

SUMMARY OF CURRENT DOCUMENT	
Name of Issuing Party or Person:	PricewaterhouseCoopers Inc., in its capacities as Receiver and Trustee of Hickman Equipment (1985) Limited
Date of Document:	February 27, 2003
Summary of Order/Relief Sought Of statement of purpose in filing:	Interlocutory application for advice and directions involving a claim for set-off by United Rentals of Canada, Inc.
Court Sub-File Number:	7:55

2002 01T 0352

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR**

**IN THE MATTER OF** the *Companies' Creditors Arrangement Act*,  
Chapter C-36 of the Revised Statutes of Canada, 1985, as amended

**AND IN THE MATTER OF** the plan of compromise or  
arrangement of Hickman Equipment (1985) Limited

**AND IN THE MATTER OF** Rule 25 of the *Rules of the  
Supreme Court*, 1986 under the *Judicature Act*, R.S.N. 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

**AND****District of Newfoundland**

**Court No. 9733  
Estate No. 100813**

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRATOR  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF  
HICKMAN EQUIPMENT (1985) LIMITED**, carrying  
on business at 1269 Topsail Road, in the City of  
Mt. Pearl, in the Province of Newfoundland and  
Labrador

**INTERLOCUTORY APPLICATION  
(INTER PARTES)**

The application of PricewaterhouseCoopers Inc. ("PWC") as Receiver of the Assets of Hickman Equipment (1985) Limited ("Hickman Equipment") and as Trustee of the Estate of Hickman Equipment in Bankruptcy, hereby says:

1. By Orders of this Honourable Court granted on the 13<sup>th</sup> day of March, 2002 and filed with the Court on the 14<sup>th</sup> day of March, 2002, it was ordered that:
  - (i) PWC be appointed receiver pursuant to Rule 25 of the *Rules of the Supreme Court, 1986* under the *Judicature Act*, R.S.N. 1990, c.J-4 (the "Receivership Order"); and
  - (ii) Hickman Equipment was adjudged to be bankrupt and PWC was appointed as the Trustee of its estate in bankruptcy (the "Receiving Order");
2. Paragraph 11 of the Receivership Order empowers the Receiver to determine "whether there are any claims or potential claims by or against Hickman Equipment or any other person who may have received such monies, property or assets, and to report to the Court with respect to the nature and extent of such claims or potential claims".
3. Paragraph 34 of the Receivership Order enables the Receiver "from time to time, [to] bring an interlocutory application before this Court for advice and directions in the discharge of its powers and duties hereunder.
4. On April 11, 2002, United Rentals of Canada, Inc. ("United Rentals"), filed a proof of claim with the Trustee in the amount of \$936,399.33. The amount of the claim was calculated by deducting \$329,254.74 ("set-off amount") acknowledged to be owing to Hickman Equipment by United Rentals, by way of set-off from the total claim of United Rentals against Hickman Equipment.
5. Part of the set-off amount includes \$171,350, which represents the unpaid purchase price for a John Deere 160LC Excavator Serial #P0016OXO41476 ("JD Unit").
6. Based on the facts known to it, PWC as Receiver is of the opinion that United Rentals is not entitled to set-off the amount of \$329,254.74 and those monies are payable from United Rentals to PWC in its capacity as Receiver of Hickman Equipment.
7. The applicant therefore makes this Application for advice and directions of the Court in respect of:
  - (a) the entitlement of PWC as Receiver to the set-off amount of \$329,254.74;
  - (b) United Rentals' entitlement to the set-off amount of \$329,254.74 as against the amount claimed to be owing to it by Hickman Equipment;
  - (c) in the event that United Rentals is not found to be entitled to the set-off amount of \$329,254.74 or any portion thereof, an Order compelling United

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Rentals to make immediate payment of the portion it is not entitled to set-off plus interest, to PWC in its capacity as Receiver for distribution to creditors in accordance with the terms of the Receivership Order and the Claims Plan Order; and

- (d) in the event that United Rentals is entitled to set-off the amount payable in respect of the JD Unit, a declaration that the conveyance of the JD Unit is a preference as described in s.95(2) of the *Bankruptcy and Insolvency Act*.

DATED at Halifax, Nova Scotia, this 27<sup>th</sup> day of February, 2003

  
\_\_\_\_\_  
**CARL A. HOLM, Q.C.**

Solicitor for PricewaterhouseCoopers Inc. as  
Receiver

whose address for service is:

Merrick Holm

1801 Hollis Street, Suite 2100

PO Box 1054

Halifax, NS B3J 2X6

or

c/o PricewaterhouseCoopers Inc.

215 Water Street, Suite 802

St. John's, NF A1C 6C9

ISSUED at St. John's, Newfoundland and Labrador, this 27<sup>th</sup> day of February, 2003.

\_\_\_\_\_  
*Registrar*

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Name of Issuing Party or Person:	PricewaterhouseCoopers Inc., in its capacities as Receiver and Trustee of Hickman Equipment (1985) Limited
Date of Document:	February 27, 2003
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Court Sub-File Number:	7: 55

2002 01T 0352

# IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

**IN THE MATTER OF** the *Companies' Creditors Arrangement Act*,  
Chapter C-36 of the Revised Statutes of Canada, 1985, as amended

**AND IN THE MATTER OF** the plan of compromise or  
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Chapter B-3 of the Revised Statutes of Canada, 1985, as amended

## AND

**District of Newfoundland**

**Court No. 9733  
Estate No. 100813**

# IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRATOR IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE BANKRUPTCY OF  
HICKMAN EQUIPMENT (1985) LIMITED**, carrying  
on business at 1269 Topsail Road, in the City of  
Mt. Pearl, in the Province of Newfoundland and  
Labrador

## NOTICE

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YOU ARE HEREBY NOTIFIED that the foregoing application will be made to the judge presiding in Chambers at the Court House at St. John's, Newfoundland and Labrador, on Wednesday, the 12<sup>th</sup> day of March, 2003, at 10:00 a.m. or so soon thereafter as the application can be heard.

YOU ARE FURTHER NOTIFIED that the Court has directed that persons wishing to reply or respond to the within Application are to file a reply or response with the Court on or before March 7, 2003 and to give notice of their reply or response to other parties in these proceedings in accordance with the terms of Orders earlier issued in these proceedings.

TO: See distribution list attached hereto as Schedule "A"

DATED at Halifax, Nova Scotia, this 26<sup>th</sup> day of February, 2003.

  
**CARL A. HOLM, Q.C.**

Solicitor for PricewaterhouseCoopers Inc.,  
in its capacities as Receiver and Trustee of  
Hickman Equipment (1985) Limited  
whose address for service is:  
Merrick Holm  
1801 Hollis Street, Suite 2100  
PO Box 1054  
Halifax, NS B3J 2X6

or  
c/o PricewaterhouseCoopers Inc.  
215 Water Street, Suite 802  
St. John's, NL A1C 6C9

ISSUED at St. John's, Newfoundland and Labrador, this \_\_\_\_\_ day of February, 2003.

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*Registrar*

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**Schedule "A"****Parties Who Have Been Served**

ABN Amro Bank Canada/ ABN Amro Leasing & Tramac Equipment Ltd.	Aubrey L. Bonnell, Q.C./ Brian Winsor David Timms Brent Keenan	709-722-7521  905-331-2020
Bombardier Capital Leasing & Culease Financial Services	John French	709-754-2701
Caterpillar Equipment	Colin D. Grant	905-849-5512
CAT Finance	James Smyth, Q.C./ Philip Warren	709-754-5662
Cedarrapids	Nathan Mixdorf/ Francoise Belzil	319-399-4760 780-413-3152
CIBC	R. Wayne Myles/ Geoffrey Spencer	709-579-2647
CIBC Equipment Finance Ltd./CIT Financial Ltd.	Gregory W. Dickie	709-722-9210
Contract Funding Group Inc.	Mark G. Klar	416-218-1831
Daimler Chrysler Financial Services/Daimler Chrysler Capital Services/Mercedes- Benz of Canada Inc.	Philip Buckingham/ Peter O'Flaherty Elaine Gray	709-722-4720 416-863-3527
Fabtek Corp.	Linc A. Rogers Rhodie E. Mercer, Q.C.	416-863-2653 709-726-5705
GE Capital	Harvey Chaiton Frederic Scalabrini	416-218-1849 905-319-4855
GMAC	Thomas R. Kendell, Q.C.	709-722-1763
Group Holdings Ltd./ Hickman Equipment/ Hickman Holdings Ltd.	Robert Stack/ Griffith D. Roberts	709-726-2992
Ingersoll-Rand Canada Inc.	R. Barry Learmonth, Q.C. Jonathan Wigley	709-739-8151 416-863-6275

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John Deere Ltd./ John Deere Credit Inc.	Neil L. Jacobs/ Bruce Grant/Maureen Ryan	709-722-4565
MTC Leasing Inc./ National Leasing Group Inc.	R. Paul Burgess	709-754-0915
ORIX Financial Services Canada Ltd.	Donald Yaeck	416-236-3010
Goodman Associates Inc.	Paul G. Goodman	902-425-3777
Royal Bank of Canada	Thomas O. Boyne, Q.C.	902-463-7500
TD Asset Finance Corp.	D. Bradford L. Wicks	709-753-5221
United Rentals	Robert Frank	416-360-8277
Wells Fargo Equipment Finance Co.	Richard B. Jones	416-361-6303

