred to as the "Charged Collateral"):

ONE (1) 1993 JOHN DEERE 892E EXCAVATOR S/N FF892EX007239

THE MORTGAGOR shall hold the Charged Collateral unto the Mortgagee forever at the following location: Mount Pearl, Newfoundland

The security constituted hereby shall cease and, determine if the Mortgagor performs all of its obligations hereunder and under any Guaranteed Agreement, if applicable, and pays to the Mortgagee the Principal Sum:

☐ with interest thereon, precomputed for the term of this Agreement, at an annual fixed rate of _____ % per annum, in _____ consecutive monthly payments of principal and interest of \$ _____ each on the _____ day of each month commencing _____ or as set out in the attached Schedule of Payments. The total payments of principal and interest due over the term of this Mortgage (excluding any interest charged on amounts past due) are equal to \$ _____; or

☒ with interest thereon at the variable rate per annum as hereinafter defined (the "Variable Rate") calculated daily both before and after default and compounded monthly on the instalment due date set out below, in _____ consecutive monthly instalments of \$ _____ on the _____ day of each month commencing _____, or as set out in the attached Schedule of Payments (such payments to be applied firstly in payment of accrued interest on the amount of the Principal Sum remaining unpaid and secondly in reduction of the Principal Sum) and one final instalment (to be invoiced separately after the term of the Agreement) in the amount of the unpaid Principal Sum and interest accrued thereon, as herein calculated, payable 30 days following the date of the last scheduled instalment.

For the purposes hereof, the Variable Rate shall be equal to 1.50 % above the per annum prime rate of interest (as established and published by the Toronto-Dominion Bank and charged to its commercial customers for Canadian dollar loans) in effect at 9:00 a.m. on the last banking day of each and every month.

As at the date of this Agreement, the applicable Toronto-Dominion Bank Prime Rate is equal to 6.75 %; or

☐ collaterally secured hereunder in accordance with the Guaranteed Agreement.

THE MORTGAGOR HEREBY REPRESENTS, COVENANTS AND AGREES to and with the Mortgagee that:

1. THE MORTGAGOR exclusively possesses and owns the Charged Collateral free and clear any liens, charges, security interest and other encumbrances of any kind whatsoever, and shall defend the Charged Collateral against all persons claiming an interest therein other than the Mortgagee;
2. THE MORTGAGOR will pay to the Mortgagee all moneys hereby secured with interest on the same as aforesaid as and when such moneys shall become due and payable and shall do, observe, perform, fulfill all the terms, conditions and obligations set forth herein and any Guaranteed Agreement, if applicable;
3. THE MORTGAGOR shall keep the Charged Collateral in good order and repair and shall, at the Mortgagor's expense, replace all worn, broken or defective parts, and shall allow the Mortgagee or its representative free access to the Charged Collateral at all times to inspect same;
4. THE MORTGAGOR may not sell, mortgage, lease, assign, encumber, create a security interest in or give up possession of the Charged Collateral or any interest therein.

THE MORTGAGOR ACKNOWLEDGES AND AGREES THAT THE TERMS AND CONDITIONS ON THE REVERSE SIDE HEREOF FORM PART OF THIS MORTGAGE AND ARE BINDING ON THE PARTIES HERETO.

IN WITNESS WHEREOF the Mortgagor acknowledges receipt of a copy of this mortgage and has caused the same to be executed on its behalf on the date first above written.

SIGNED, SEALED AND DELIVERED in the presence of

HICKMAN EQUIPMENT (1985) LIMITED

(Mortgagor)

Angela Schaus

By:

[Signature]
Under Power of Attorney Granted to John Deere Credit Inc.