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SUMMARY OF CURRENT DOCUMENT	
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Date of Document:	February 27, 2003
Summary of Order/Relief Sought Of statement of purpose in filing:	Affidavit of James Kirby in support of an application for advice and directions involving a claim for set-off by United Rentals of Canada, Inc.
Court Sub-File Number:	7: 55

2002 01 T 0352

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR**

**IN THE MATTER OF** the *Companies' Creditors Arrangement Act*, Chapter C-36 of the Revised Statutes of Canada, 1985, as amended

**AND IN THE MATTER OF** the plan of compromise or arrangement of Hickman Equipment (1985) Limited

**AND IN THE MATTER OF** Rule 25 of the *Rules of the Supreme Court*, 1986 under the *Judicature Act*, R.S.N. 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

**AND**

**District of Newfoundland  
Court No. 9733  
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**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF  
HICKMAN EQUIPMENT (1985) LIMITED**, carrying on business at 1269 Topsail Road, in the City of Mount Pearl, in the Province of Newfoundland and Labrador

**AFFIDAVIT**



The Affidavit of JAMES A. KIRBY, of St. John's, in the Province of Newfoundland and Labrador, Senior Vice-President of PricewaterhouseCoopers Inc., Trustee of the Estate of Hickman Equipment (1985) Limited ("Hickman Equipment") in Bankruptcy and Receiver of the Assets of Hickman Equipment, states as follows:

1. I have personal knowledge of the matters herein deposed to except where stated to be based on information and belief, and where so stated I verily believe same to be true.
2. Attached to this my Affidavit and marked as Exhibit "A" is a true copy of the Proof of Claim dated April 16, 2002 by United Rentals of Canada, Inc. ("United Rentals") in the Bankruptcy of Hickman Equipment, together with excerpts from the schedules attached thereto, (collectively referred to herein as "Proof of Claim").
3. Attached to and forming part of the Proof of Claim, and more particularly as part of the "BACK-UP TO SCHEDULE "A" OF SCHEDULE 1" ("Back-up to Schedule A") is correspondence dated January 18, 2002, from Mr. Craig Hannam of United Rentals to Mr. Hubert Hunt of Hickman Equipment, a copy of which is included in Exhibit "A". In the letter, United Rentals purports to set-off \$329,254.74 ("set-off amount"), from the outstanding indebtedness of Hickman Equipment to United Rentals ("set-off letter").
4. The invoices in support of the set-off amount are summarized in Schedule "B" of the Proof of Claim as well as individually produced in the "BACK-UP TO SCHEDULE "B" OF SCHEDULE 1" of the Proof of Claim ("Back-up to Schedule B"), representative samples of which are attached to and form part of Exhibit "A".
5. I am unaware of the existence of any set-off agreement between Hickman Equipment and United Rentals.
6. Attached to this my affidavit and marked as Exhibit "B" is a true copy of a General Assignment of Book Debts and Accounts ("GABD") dated January 4, 1985, executed by Hickman Equipment in favour of the Canadian Imperial Bank of Commerce ("CIBC")

and registered at the Registry of Deeds on the 16<sup>th</sup> day of January, 1985 and continued under the Personal Property Security Act on the 29<sup>th</sup> day of June, 2001 as registration # 1063565.

7. Attached to this my Affidavit and marked as Exhibit "C" is a true copy of a Floating Charge Debenture executed by Hickman Equipment in favour of the CIBC, originally dated as of the 7<sup>th</sup> day of January, 1985 (as amended on February 19, 1990, April 17, 1997, August 6, 1997, and July 9, 1998) in the final amended amount of \$20,000,000 ("demand debenture"), which demand debenture was originally registered at the Registry of Deeds on the 29<sup>th</sup> day of January, 1985 at Roll 77, Frame 70, and continued under the Personal Property Security Act on the 29<sup>th</sup> day of November, 2001 as registration # 1403243.
8. Attached to this my Affidavit and marked as Exhibit "D" is a true copy of an Asset Purchase Agreement dated February 1, 1999 between United Rentals and Hickman Equipment together with Schedule 3.4(b) ("Asset Purchase Agreement") in which United Rentals agreed to purchase certain assets of Hickman Equipment. The agreement was signed on behalf of United Rentals by its President.
9. Paragraph 3.4 of the Agreement reads as follows:

3.4 Liabilities: Schedules 3.4(b), (c) and (d) are accurate lists and descriptions of all liabilities of Hickman described in accordance with Sections 3.4(b), (c) and (d) below:


- (b) Schedule 3.4(b) lists all liens, claims and encumbrances secured by or otherwise affecting any Purchased Assets, including a description of the nature of such lien, claim or encumbrance, the amount secured if it secures a liability, the nature of the obligation secured, and the party holding such lien, claim or encumbrance.

10. Schedule 3.4(b) of the Agreement refers to the demand debenture.
11. Attached to this my Affidavit and marked as Exhibit "E" is a true copy of a Power Plan Merchant Agreement dated October 1, 1999 ("Power Plan"), with John Deere Credit Inc. ("John Deere"). The Power Plan was a financing mechanism that enabled Hickman Equipment to sell eligible products to approved customers. Approved customers obtained their financing through the Power Plan and paid their accounts directly to John Deere.
12. Upon reviewing the invoices in the Back-up to Schedule B, representative samples of which are attached to Exhibit "A", I note that many of them make reference to 'TOTAL POWERPLAN', which appear to be an acknowledgement by United Rentals that the amounts in question were Power Plan accounts.
13. Attached to this my Affidavit and marked as Exhibit "F" is a true copy of correspondence dated February 14, 2003 from Mr. Carl Holm, Q.C., as solicitor for PWC in its capacity as Receiver, to Mr. Robert Frank, as solicitor for United Rentals ("opinion letter") which refers to many of the issues and documentation referred to herein. In Schedule "B" to the opinion letter is the summary list of the invoices that make up the set-off amount. I am advised by Mr. Holm and do verily believe that he has caused a review of all of the receivables and has marked with an asterix those that make reference to 'Total PowerPlan'. I am further advised by Mr. Holm and do verily believe that there is an error on page 1 of Schedule "B". Mr. Holm has identified the credits associated with the Power Plan invoices as \$14,745.71, whereas the correct amount is actually \$4,745.71. The net balance of \$32,573.90 remains unchanged by this correction.
14. Attached to and forming part of the Proof of Claim as part of the Back-up to schedule B, a copy of which is attached as part of Exhibit "A" herein, is a copy of an invoice dated the 21<sup>st</sup> day of November, 2001 from Hickman Equipment to United Rentals, for a John

Deere 160LC Excavator Serial #P0016OXO41476 ("JD Unit"), which invoice bears a stamp indicating "Received February 8, 2002, United Rentals of Canada".

15. Attached to and forming part of the Proof of Claim as part of the Back-up to Schedule B, a copy of which is attached as part of Exhibit "A" herein, is a February 4, 2002 purchase order invoice from United Rentals to Hickman Equipment for the JD Unit.
16. Attached to and forming part of the Proof of Claim as part of the Back-up to Schedule B, a copy of which is attached as part of Exhibit "A" herein, is a January 18, 2002 document that is presumably an internal document generated from within United Rentals. It is entitled "United Rentals' Capital Expenditure Request", and is for the purchase of what appears to be the JD Unit from Hickman Equipment in the amount of \$149,000. The document is signed by the Branch Manager, District Manager, and Regional Manager of United Rentals.
17. This Affidavit is sworn to in support of an application to this Honourable Court for advice and directions involving a claim for set-off by United Rentals.

SWORN TO at St. John's, in the Province )  
 of Newfoundland and Labrador, this )  
 day of February, A.D. 2003, before me, )

  
 A Commissioner of Oaths for the Province )  
 of Newfoundland and Labrador )

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 JAMES A. KIRBY, C.A., CIRP

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# PRICEWATERHOUSECOOPERS

## FORM 33

### 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)

PricewaterhouseCoopers Inc.  
Atlantic Place  
215 Water Street Suite 802  
Box 75  
St John's Newfoundland  
Canada A1C 6C9  
Telephone +1 (709) 722-3883  
Facsimile +1 (709) 722-5874  
Direct Tel. (709) 722-3883  
Direct Fax (709) 722-5874

(All notices or correspondence regarding this claim must be forwarded to the following address:  
PricewaterhouseCoopers Inc., Atlantic Place, Box 75, 215 Water Street, St. John's, NF A1C 6C9

In the matter of the bankruptcy of Hickman Equipment (1985) Limited of Mount Pearl, NF and the claim of United Rentals of, creditor.

Canada, Inc. United Rentals of Canada, Inc.  
I, Steve Menchenton of (name of creditor), 1269 Topsail Rd. Box 939 (street address/ P.O. Box number) Mt. Pearl, NF (city and province) A1N 3C9 (postal code) (709) 748-3319 (telephone number - including area code) hereby certify:

- District Manager, Atlantic Canada District  
1. That I am a creditor of the above named debtor (or that I am President (state position or title) of United Rentals of (name of creditor)).  
Canada, Inc., a creditor of the above-named debtor.  
2. That I have knowledge of all the circumstances connected with the claim referred to below.