By:

This is Exhibit "D" referred to in the

affidavit of David R. Bugresth

sworn before me on 6th

day of February, 2003 (if)

[Signature]

5. Time is of the essence of Mortgagor's obligations. It will be an event of default:

- (a) if Mortgagor fails to pay, when due, whether by acceleration or otherwise, any amount owing to Mortgagee hereunder;
- (b) if Mortgagor fails to observe or perform any of the Mortgagor's obligations hereunder or breaches any of the terms and conditions hereof or in any other agreement between the Mortgagor and Mortgagee;
- (c) if Mortgagor commits or threatens to commit an act of bankruptcy or ceases or threatens to cease carrying on business as a going concern, or if a proceeding in bankruptcy, receivership, insolvency, reorganization or winding up is instituted by or against Mortgagor or any of its property or any compromise or arrangement between the Mortgagor and any of its creditors is proposed or sought;
- (d) if Mortgagor overtaxes, overloads, misuses, damages, destroys or abuses the Charged Collateral or uses it for any illegal purposes;
- (e) if Mortgagor attempts to remove the Charged Collateral outside the jurisdiction or jurisdictions set out above;
- (f) if execution or other process of any court becomes enforceable against Mortgagor or any of its property or distress or analogous process is levied upon all or any part of the Mortgagor's property; or
- (g) if all or a material part of Mortgagor's property is sold or if Mortgagor enters into a sale bill within the meaning of any applicable bulk sales law.

If an event of default occurs, or if Mortgagee, acting commercially reasonably, believes that the ability of Mortgagor to pay amounts owing hereunder or to perform its obligations hereunder is impaired or that the Charged Collateral is in danger of being lost, damaged or confiscated, then subject to any applicable statutory provisions but in addition to any other right or remedy Mortgagee may have (including those provided to a secured party under applicable personal property security legislation) Mortgagee may, with or without legal process, notice or demand, and without any liability whatsoever to Mortgagee:

- (i) declare all amounts owing by Mortgagor hereunder to be immediately due and payable;
- (ii) enter upon the premises wherever the Charged Collateral may be, take constructive or actual possession of, and remove, the Charged Collateral, or any part thereof, required to satisfy the Mortgagor's indebtedness and obligations;
- (iii) retain repossessed Charged Collateral and all moneys paid by Mortgagor to Mortgagee on account thereof; and
- (iv) collect any amounts payable to Mortgagor in respect of the lease, rental or use thereof by third parties.

Mortgagee, if it repossesses the Equipment, will retain the Charged Collateral, for the period of time required by law and if the Charged Collateral is not redeemed within the time by Mortgagor, Mortgagee may store, repair and recondition the Charged Collateral and may sell, lease or otherwise dispose of the Charged Collateral in a lawful manner and upon such terms, including deferred payment, as Mortgagee may deem appropriate. The proceeds of any such sale, when actually received in cash by the Mortgagee and after deduction of all charges, expenses, and commissions including solicitor's fees, incurred in connection with such repossession, storage, repairing, reconditioning and sale of the Charged Collateral, shall be applied toward the payment of all amounts owing by Mortgagor hereunder. All payments previously received shall be retained by Mortgagee and shall remain credited to Mortgagor's account. Mortgagor shall be liable for any deficiency. The surplus, if any, shall be credited to Mortgagor's account and, if no other amounts are then owing, such surplus shall be paid to Mortgagor or to such other party as may be entitled by law thereto.

Upon the happening of any event of default, Mortgagee may appoint in writing any person to be a receiver, manager or agent of the Charged Collateral, including any rents and profits thereof, and may remove any receiver, manager or agent and appoint another instead thereof, and such receiver, manager or agent so appointed shall have the power to take possession of the Charged Collateral and to carry on or concur in carrying on the business of Mortgagor, and to sell or concur in selling the Charged Collateral or any part thereof. Any such receiver, manager or agent shall be paid first in discharge of any rents, taxes, rates insurance premiums and outgoings affecting the Charged Collateral, secondly in payment of the remuneration due thereto as receiver (including all legal expenses incurred), thirdly in keeping in good standing any liens and charges on the Charged Collateral prior to the security constituted by this Agreement or any Guaranteed Agreement, if applicable, and fourthly in or toward payment of such parts of Mortgagor's indebtedness as to Mortgagee seems best and any residue of such moneys so received shall be paid as required by law.

There shall be added to, and deemed part of, the indebtedness payable by Mortgagor hereunder (i) the amount of all reasonable expenditures, (including, without limitation, legal fees and expenses of a solicitor and his own client basis and expenditures incurred by Mortgagee in exercising its rights and remedies hereunder made by Mortgagee at any time in the retaking, repairing, reconditioning, storing, preserving and/or disposing of Charged Collateral, in whole or in part, and in perfecting, preserving and enforcing its security interests, rights and remedies hereunder, and (ii) interest on each such expenditure from the date it is made until payment by Mortgagor is received in full at the rate of 24% per annum.