3. That the debtor was, at the date of bankruptcy (or the date of the receivership, or in the case of a proposal, the date of the notice of intention or of the proposal, if no notice of intention was filed), namely the 11th day of March 2002, and still is, indebted to the creditor in the sum of \$936,399.33, as specified in the statement of account (or affidavit or solemn declaration) attached and marked Schedule "A", after deducting any counterclaims to which the debtor is entitled. (The attached statement of account, or affidavit or solemn declaration must specify the vouchers or other evidence in support of the claim.)

4. (Check and complete appropriate category.)

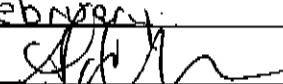
(X) A. UNSECURED CLAIM OF \$936,399.33

That in respect of this debt, I do not hold any assets of the debtor as security and

(Check appropriate description.)

(X) Regarding the amount of \$936,399.33, I do not claim a right to a priority.

No. \_\_\_\_\_  
This is Exhibit "A" referred to in the affidavit of James A. Kirby sworn before me this 27th day of February, 2003.

  
A Barrister of the Supreme Court of Nova Scotia

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0020/028

# PRICEWATERHOUSECOOPERS

~~(-) Regarding the amount of \$ \_\_\_\_\_, I claim a right to a priority under section 136 of the Act.~~

~~(Set out on an attached sheet details to support priority claim.)~~

~~(-) A.1. CLAIM OF LANDLORD FOR DISCLAIMER OF A LEASE \$ \_\_\_\_\_~~

~~That I hereby make a claim under subsection 65.2(4) of the Act, particulars of which are as follows:~~

~~(Give full particulars of the claim, including the calculations upon which the claim is based)~~

~~(-) B. SECURED CLAIM OF \$ \_\_\_\_\_~~

~~That in respect of this debt, I hold assets of the debtor valued at \$ \_\_\_\_\_ as security, particulars of which are as follows:~~

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

~~(-) C. CLAIM BY FARMER, FISHERMAN OR AQUACULTURIST OF \$ \_\_\_\_\_~~

~~That I hereby make a claim under subsection 81.2(1) of the Act for the unpaid amount of \$ \_\_\_\_\_ (attach a copy of sales agreement and delivery receipts.)~~

~~(-) D. CLAIM AGAINST DIRECTOR \$ \_\_\_\_\_~~

~~(To be filed when a proposal provides for the compromise of claims against directors)~~

~~That I hereby make a claim under subsection 50(13) of the Act, particulars of which are as follows:~~

~~(Give full particulars of the claim, including the calculations upon which the claim is based)~~

5. That, to the best of my knowledge, I am ~~(or the above-named creditor is) (or am not or is not)~~ related to the debtor within the meaning of section 4 of the Act.

6. That the following are the payments that I have received from, and the credits that I have allowed to, the debtor within the three months ~~(or, if the creditor and the debtor are related within the meaning of section 4 of the Act, within the 12 months)~~ immediately before the date of the initial

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PRICEWATERHOUSECOOPERS 

bankruptcy event within the meaning of Section 2 of the Act. (Provide details of payments and credits.)

(a) \$418,910.43 in payments from Hickman; and

(b) \$214.18 in credits allowed to Hickman.

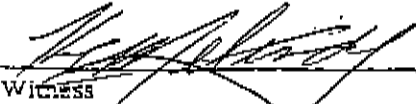
(See Schedule "B"). These payments were in the ordinary course, were for ongoing consideration, and were regarding assets owned by the creditor, and/or with respect to which it maintained security.  
(Applicable only in the case of the bankruptcy of an individual)

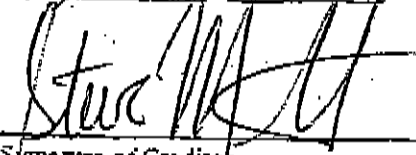
( ) I request to be advised of any material change in the financial situation of the bankrupt pursuant to subparagraph 102(3)(b)(i) of the Act.

( ) I request to be advised of any amendment made regarding the amount that the bankrupt is required to pay, pursuant to subsection 68(4) of the Act.

( ) I request that a copy of the report filed by the trustee regarding the bankrupt's application for discharge pursuant to subsection 170(1) of the Act be sent to the above address.

Dated at Montreal, this 16 day of April, 2002

  
Witness

  
Signature of Creditor

NOTE: If an affidavit or solemn declaration is attached, it must have been made before a person qualified to take affidavits or solemn declarations.

WARNINGS: A trustee may, pursuant to subsection 125(3) of the Act, redeem a security on payment to the secured creditor of the debt or the value of the security as assessed, in a proof of security, by the secured creditor.

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

PLEASE COMPLETE GENERAL PROXY ON REVERSE SIDE (IF APPLICABLE)

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PRICEWATERHOUSECOOPERS 

General Proxy  
(Paragraphs 51(1)(e) and 66.15(3)(b) and  
subsection 102(2) of the Act)

XX United Rentals of Canada, Inc. (name of creditor), of  
Mount Pearl, NF (name of town or city),

a creditor in the above matter, hereby appoint Steve Menchenton of United Rentals of Canada, Inc.,  
or failing him any lawyer at Patterson Palmer Hunt Murphy, to be my general proxy in the above matter, except as  
to the receipt of dividends, with (or without) power to appoint another general proxy in his or her place.

Dated at Mount Pearl, this 16 day of April, 20 02

Witness

Individual Creditor

United Rentals of Canada, Inc.  
Name of Corporate Creditor

Witness

Per:

Name and Title of Signing Officer



## Schedule "A"

Cust.#	CustName	RunDate	Loc.	Contract #	Contract Date	Current	30	60	90	Over 120	Total	Days Old
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	17526676-001	04/24/2001					28.07	28.07	262
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	20558124-001	09/04/2001					52.78	52.78	129
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	20650911-001	09/06/2001					12.59	12.59	127
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	20651404-001	09/06/2001					28.11	28.11	127
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	20681281-001	09/11/2001					70.38	70.38	122
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	20894888-001	09/17/2001				30.12		30.12	116
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	20910956-001	09/18/2001				194.93		194.93	115
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	20940773-001	09/19/2001				247.37		247.37	114
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	21098987-001	09/26/2001				2.09		2.09	107
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	21126145-001	09/27/2001				16.56		16.56	106
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	21253859-001	10/03/2001				188.26		188.26	100
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	21262495-001	10/03/2001				16.73		16.73	100
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	21294942-001	10/04/2001				2012.07		2012.07	99
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	21562037-001	10/16/2001			290.37			290.37	87
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	21576641-001	10/17/2001			18.69			18.69	86
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	21600819-001	10/18/2001			39.14			39.14	85
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	22031743-001	11/07/2001			59.51			59.51	66
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	22094896-001	11/09/2001			31.16			31.16	63
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	22505747-001	12/05/2001		96.30				96.30	37
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	22612762-001	12/07/2001		41.79				41.79	35
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	22662762-001	12/11/2001		49.06				49.06	31
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	22663425-001	12/12/2001	26.40					26.40	30
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	22708679-001	12/18/2001	82.80					82.80	24
208909	HICKMAN EQUIP(1985)LTD. (G/F)	01/11/2002	793	23013957-001	01/04/2002	28.18					28.18	7
						137.38	187.15	438.87	2708.15	191.93	3,663.48	

## Schedule "A"

Qust#	CustName	Rundate	Loc.	Contract#	Contract Date	Current	30	60	90	over 120	Total	Days Old
208910	HICKMAN EQUIP (1985)LTD. (C/B)	01/11/2002	792	19870735-001	08/02/2001					23.92	23.92	162
208910	HICKMAN EQUIP (1985)LTD. (C/B)	01/11/2002	792	20908892-001	10/08/2001				227.24		227.24	95
208910	HICKMAN EQUIP (1985)LTD. (C/B)	01/11/2002	792	21882659-001	10/31/2001			12.05			12.05	72
208910	HICKMAN EQUIP (1985)LTD. (C/B)	01/11/2002	792	21926444-001	11/01/2001			17.20			17.20	71
208910	HICKMAN EQUIP (1985)LTD. (C/B)	01/11/2002	792	21934344-001	11/02/2001			105.75			105.75	70
208910	HICKMAN EQUIP (1985)LTD. (C/B)	01/11/2002	792	20908892-002	11/05/2001			227.24			227.24	67
208910	HICKMAN EQUIP (1985)LTD. (C/B)	01/11/2002	792	21781623-001	11/17/2001		136.16				136.16	55
208910	HICKMAN EQUIP (1985)LTD. (C/B)	01/11/2002	792	22356586-001	11/23/2001		6.04				6.04	49
208910	HICKMAN EQUIP (1985)LTD. (C/B)	01/11/2002	792	22411238-001	11/27/2001		12.01				12.01	45
208910	HICKMAN EQUIP (1985)LTD. (C/B)	01/11/2002	792	22435737-001	11/28/2001		4.00				4.00	44
208910	HICKMAN EQUIP (1985)LTD. (C/B)	01/11/2002	792	22455530-001	11/29/2001		6.85				6.85	43
208910	HICKMAN EQUIP (1985)LTD. (C/B)	01/11/2002	792	20908892-003	12/03/2001		227.35				227.35	39
208910	HICKMAN EQUIP (1985)LTD. (C/B)	01/11/2002	792	22576914-001	12/06/2001		2.25				2.25	36
208910	HICKMAN EQUIP (1985)LTD. (C/B)	01/11/2002	792	22685667-001	12/12/2001	27.26					27.26	30
208910	HICKMAN EQUIP (1985)LTD. (C/B)	01/11/2002	792	22717445-001	12/13/2001	20.57					20.57	29
208910	HICKMAN EQUIP (1985)LTD. (C/B)	01/11/2002	792	21781623-002	12/15/2001	136.16					136.16	27
208910	HICKMAN EQUIP (1985)LTD. (C/B)	01/11/2002	792	22765634-001	12/17/2001	7.01					7.01	25
208910	HICKMAN EQUIP (1985)LTD. (C/B)	01/11/2002	792	22801633-001	12/18/2001	3,450.00					3,450.00	24
208910	HICKMAN EQUIP (1985)LTD. (C/B)	01/11/2002	792	22811975-001	12/19/2001	7.37					7.37	23
208910	HICKMAN EQUIP (1985)LTD. (C/B)	01/11/2002	792	21781623-004	12/21/2001	136.16					136.16	21
208910	HICKMAN EQUIP (1985)LTD. (C/B)	01/11/2002	792	20908892-004	12/31/2001	227.35					227.35	11
208910	HICKMAN EQUIP (1985)LTD. (C/B)	01/11/2002	792	23063110-001	01/08/2002	9.15					9.15	3
						3,748.71	394.66	362.24	227.24	23.92	4,756.77	
						3884.87						

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Printed on 01/18/2002

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HickmanEquip accts as of 1.11.021, 208910CamerBrook

## Schedule "A"

Cust#	Cust Name	Run Date	Loc.	Contract #	Contract Date	Current	30	60	90	over 120	Total	Days Old
208911	HICKMAN EQUIP (1985)LTD. (M/P)	01/11/2002	640	-017						595.80	595.80	207
208911	HICKMAN EQUIP (1985)LTD. (M/P)	01/11/2002	791	18818067-001	06/18/2001					33.18	33.18	207
208911	HICKMAN EQUIP (1985)LTD. (M/P)	01/11/2002	640	-019						776.26	776.26	
208911	HICKMAN EQUIP (1985)LTD. (M/P)	01/11/2002	791	19936401-001	08/04/2001					73.12	73.12	160
208911	HICKMAN EQUIP (1985)LTD. (M/P)	01/11/2002	791	19962801-001	08/06/2001					110.98	110.98	158
208911	HICKMAN EQUIP (1985)LTD. (M/P)	01/11/2002	794	18428932-004	09/11/2001					415,087.90	415,087.90	122
208911	HICKMAN EQUIP (1985)LTD. (M/P)	01/11/2002	791	20815081-001	09/13/2001				25.62		25.62	120
208911	HICKMAN EQUIP (1985)LTD. (M/P)	01/11/2002	794	21305822-001	10/04/2001				8,050.00		8,050.00	99
208911	HICKMAN EQUIP (1985)LTD. (M/P)	01/11/2002	794	21718837-001	11/05/2001			243.80			243.80	67
208911	HICKMAN EQUIP (1985)LTD. (M/P)	01/11/2002	794	18428932-008	11/06/2001			415,087.90			415,087.90	66
208911	HICKMAN EQUIP (1985)LTD. (M/P)	01/11/2002	794	18428932-009	12/04/2001		415,189.15				415,189.15	38
							415,189.15	415,331.70	8,075.62	416,677.24	1,255,273.71	

## Schedule "A"

Cust.#	Cust.Name	Rundate	Loc.	Contract #	Contract Date	Current	30	60	90	over 120	Total	Days Old
208912	HICKMAN EQUIP (1985) LTD. (G/B)	01/11/2002	794	21071471-001	09/25/2001				75.57		75.57	108
208912	HICKMAN EQUIP (1985) LTD. (G/B)	01/11/2002	794	21153045-001	09/28/2001				213.54		213.54	105
208912	HICKMAN EQUIP (1985) LTD. (G/B)	01/11/2002	794	21186079-001	09/29/2001				137.59		137.59	104
208912	HICKMAN EQUIP (1985) LTD. (G/B)	01/11/2002	794	21755243-001	10/25/2001			194.06			194.06	78
208912	HICKMAN EQUIP (1985) LTD. (G/B)	01/11/2002	794	21785358-001	10/26/2001			49.13			49.13	77
208912	HICKMAN EQUIP (1985) LTD. (G/B)	01/11/2002	794	21702813-001	11/05/2001			893.70			893.70	67
208912	HICKMAN EQUIP (1985) LTD. (G/B)	01/11/2002	794	22061122-001	11/08/2001			176.46			176.46	64
208912	HICKMAN EQUIP (1985) LTD. (G/B)	01/11/2002	794	22100816-001	11/09/2001			2.53			2.53	63
208912	HICKMAN EQUIP (1985) LTD. (G/B)	01/11/2002	794	22233547-001	11/16/2001		67.48				67.48	56
208912	HICKMAN EQUIP (1985) LTD. (G/B)	01/11/2002	794	22555005-001	12/05/2001		84.40				84.40	37
208912	HICKMAN EQUIP (1985) LTD. (G/B)	01/11/2002	794	23064000-001	01/08/2002	83.27					83.27	3
208912	HICKMAN EQUIP (1985) LTD. (G/B)	01/11/2002	794	23064000-002	01/09/2002	78.02					78.02	2
						5.25	151.88	1,315.88	426.70		1,899.71	

## Schedule "A"

Cust.#	Cust.Name	Rundate	Loc.	Contract#	Contract Date	Current	30	60	90	over 120	Total	Days Old
535070	HICKMAN EQUIPMENT (WABUSH)	01/11/2002	793	21326995-001	10/05/2001				59.51		59.51	98
535070	HICKMAN EQUIPMENT (WABUSH)	01/11/2002	793	99999999-001	12/25/2001	0.89					0.89	17
						0.89			59.51		60.40	

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HickmanEquip acct's as of 1.11.02 | 535070Wabush

## Schedule "B"

## Hickman Equipment A/P invoices

Invoice No.	Inv Amt
M18625	19.76
M18655	10.74
M18656	7,360.00
M18694	265.42
M18704	43.88
M18705	172.38
M18745	25.84
M18746	132.10
M18769	48.16
M18776	8.35
M18860	37.45
R19801	189.75
R19802	977.50
W49354	227.01
W49495	91.77
W49651	282.56
B09756	-846.40
B10275	226.90
B10297	133.98
B10357	64.72
D06181	4,427.50
D06182	2,178.68
D06282	105.84
M18335	121.37
R19739	201.82
W48791	3,045.79
W48989	170.26
W49374	713.85
D05962	23.92
D06141	197.73
D06142	13.14
DM-8161 V	-2,185.00
F10863	100.86
M18553	56.12
M18578	-14.54
PICPAK	20.01
R19779	2,418.65
R19780	1,938.45
R19781	201.82
W48006	6,285.04
W49373	-713.85
B09399	1,424.85
B09532	264.40
B09731	447.84
B09778	-203.55
B09804	130.66
B09954	82.04

## Schedule "B"

## Hickman Equipment A/P invoices

Invoice No.	Inv Amt
B10152	142.14
B10169	299.23
B10298	-133.98
D05564	220.68
D05707	336.38
D05879	191.87
D06022	24.77
D06023	27.88
F10039	52.49
F10203	168.97
F10265	-52.49
M14080	292.68
M17200	38.24
M17289	165.39
M17348	367.08
M17353	134.98
M17354	7.13
M17534	44.34
M17574	46.46
M17640	41.17
M17652	67.01
M17666	165.39
M17675	55.61
M17698	82.64
M17703	953.87
M17704	41.17
M17744	53.59
M17745	69.23
M17822	26.28
M17825	6.90
M17933	86.39
M17941	532.64
M17942	89.68
M17961	571.11
M17994	274.05
M18131	56.93
R19443	1,197.54
R19445	7,360.00
R19492	201.82
R19508	177.58
R19509	24.58
R19583	350.00
R19643	2,178.77
R19644	1,692.52
R19649	3,864.00
R19698	177.58
R19699	24.58

**Schedule "B"****Hickman Equipment A/P invoices**

Invoice No.	Inv Amt
R19712	-1,564.00
W44287	267.25
W47210	27,509.84
W47211	36,125.26
W47212	37,941.72
000924	171,350.00
M18953	74.18
M18923	22.97
M18924	473.49
W48498	1,403.18
W47681	550.62
B09777	-148.93
R19719	-613.32
R19686	-1,840.00
B10474	80.73
B10475	51.80
W48498	1,403.18
B10607	106.21
W49485	338.04
	<b>329,254.74</b>



**BACK-UP TO SCHEDULE "A" OF SCHEDULE 1**  
**(Copies of invoices of amounts owing to United Rentals from Hickman)**

**SCHEDULE "A"**  
**TO PROOF OF CLAIM OF**  
**UNITED RENTALS OF CANADA, INC.**  
**("UNITED RENTALS")**  
**IN THE MATTER OF**  
**THE BANKRUPTCY OF**  
**HICKMAN EQUIPMENT (1985) LIMITED**  
**("HICKMAN EQUIPMENT")**

UNSECURED CLAIM as of March 11, 2002  
(See letter dated January 18, 2002 ("Set-Off  
Letter") attached hereto as Schedule 1) \$ 936,399.33