Mortgagor hereby waives, if applicable and to the extent permitted, the rights, benefits and protections given it with respect to the Charged Collateral and this Agreement by The Limitation of Civil Rights Act of Saskatchewan, as amended, supplemented, reenacted and superseded and in force from time to time and any law of any jurisdiction now in force or hereafter enacted similar in effect to the aforesaid laws. To the extent permitted by law, Mortgagor waives the benefit of any statute which restricts Mortgagee's enforcement right to the recovery of money due and owing under this Agreement or any Guaranteed Agreement, if applicable, to taking possession of the Charged Collateral, or in the choice of such recovery or taking possession. Where such waiver is effective, taking possession of the Charged Collateral, its surrender, or its subsequent sale, shall not affect and shall not be affected by Mortgagee's right to sue Mortgagor, his guarantor or indemnitor for the money due and owing under this Agreement or any Guaranteed Agreement, if applicable.

All rights and remedies hereunder are cumulative and alternative and, in particular, Mortgagee shall be entitled to pursue all of its rights hereunder either consecutively or concurrently and no right or interest in the Charged Collateral shall be extinguished or merged by the commencement of any legal proceedings or the taking of judgment for all or any part of the monies which are or may become due and owing hereunder or pursuant to any agreement renewing or extending or collateral to this Agreement.

6. In the event of the Mortgagee taking possession of the Charged Collateral, or any part thereof in accordance with the provisions hereof, the Mortgagee shall have the right to maintain the same upon the said premises, or upon the premises on which the Charged Collateral may then be situate, and for such purpose shall be entitled to the free use and enjoyment of all necessary buildings, premises, housing, shelter, and accommodation for the proper maintaining, housing and protection of the Charged Collateral, and for its servant or servants, assistant or assistants, and the Mortgagor covenants and agrees to provide the same without cost or expense to the Mortgagee until such time as the Mortgagee shall determine in its discretion to remove, sell or otherwise dispose of the Charged Collateral so taken possession of by it aforesaid.

7. THE MORTGAGOR will forthwith for the benefit of the Mortgagee insure and during the continuance of this Agreement keep the Charged Collateral insured against all risks of physical loss or damage and liability, and such other risks as the Mortgagee may reasonably require to their full insurable value in Canadian dollars with an insurance company or companies to be approved of by the Mortgagee, and will pay all premiums and moneys necessary for such purposes as the same shall become due; the loss, if any, to be payable to the Mortgagee. The Mortgagor will not do or suffer anything whereby any such policy or policies of insurance may be vitiated, and will assign and deliver over unto the Mortgagee at the place where the said indebtedness is payable the policy or policies of insurance and receipt or receipts thereto appertaining. If the Mortgagor neglects to keep the Charged Collateral or any part thereof insured as aforesaid, or pay the premiums or deliver such receipts, then it shall be lawful for the Mortgagee to insure the same as to it may seem expedient, and all moneys expended by the Mortgagee with interest at the rate aforesaid, computed from the time or times of advancing the same, shall be repaid by the Mortgagor to the Mortgagee on demand. The amount of such payments shall be added to the indebtedness and be hereby secured and shall bear interest at the rate aforesaid from the time of such payment. Evidence of the renewal of such insurance shall be produced to the Mortgagee at the place where the said indebtedness is

payable at least three (3) weeks before the termination thereof or the Mortgagee may provide therefor. The Mortgagee may require any insurance to be cancelled and new insurance to be effected with a company or companies to be named by it. The Mortgagee shall have a first lien for the indebtedness hereunder upon all insurance on the Charged Collateral whether effected under this covenant or not, and shall have the right to require that all moneys received on any insurance be applied to discharge any of the moneys hereby secured whether due or not. Mortgage clauses in a form approved by the Mortgagee will be attached to all insurance policies. Forthwith on the happening of any loss or damage the Mortgagor will furnish at his own expense all the necessary proofs and do all necessary acts to enable the Mortgagee to obtain payment of the insurance moneys. The Mortgagee may effect insurance without reference to the Mortgagor and charge all premiums paid in respect thereof against the Mortgagor in the manner aforesaid. The foregoing covenants and provisions as to insurance shall apply to all Charged Collateral whether now or hereafter included in this mortgage.