Calculation of UNSECURED CLAIM

1. Aggregate amount owing to United Rentals  
from Hickman Equipment as of January 18, 2002  
(See Schedule "A" to Set-Off Letter) \$1,265,654.07
2. Aggregate amount owing to Hickman Equipment  
from United Rentals as of January 18, 2002  
(See Schedule "B" to Set-Off Letter) \$ 329,254.74
3. Net amount owing to United Rentals  
from Hickman Equipment as of  
January 18, 2002 \$ 936,399.33

## SCHEDULE 1



United Rentals of Canada, Inc.  
Maritime District Office  
1269 Topsail Road, P.O. Box 939  
Mount Pearl, Newfoundland  
A1N 3C9

Tel: 709-748-3319  
Fax: 709-748-3330  
Web: [www.unitedrentals.com](http://www.unitedrentals.com)

January 18, 2002

*By Facsimile*

Hickman Equipment (1985) Limited  
1269 Topsail Road  
P.O. Box 820  
Mount Pearl, Newfoundland  
A1N 3C8

Attention: Mr. Hubert Hunt, Vice-President & General Manager

Dear Mr. Hunt:

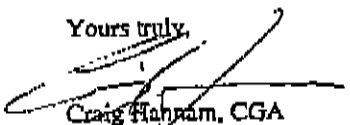
Re: Outstanding Receivables – United Rentals of Canada, Inc. ("United Rentals") and Hickman Equipment (1985) Limited ("Hickman")

Please find attached as Schedule "A" a list of invoices with respect to amounts presently due and owing to United Rentals from Hickman in the aggregate amount of CAD\$1,265,654.07 (the "United Receivable").

In addition, attached as Schedule "B" is a list of invoices with respect to amounts presently due and owing to Hickman from United Rentals in the aggregate amount of CAD\$329,254.74 (the "Hickman Receivable").

United Rentals hereby sets off the Hickman Receivable against the United Receivable, such that the Hickman Receivable has been paid in full, and thereby reducing the United Receivable to CAD\$936,399.33.

Yours truly,

  
Craig Hahnham, CGA  
District Controller, Atlantic Canada District  
United Rentals of Canada, Inc.

**BACK-UP TO SCHEDULE "B" OF SCHEDULE 1**  
**(Copies of invoices of amounts owing to Hickman from United Rentals)**

**HICKMAN  
EQUIPMENT**  
HICKMAN EQUIPMENT (1985) LIMITED  
P.O. BOX 820 MT. PEARL, Nfld. A1N 3C8  
TELEPHONE: (709) 368-8680, FAX (709) 368-1148

B  
R  
A  
N  
C  
H  
E  
S

P.O. BOX 480, GRAND FALLS-WINDSOR, Nfld. A2A 2J8  
TELEPHONE: (709) 489-2581 FAX: (709) 489-7243  
P.O. BOX 1074, CORNER BROOK, Nfld. A2H 6G3  
TELEPHONE: (709) 634-3151 FAX: (709) 634-5889  
P.O. BOX 850, STN "C", GOOSE BAY, LAB. NF. A0P 1S0  
TELEPHONE: (709) 696-8666 FAX: (709) 696-8989  
P.O. BOX 219, WABUSH, Nfld. A0R1B0  
TELEPHONE: (709) 282-3638 FAX: (709) 282-3355

SAME AS BELOW

#68224

UNITED RENTALS (MT. PEARL)  
OF CANADA, INC. #90435  
P.O. BOX 759  
MT. PEARL, NF A1N 2Y2

COPY

Branch 01 - MOUNT PEARL		
Date 11/21/2001	Time 17:51:38 (O)	Page 1
Account No. UNITE001	Phone No. 5195781230	Invoice No. 2 000924
Ship Via	Purchase Order	
Sales Tax License No.	Federal Exemption No.	
		Salesperson PCB

## DESCRIPTION

AMOUNT

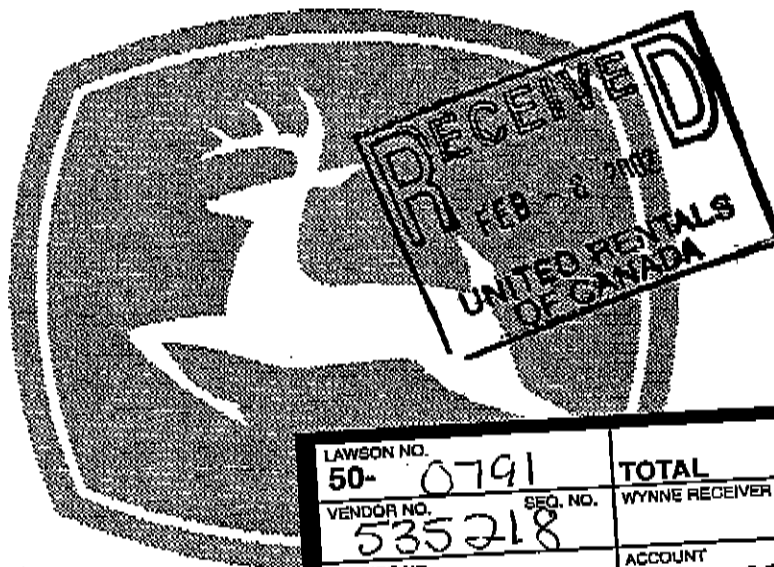
DESCRIPTION

Fold

Lock #: C000886 Serial #: P00160X041476  
IE ONLY JOHN DEERE 160LC EXCAVATOR

149000.00

Subtotal: 149000.00  
15 % H.S.T.: 22350.00  
Total: 171350.00



LAWSON NO. 50- 0791	INVOICE AMOUNT TOTAL 171350.00	
VENDOR NO. 535218	WYNNE RECEIVER NO.	AMOUNT
INVOICE NO. 000924	ACCOUNT SUB 2365093001	149000.00
INVOICE DATE 11/21/01		
DATE TO PAY	GST/HST 9050-20080	22350.00
DISCOUNT	PREPARED BY [Signature]	APPROVED BY [Signature]
% OR \$		

Form AF-002 REV 0000 CANADA

H.S.T. REGISTRATION NO. R102345758

## DISCLAIMER OF WARRANTIES

Any warranties on the product sold hereby are those made by the manufacturer. The seller hereby expressly disclaims all warranties, either express or implied, including and implied warranty of merchantability or fitness for a particular purpose, and the seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of the said products. Any limitation contained herein does not apply where prohibited by law. Title to goods described remain in Vendor's name until fully paid.

GOODS RECEIVED BY

## RECEIVER

PAGE: 1


 PO NUMBER 2365093-001  
2388083

DATE 2/04/02

 THE ABOVE PURCHASE ORDER NUMBER MUST  
APPEAR ON ALL INVOICES, PACKAGES,  
SHIPPING, PAPERS, AND CORRESPONDENCE.

 VENDOR: 535218  
HICKMAN EQUIPMENT (1985) LTD  
PO BOX 820  
MOUNT PEARL, NF A1N-3C8  
709-368-9660

## SHIP TO:

 UNITED RENTALS OF CANADA  
1269 TOPSAIL ROAD  
MOUNT PEARL, NF A1N 2Y2

709-368-7368

DATE REQUIRED	F.O.B. POINT	PAYMENT TERMS	TAXABLE
CAD	NET 30		NO
SHIP VIA	BUYERS NAME	ORDERED FROM	
	GREENWICH PURCHASING - GC		

Qty	B/O	Item number/Description	Eqp #	U/M	Unit Cost	Extended
1.00		160LC DEERE EXCAVATOR 34,000LB G/L # 1000546571 EQUIPMENT INVENTORY BIN LOC: U/M: EA Eqp #: 389034 Ser #: P00160X041476 Type: N RENTAL CER#02-791-001	389034		149000.000	149000.00

 ALL INTERNAL COMBUSTION ENGINES MUST BE  
CERTIFIED AS TO MEET US ENVIRONMENTAL  
PROTECTION AGENCY EMISSION REQUIREMENT  
AND HAVE A PROPER ENGINE EMISSIONS LABE  
BILL TO SHIPPING LOCATION  
PLEASE CONFIRM ORDER & PRICING  
CONFIRM BY FAX#203-618-7386  
ATTENTION GLORIA CASTRO

P.O. Total: 149,000.00

 2/04/02 12:12:18 Ordered by: GREENWICH PURCHASING - GC  
Ordered for: PAT MYERS

ent By: UNITED RENTALS NE;

508 366 7225;

Jan-21-02 9:59AM;