8. THE MORTGAGOR hereby acknowledges that its obligations hereunder to the Mortgagee will in no way be affected by any seller's, distributor's or manufacturer's warranties, guarantees or representations, with respect to the Charged Collateral, express or otherwise, which may exist in the Mortgagor's favour.

9. Each item of the Charged Collateral, whether severable or not, shall stand charged with the whole of the indebtedness hereby secured and that no person shall have any right to require that such indebtedness be apportioned;

10. If the Mortgagee shall deem it necessary to pay any encumbrance, lien or claim against or discharge any security interest in the Charged Collateral or any part thereof, or any judgment or execution which may now or hereafter be extant against the Mortgagor, or any taxes, duties, rates, assessments, rents, principal or interest (hereinafter referred to) then, and in every such case it may do so, and any sum or sums of money so paid, together with all costs, charges and expenses incurred in connection therewith shall be added to the indebtedness from the day of such payment, and shall be repayable with the indebtedness hereby secured or on demand as the Mortgagee may deem expedient, and shall be secured by and may be realized from the Charged Collateral.

11. The security contained herein is continuing security for the performance of Mortgagor's obligations owed to Mortgagee and for the payment of all such indebtedness and of all interest and other moneys secured or intended to be secured hereby and for the due and proper payment thereof and of every part thereof as and when the same shall become payable to the Mortgagee notwithstanding any change in the nature or form of such indebtedness or in the accounts or in the bills of exchange, promissory notes and/or other obligations now or from time to time hereafter held by the Mortgagee representing the same or in the name of any part thereof or in the names of the parties of such bills, notes and/or other obligations or any change or changes in the name of the Mortgagor or (in the event that the Mortgagor be a partnership) any changes or changes in the membership of Mortgagor's firm by the death or by the retirement of one or more of the partners or by the introduction of one or more other partners.

12. The amount of the Mortgagor's indebtedness to the Mortgagee existing at the date of this Agreement shall be secured hereby notwithstanding the form in which the accounts with the Mortgagor may be kept, or any new transactions with the Mortgagor by way of further loans, discounts or advances.

13. Any and all payments made in respect of such indebtedness and interest and the moneys realized from any securities held therefor (including this mortgage) may be applied on such part or parts of such indebtedness and/or interest as the Mortgagee may see fit; and the Mortgagee may grant extensions, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the Mortgagor and with other parties and securities as the Mortgagee may see fit without prejudice to the liability of the Mortgagor or the Mortgagee's right to hold and realize the security hereunder.

14. This Agreement shall not operate by way of merger of the indebtedness or any contract by which the same may now or at any time hereafter be represented or evidenced and that no judgment recovered by the Mortgagee shall operate by way of merger of this Agreement or in any way affect the security created or the Mortgagee's right to interest as aforesaid;

15. The Mortgagee may from time to time discharge any part or parts of the Charged Collateral for such consideration as it may think proper or without consideration if it sees fit, and no such discharge shall diminish or prejudice this security as against the Charged Collateral remaining undischarged or against any person or corporation whomsoever.

16. Any condonation, forgiveness, waiver or forbearance must be in writing. If the Mortgagee has recourse to the services of a solicitor to enforce any right hereunder, its solicitor and client costs shall be forthwith paid on demand by the Mortgagor to the Mortgagee. The Mortgagor shall execute and deliver to the Mortgagee upon request, such instruments and assurances as the Mortgagee deems necessary or advisable in its sole discretion. At the request of the Mortgagee, the Mortgagor shall request and obtain all consents required in connection with any aspect of the Charged Collateral. The Mortgagor shall provide the Mortgagee with a copy of any notice which the Mortgagor receives regarding any claim by a third party to the Charged Collateral or any part thereof adverse to the interest of the Mortgagee in the Charged Collateral.

17. Any notice required or permitted under this Agreement may be given by delivering the same to the party to receive it or by mailing to such party at the address set forth herein or such other address as such party may notify in writing. Such notice shall be deemed to have been given on the day of delivery if delivered and on the business day three days following the day of mailing, if mailed. The Mortgagor shall notify the Mortgagee of any change in its name, and any change in the location of the Charged Collateral from the location set forth above, immediately upon such change occurring. The Mortgagor shall not, without the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld, use or transport the Charged Collateral outside the jurisdiction or jurisdictions of the Mortgagor's address set forth above.