Page 1/1

MAY 6:1959

9:28AM

MICHIGAN RENT ALLS

NO. 273

P. 1/1

## United Rentals' Capital Expenditure Request

Date of Request <b>JAN 18/02</b>	Location Name and Number <b>MOUNT PEARL #791</b>	Requested By: <b>PAT MYERS</b>	CER # <b>02-791-DDH</b>
Type of Asset (Circle One) <b>Rental</b> Delivery Transportation Other Transportation Machinery Leasehold Improvements Furniture Computer Building Land Building Improvements Land Improvements		Type of Purchase (Circle One) Transfer from Inventory Purchase Capital Lease Operating Lease Rent to Purchase	
Order Quantity <b>1</b>	Asset Description <b>EXCAVATOR</b>	Asset Make <b>JOHN DEERE</b>	Asset Model <b>160 LC</b>
Cost per Item <b>149,000.00 L.V.</b>	Total Cost <b>\$149,000.00 L.V.</b>	New or Used <b>NEW</b>	Budgeted (Circle One) <b>Yes</b> No
To be Completed for Rental Assets Only			
Reason <b>Growth</b> Purchase (Circle One) Maintenance	Estimated Delivery Date <b>JUNE</b>	Avg Annual Revenue Each <b>\$60,000.00</b>	Last 12 Month Last Revenue
Current Fleet Size of this Category <b>0</b>	Rental Category <b>905-130</b>	Average Age of Category <b>N/A</b>	Re Rent Cost Last 12 Months
		Re Rent Type (Circle One) Internal 3 <sup>rd</sup> Party	
Explanation (reasons for need, verified not available at other URI locations, etc.) <b>REQUIRED FOR WATER &amp; SEWER PROJECTS FOR 2002.</b>			
Vendor <b>HILTI EQUIPMENT (1985) LTD.</b>		Branch Manager Approval <b>[Signature]</b>	
		District Manager/Controller Approval <b>[Signature]</b>	
Vendor Terms <b>N 30 DAYS</b>		Region Manager/Controller Approval <b>[Signature]</b>	
		President/CFO Approval <b>[Signature]</b>	

(1) Once completed forward to next approval required as follows:

Rental Assets, Transportation and Machinery

- All Rental, Transportation and Machinery or Major Repairs of \$5,000 or greater Original Cost (2)
- All Rental, Transportation and Machinery of \$10,000 or greater Original Cost or Major Repairs of \$10,000 or greater Original Cost
- All \$25,000 or greater Original Cost or when 10% of annual budget has been expended or committed and \$5,000 or greater Original Cost
- All when 100% of annual budget has been expended or committed.

Company Assets, Leasehold Improvements and Machinery

- All Company Assets (3) or Leasehold Improvements of \$1,000 or greater Original Cost (2) or Land and/or Building of up to \$50,000 Original Cost
- All Company Assets of \$5,000 or greater Original Cost
- All Company Assets of \$25,000 or greater Original Cost or when 10% of annual budget has been expended or committed and \$5,000 or greater Original Cost
- All when 100% of annual budget has been expended or committed and Land and/or Building \$50,000 or greater Original Cost

(2) Final approval sends (or emails) back to Branch Manager for processing.

Branch Manager

District Manager

Region Manager

President or CFO

Branch Manager

District Manager or Controller  
Region Manager or Controller

President or CFO

President and John Miller (2)

**FAXED**  
1/21-8:35 PM  
TO CT

# HICKMAN EQUIPMENT

HICKMAN EQUIPMENT (1985) LIMITED

P.O. BOX 820 MT. PEARL, Nfld. A1N 3C8  
TELEPHONE: (709) 368-9660, FAX (709) 368-1146B  
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P.O. BOX 490, GRAND FALLS-WINDSOR, Nfld. A2A 2J8  
TELEPHONE: (709) 489-2561 FAX: (709) 489-7243  
P.O. BOX 1074, CORNER BROOK, Nfld. A2H 6G3  
TELEPHONE: (709) 634-3161 FAX: (709) 634-5889  
P.O. BOX 860, STN "C", GOOSE BAY, LAB. NF. A0P 1S0  
TELEPHONE: (709) 896-8666 FAX: (709) 896-8888  
P.O. BOX 219, WABUSH, Nfld. A0R1B0  
TELEPHONE: (709) 282-3638 FAX: (709) 282-3355

COPY

# 66466

UNITED RENTALS (STEPHENVI)  
OF CANADA, INC. #E02  
3A ATLANTIC AVE.  
STEPHENVILLE, NF A2M 2Z4

Branch CORNER BROOK		CNNYYY
Date 10/19/01	Time 15:13:46 (O)	Page 01
Account No. UNITE009	Phone No. 519 5781230	Invoice No. B09399
Ship Via STEPHENVILLE	Purchase Order 236602	
Sales Tax License No.	Federal Exemption No.	
		Salesperson ALP

## DESCRIPTION

RDER#: 010554

FREIGHT TERMS:

Fold —

ART#	DESCRIPTION	BIN	ORD	ISS	SHF	B/O	UTT	PRICE	AMOUNT
38H3231-13	T38 10FT STEEL	FL	(2)	4	4	4	*	163.00	652.00
38C55191	T38 COUPLING	1B 2	(1)	2	2	2	*	35.00	70.00
R51250678	31/2B45 PRI BIT	(2)	2	2	2	2	*	177.00	354.00
387500380	SHANK	1A 1	(1)	2	2	2	*	81.50	163.00
NOTE: T387500380 IS A REPLACEMENT FOR IR51781169									

02216927

600525148116140043

Returned

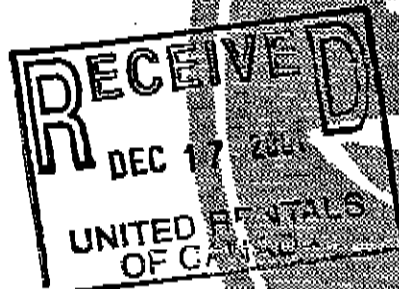
SUB TOTAL==&gt; 1239.00

15% H.S.T. 185.85

TOTAL HDC 1424.85

Bal charged

to what was (1) T38 Hand Rok.



LAWSON NO. 50-5002	INVOICE AMOUNT TOTAL 1424.85	
VENDOR NO. 535218	SEQ. NO.	WYNNE RECEIVER NO. AMOUNT
INVOICE NO. B09399	ACCOUNT 52020-51	SUB 1239.00
INVOICE DATE Oct 19, 2001		
DATE TO PAY Nov 18, 2001	GST/HST 9050-20080	185.85
DISCOUNT	PREPARED BY KOB	APPROVED BY [Signature]
% OR \$		

Form 41-002 REV 0800 CANADA

## DISCLAIMER OF WARRANTIES

Any warranties on the product sold hereby are those made by the manufacturer. The seller hereby expressly disclaims all warranties, either express or implied, including and implied warranty of merchantability or fitness for a particular purpose, and the seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of the said products. Any limitation contained herein does not apply where prohibited by law. Title to goods described remain in Vendor's name until

J.T./H.S.T. REGISTRATION NO. R102345756

GOODS RECEIVED BY



# HICKMAN EQUIPMENT

**HICKMAN EQUIPMENT (1985) LIMITED**

 P.O. BOX 520 MT. PEARL, Nfld. A1N 3C9  
 TELEPHONE: (709) 368-8680, FAX (709) 368-1146

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 P.O. BOX 480, GRAND FALLS-WINDSOR, Nfld. A2A 2J8  
 TELEPHONE: (709) 489-2381 FAX: (709) 489-7243  
 P.O. BOX 1074, CORNER BROOK, Nfld. A2H 6G3  
 TELEPHONE: (709) 634-3181 FAX: (709) 634-5889  
 P.O. BOX 880, STN "C", GOOSE BAY, LAB. NF. A0P 1S0  
 TELEPHONE: (709) 836-8686 FAX: (709) 836-8999  
 P.O. BOX 218, WABUSH, Nfld. A0R1B0  
 TELEPHONE: (709) 282-3638 FAX: (709) 282-3355

## #65425 COPY

 UNITED RENTALS (C.BROOK)  
 OF CANADA, INC. #90436  
 P.O. BOX 1006  
 CORNER BROOK, NF A2H 6J3

Branch <b>CORNER BROOK</b>		CNNYYY	
Date <b>10/29/01</b>	Time <b>09:59:21 (O)</b>	Page <b>01</b>	
Account No. <b>UNITE003</b>	Phone No. <b>519 5781230</b>	Invoice No. <b>B09532</b>	
Ship Via <b>P/UP</b>		Purchase Order <b>792-3095</b>	
Sales Tax License No.		Federal Exemption No.	
		Salesperson <b>RGR</b>	

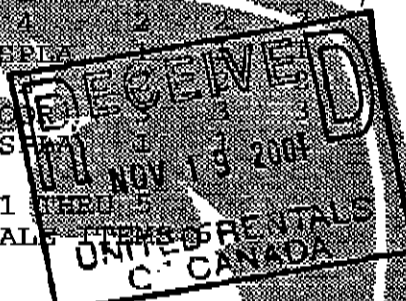
### DESCRIPTION

ORDER#: 010573

FREIGHT TERMS:

Fold →

PART#	DESCRIPTION	BIN	ORD	ISS	SHP	B/O	UTT	PRICE	AMOUNT
Y6396	PLUS 50 OIL	FLOOR	5	5	5		*	11.96	59.80
R120247	RING	C3C33	1	1	1		*	.67	.67
I10143-12-8	FITTING	1M 9	2	2	2		*	8.75	17.50
I381-8-RL	4200PSI HOSE	FLOOR	3	3	3		*	3.74	11.22
H1058	NUT	EN 1	1	1	1		*	.77	.77
7394	OIL FILTER	2B 4	2	2	2		*	15.45	30.90
XTY16041	DEGREASING	TIFFIN	1	1	1		*	7.77	7.77
AR86745	ELEMENT	8A	1	1	1		*	22.95	45.90
Y6396	PLUS 50 OIL	FLOOR	3	3	3		*	15.55	46.65
Y24346	CLNR	DIS	1	1	1		*	8.71	8.71

 PICKED UP BY CRAIG HIGGINS ITEMS 1 THRU 5  
 PICKED UP BY HUBERT HIGGS FOR RESALE ITEMS 6 RENTALS  
 THRU 8, ITEM # 9 FOR SHOP USE.


02228179

600525148100660042

 SUB TOTAL==> 229.89  
 15% H.S.T. 34.51  
 TOTAL HDC 264.40

G.S.T./H.S.T. REGISTRATION NO. R102345758

GOODS RECEIVED BY

PAGE 34/108 \* RCVD AT 2/28/2003 6:53:19 AM [Eastern Standard Time] \* SVR:/3 \* DNIS:8907 \* CSID:7221428 \* DURATION (mm-ss):39-48

LAWSON NO. <b>50- 0792</b>	INVOICE AMOUNT <b>TOTAL 264.40</b>	
VENDOR NO. <b>535218</b>	SEQ. NO.	WYNNE RECEIVER NO. AMOUNT
INVOICE NO. <b>B09532</b>	ACCOUNT <b>52000-11</b>	SUB <b>229.89</b>
INVOICE DATE <b>10 29 01</b>		
DATE TO PAY <b>11 28 01</b>	GST/HST <b>9050-20080</b>	<b>34.51</b>
DISCOUNT	PREPARED BY <i>[Signature]</i>	APPROVED BY <i>[Signature]</i>

**HICKMAN  
EQUIPMENT**  
HICKMAN EQUIPMENT (1986) LIMITED  
P.O. BOX 820 MT. PEARL, Nfld. A1N 3C8  
TELEPHONE: (709) 368-8660, FAX (709) 368-1148

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P.O. BOX 480, GRAND FALLS-WINDSOR, Nfld. A2A 2J9  
TELEPHONE: (709) 489-2561 FAX: (709) 489-7243  
P.O. BOX 1074, CORNER BROOK, Nfld. A2H 6G3  
TELEPHONE: (709) 634-3181 FAX: (709) 634-5889  
P.O. BOX 860, STN "C", GOOSE BAY, LAB. NF. A0P 1S0  
TELEPHONE: (709) 896-8665 FAX: (709) 896-8898  
P.O. BOX 219, WABUSH, Nfld. A0R1B0  
TELEPHONE: (709) 282-3638 FAX: (709) 282-3355

# COPY

UNITED RENTALS (MT. PEARL)  
OF CANADA, INC. #90435  
P.O. BOX 759  
MT. PEARL, NF A1N 2Y2

Branch MOUNT PEARL		CNNYYY	
Date 12/27/01	Time 10:08:35 (O)	Page 01	
Account No. UNITE001	Phone No. 519 5781230	Invoice No. M18625	
Ship Via	Purchase Order 2292241		
Sales Tax License No.	Federal Exemption No.		
			Salesperson RPW

## DESCRIPTION

RDER#: 017808

FREIGHT TERMS:

Fold —

ARTS DEPT 24 HOUR AFTER HOUR PARTS SUPPORT 368-9660 PRESS 2 FOR PARTS DEPT.  
E ARE OPEN ON ---SATURDAYS--- !!!!!!!!!!!!!!!!!!!!!!!  
EERE VALUEPARTS FOR CAT\* KOMATSU\* CASE\* WE CAN SAVE YOU MONEY!!!!!!-----

ART#	DESCRIPTION	BIN	ORD	ISS	SHP	B/O	UTT	PRICE	AMOUNT
1 8276	BEARING	ATB	2	2	2		*	3.22	6.44
1 0091	BEARING	ATB	2	2	2		*	5.37	10.74
SUB TOTAL==>								17.18	
								15 % H.S.T.	2.58
TOTAL POWERPLAN									19.76

02300440

600525148103050043

#67199



G.S.T./H.S.T. REGISTRATION NO. R102345758

GOODS RECEIVED BY

*[Signature]*

Any warrant  
seller hereby  
Implied warrant  
neither assumes  
connection with the  
apply where prohibi  
fine mail

LAWSON NO. 50- 0791	INVOICE AMOUNT TOTAL 19.76	
VENDOR NO. 35218	SEQ. NO. 2292241-002	WYNNE RECEIVER NO. 1718
ACCOUNT SUB		
GST/HST 9050-20080		2.58
PREPARED BY ac	APPROVED BY PM	

**HICKMAN  
EQUIPMENT**  
HICKMAN EQUIPMENT (1985) LIMITED  
P.O. BOX 520 MT. PEARL, Nfld. A1N 3C8  
TELEPHONE: (709) 368-9660, FAX (709) 368-1146

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P.O. BOX 480, GRAND FALLS-WINDSOR, Nfld. A2A 2J9  
TELEPHONE: (709) 489-2561 FAX: (709) 489-7243  
P.O. BOX 1074, CORNER BROOK, Nfld. A2H 6G3  
TELEPHONE: (709) 634-3161 FAX: (709) 634-5889  
P.O. BOX 860, STN "C", GOOSE BAY, LAB. NF. A0P 1S0  
TELEPHONE: (709) 896-8666 FAX: (709) 896-8999  
P.O. BOX 219, WABUSH, Nfld. A0R1B0  
TELEPHONE: (709) 282-3638 FAX: (709) 282-3355

COPY

UNITED RENTALS (MT. PEARL)  
OF CANADA, INC. #90435  
P.O. BOX 759  
MT. PEARL, NF A1N 2Y2

Branch MOUNT PEARL		CNNYYY
Date 01/02/02	Time 11:13:33 (O)	Page 01
Account No. UNITE001	Phone No. 519 5781230	Invoice No. M18655
Ship Via	Purchase Order 2306605	
Sales Tax License No.	Federal Exemption No.	
		Salesperson RPW

## DESCRIPTION

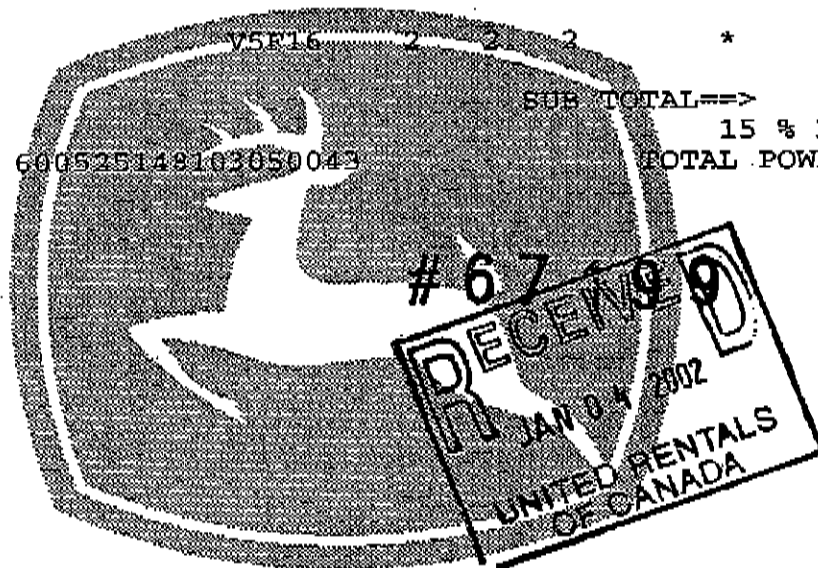
ORDER#: 017904

FREIGHT TERMS:

PARTS DEPT 24 HOUR AFTER HOUR PARTS SUPPORT 368-9660 PRESS 2 FOR PARTS DEPT.  
WE ARE OPEN ON ---SATURDAYS--- !!!!!!!!!!!!!!!!!!!!!!!  
HERE VALUEPARTS FOR CAT\* KOMATSU\* CASE\* WE CAN SAVE YOU MONEY!!!!!!-----

Fold

RT#	DESCRIPTION	BIN	ORD	ISS	SHP	B/O	UTT	PRICE	AMOUNT
145929	KEY	V5F16	2	2	2		*	4.67	9.34
								SUB TOTAL==>	9.34
								15 % H.S.T.	1.40
02303048	600525149103050043							TOTAL POWERPLAN	10.74



LAWSON NO. 50-0791	INVOICE AMOUNT TOTAL 10.74	
VENDOR NO. 535218	SEQ. NO. 236605001	AMOUNT 9.34
INVOICE NO. M18655	ACCOUNT	SUB
INVOICE DATE Jan 2/02		
DATE TO PAY	GST/HST 9050-20080	1.40
DISCOUNT	PREPARED BY DC	APPROVED BY PM
% OR \$		

S.T. REGISTRATION NO. R102345758

GOODS RECEIVED BY:

Steven Boon

Supplier. The  
including and  
the seller  
city in  
rain does not  
name until

# HICKMAN EQUIPMENT

**HICKMAN EQUIPMENT (1985) LIMITED**

 P.O. BOX 520 MT. PEARL, Nfld. A1N 3C8  
 TELEPHONE: (709) 368-8660, FAX (709) 368-1146

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 P.O. BOX 480, GRAND FALLS-WINDSOR, Nfld. A2A 2J6  
 TELEPHONE: (709) 489-2561 FAX: (709) 489-7243  
 P.O. BOX 1074, CORNER BROOK, Nfld. A2H 6Q3  
 TELEPHONE: (709) 634-3181 FAX: (709) 634-5889  
 P.O. BOX 860, STN "C", GOOSE BAY, LAB. NF. A0P 1S0  
 TELEPHONE: (709) 896-8666 FAX: (709) 896-8999  
 P.O. BOX 219, WABUSH, Nfld. A0R1B0  
 TELEPHONE: (709) 282-3638 FAX: (709) 282-3355

SAME AS BELOW

## COPY

DEC 17 2001

 UNITED RENTALS (MT. PEARL)  
 OF CANADA, INC. #90435  
 P.O. BOX 759  
 MT. PEARL, NF A1N 2Y2

Branch <b>MOUNT PEARL</b>		
Date <b>12/12/01</b>	Time <b>10:15:28 (O)</b>	Page <b>01</b>
Account No. <b>UNITE001</b>	Phone No. <b>519 5781230</b>	Invoice No. <b>W49373</b>
Ship Via		Purchase Order
Sales Tax License # <b>67022</b>		Federal Exemption No.
		Salesperson <b>DBB</b>

### DESCRIPTION

STK#		HRS	PIN/EIN	WARRANTY DATE	HRS
?	SKIDSTEER 250	646	KV0250A151306		

REPAIR# 1 C 286 12/12/01 12/12/01

CREDIT NOTE

TO CREDIT WORK ORDER W48425.