18. The Mortgagor waives any right it may have to receive a copy of any financing statement, financing change statement, verification statement or similar document registered in respect of this Agreement or any amendment, supplement, renewal or replacement of it.

19. The Mortgagor's obligation to make payment of any amount hereunder shall be absolute and unconditional and shall not be affected by any circumstances including but not limited to:

- (i) any set-off, counterclaim, recoupment, defence or other right which Mortgagor may have against Mortgagee or anyone else for any reason whatsoever;
- (ii) any defect in the title, condition, design, operation or fitness for use of, or any damage or loss or destruction of the Charged Collateral; or
- (iii) any interruption or cessation in the use or possession of the Charged Collateral by Mortgagor for any reason whatsoever.

20. Mortgagor represents and warrants that:

- (i) it is duly organized and existing in good standing under the laws of the jurisdiction of its incorporation and is duly authorized to carry on business in the jurisdiction(s) in which the Charged Collateral is located;
- (ii) the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on the part of the Mortgagor, does not require any shareholder approval and does not violate any of Mortgagor's articles of incorporation or any amendments thereto or any agreement, indenture or other instrument to which Mortgagor is a party or by which Mortgagor's property may be bound or affected;
- (iii) this Agreement constitutes a legal, valid, and binding obligation of Mortgagor enforceable in accordance with the terms hereof;
- (iv) there are no suits or proceedings pending or, to the knowledge of Mortgagor, threatened in any court or before any competent authority against or affecting Mortgagor which may, in the opinion of Mortgagee, acting commercially reasonably, have a material adverse effect on the financial condition or business of Mortgagor.

21. This Agreement constitutes the entire agreement between the Mortgagor and Mortgagee with respect to the subject matter hereof and may be modified only in writing signed by both parties.

THIS INDENTURE shall be binding upon and enure to the benefit of the respective heirs, executors, administrators, successors and assigns, as the case may be, of each and every of the parties hereto, and where there is more than one mortgagor or there is a female party or a corporation, the provisions hereof shall be read with all grammatical changes thereby rendered necessary and where there is more than one mortgagor all covenants shall be deemed to be joint and several.



**JOHN DEERE
CREDIT**

1001 Champlain Avenue, Suite 401, Burlington, Ontario, L7L 5Z4

SCHEDULE OF PAYMENTS

This Schedule of Payments forms an integral part of the Chattel Mortgage Agreement between:

HICKMAN EQUIPMENT (1985) LIMITED, as Mortgagor
and
JOHN DEERE CREDIT INC., as Mortgagee

and dated the 3rd day of April, 2001 and covering the equipment as noted on the Chattel Mortgage Agreement

The Principal Balance Financed together with interest thereon shall be paid as follows:

(a)

Number of Payments	Commencement Date	Required Principal Payments
3	May 1, 2001	0.00
14	August 1, 2001	6,002.00
1	October 1, 2002	81,114.87

(b) Commencing May, 2001, interest on the unpaid Principal Balance financed at the variable rate per annum herein defined (the "Variable Rate") will be calculated daily both before and after maturity and before and after default and compounded monthly on the 1st day of each month, and such interest shall be invoiced monthly and payable each on the 1st day of the month commencing on the same day as the above Principal Instalments commence. For the purposes hereof, the Variable Rate shall be equal to 1.50 % above the per annum prime rate of interest (as established and published by the Toronto Dominion Bank and charged to its commercial customers for Canadian dollar loans) in effect at 9 a.m. on the last banking day of each and every month. As at the date of this Agreement, the applicable Toronto Dominion Prime Rate is equal to 6.75 % ; and

(c) One final instalment (to be invoiced separately after the completion of the term of the Agreement) equal to the unpaid Principal Balance financed together with the interest thereon, resulting from interest compounding as set forth above, shall be payable 30 days following the date of the last scheduled instalment.

It is acknowledged and agreed that this Schedule of Payments forms an integral part of the above referenced Chattel Mortgage Agreement

JOHN DEERE CREDIT INC.

Mortgagee's Initials

HICKMAN EQUIPMENT (1985) LIMITED

Mortgagor's Initials