CXTY16368	LIQUID GAS	1-	5.95	5.95CR
TY24346	CLNR	4-	8.61	34.84CR
X12FNL-S	FITTING	2-	9.61	19.62CR
X12PNLO-S	FITTING	2-	7.25	14.50CR
X4FNL-S	FITTING	4-	2.61	10.04CR
X4PNLO-S	FITTING	4-	2.65	9.40CR
X6FNL-S	FITTING	1-	2.72	2.74CR
X6PNLO-S	FITTING	1-	3.12	3.12CR
11M7081	COTTER PIN	6-	.06	.36CR
14H1076	NUT	2-	.20	.40CR
19H3065	CAP SCREW	2-	.53	1.06CR



***** WORK ORDER TOTALS *****	
PARTS	102.03CR
LABOR	494.00CR
SHOP SUPPLIES	24.70CR
SUB TOTAL	620.73CR
15 % H.S.T.	93.12CR
TOTAL POWERPLAN	713.85CR

600525148103050043

G.S.T./H.S.T. REGISTRATION NO. R102345758

GOODS RECEIVED BY

LAWSON NO. <b>50-0795</b>	INVOICE AMOUNT <b>713.85</b>	
VENDOR NO. <b>535218</b>	SEQ. NO.	WYNNE RECEIVER NO.
INVOICE NO. <b>W49373</b>	ACCOUNT <b>52020-11</b>	SUB <b>6207</b>
INVOICE DATE <b>12/12/01</b>		
DATE TO PAY	GST/HST <b>9050-20080</b>	<b>93.12</b>
DISCOUNT	PREPARED BY <b>JP</b>	APPROVED BY
% OR \$		

BCCI66F40306-1  
REGISTEREDCanadian Securities Registration Systems (BCCI66)  
July 3, 2001 10:43AM

## REGISTRATION STATEMENT (NEWFOUNDLAND)

## REGISTRATION INFORMATION

Registration Number	Registration Date	Registration Time	Expiry Date
063565	29 JUN 2001	2:43PM	29 JUN 2006
Type of Registration	Life of Registration		
SECURITY AGREEMENT	5 Year		

## PREVIOUS REGISTRIES REGISTRATION INFORMATION

Pre-PPSA Act	Registration Number	County Code	Registration Date
Assignment of Book	16040	0 Not Applicable	16 JAN 1985

## SECURED PARTY INFORMATION

Transit: 82213	PPR Code:
CANADIAN IMPERIAL BANK OF COMMERCE	
95 BAY STREET, SUITE 500	
Toronto, ON Canada M5G 2C2	

## DEBTOR INFORMATION

HICKMAN EQUIPMENT (1985) LIMITED  
PO BOX 820  
Mount Pearl, NF Canada A1N 3C8

## GENERAL COLLATERAL

All accounts, debts, claims, choses in action and receivables; and also all securities, instruments, documents of title, chattel paper, intangibles, money (all as defined in the Personal Property Security Act), bills, notes, and other documents, electronically stored data, books of account, and other books and records, evidencing or relating to the collateral or the proceeds there from which now are or which may at any time hereafter be due to or owing to or owned by the Debtor.  
Proceeds: goods, securities, instruments, documents of title, chattel paper, intangibles, fixtures, money, crops or licenses as defined in Personal Property Security Act, derived directly or indirectly from any dealings with the collateral.

Your Reference :	82213	Billed Amount :	\$72.00
Billed Account :	CUSTOMER - HICKMAN EQUIPMENT (1985) LIMIT 0010		
	00063 00-02801		
	INTERNAL ACCOUNT - 82213 82213 - CIBC Comm Sales		
	(NF)		

No. 3 referred to in the  
affidavit of James A. Kirby  
sworn before me this 29<sup>th</sup> day of  
February 2003.  
A Barrister of the Supreme Court of Nova Scotia

GENERAL ASSIGNMENT OF ACCOUNTS, ETC.

**E. t. c. 2.**

No

169

\_\_\_\_\_

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... 15.03 ...

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### On the Indifference

Atlantic Place, St. John's, Newfoundland  
(Branch Designation) ATLANTIC PL

(Branch Designation)

### ATTENTION PLACE

FOR VALUABLE CONSIDERATION the undersigned

Hickman Equipment, (1985) Limited

(Nauru)

(1) Insert full name of assignor.

of ..... P. O. Box 2130, St. John's, Newfoundland  
(City, Town or Village and Parish) (City, Town or Village and Parish)

(Street number and name, apt. no. QR lot, concession and Township)

(City, Town or Village and rural route)

(Prov./Territory)

hereby assign(s) and transfer(s) all debts, accounts, claims, moneys and choses in action which now are of which may at any time hereafter be due or owing to or owned by the undersigned, and also all securities, bills, notes and other documents now held or owned or which may be hereafter taken, held or owned by the undersigned or anyone on behalf of the undersigned in respect of the said debts, accounts, claims, moneys and choses in action or any part thereof, and also all books and papers recording, evidencing or relating to said debts, accounts, claims, moneys and choses in action or any part thereof (all of the foregoing being herein called the "assigned premises") to CANADIAN IMPERIAL BANK OF COMMERCE (herein called the "Bank") as a general and continuing collateral security for payment of all existing and future indebtedness and liability of the undersigned to the Bank wheresoever and howsoever incurred and any ultimate unpaid balance thereof, and as a first and prior claim upon the assigned premises.

2. The Bank may collect, realize, sell or otherwise deal with the assigned premises or any part thereof in such manner, upon such terms and conditions and at such time or times as may seem to it advisable and without notice to the undersigned (except as otherwise required by any applicable law), and may charge on its own behalf and pay to others reasonable sums for expenses incurred and for services rendered (expressly including legal advices and services) in or in connection with collecting, realizing, selling or obtaining payment of the assigned premises and may add the amount of such sums to the indebtedness of the undersigned.

3. The Bank shall not be liable or accountable for any failure to collect, realize, sell or obtain payment of the assigned premises or any part thereof and shall not be bound to institute proceedings for the purpose of collecting, realizing or obtaining payment of the same or for the purpose of preserving any rights of the Bank, the undersigned or any other person, firm or corporation in respect of the same.

4. The Bank may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the undersigned, debtors of the undersigned, sureties and others and with the assigned premises and other securities as the Bank may see fit without prejudice to the liability of the undersigned or the Bank's right to hold and realize this security.

5. All moneys collected or received by the undersigned in respect of the assigned premises shall be received as trustee for the Bank and shall be forthwith paid over to the Bank.

6. All moneys collected or received by the Bank in respect of the assigned premises (whether by virtue of paragraph 5 hereof or otherwise howsoever) may be applied on account of such parts of the indebtedness and liability of the undersigned as to the Bank seems best or in the discretion of the Bank may be released to the undersigned, all without prejudice to the Bank's claims upon the undersigned.

7. The undersigned shall from time to time forthwith on request furnish to the Bank in writing all information requested relating to the assigned premises and the Bank shall be entitled from time to time to inspect the aforesaid securities, bills, notes, books, papers and other documents or take temporary custody thereof and for such purposes the Bank shall have access to all premises occupied by the undersigned.

8. The undersigned shall from time to time forthwith on the Bank's request do, make and execute all such financing statements, further assignments, documents, acts, matters and things as may be required by the Bank of or with respect to the assigned premises or any part thereof or as may be required to give effect to these presents, and the undersigned hereby constitute and appoints the Manager or acting Manager for the time being of the above mentioned branch of the Bank, or any other branch at which this security is held, the true and lawful attorney of the undersigned irrevocable with full power of substitution to do, make and execute all such statements, assignments, documents, acts, matters or things with the right to use the name of the undersigned whenever and wherever it may be deemed necessary or expedient.

9. The provisions hereof shall enure to the benefit of the successors and assigns of the Bank and shall be binding upon the respective heirs, executors, administrators, successors and assigns of the undersigned.

WITNESS the hand and seal of the undersigned this 4<sup>th</sup> day of Jan 1985.

**Witness:**

APPROVED  
Hans H. [unclear] SEAL

(To be completed for registration in Manitoba, Ontario and Saskatchewan)

FULL NAME AND ADDRESS OF ASSIGNOR(S)	If given by individual(s) record					For Manitoba only Driver's License No. (If Available)
	Initials of ASSIGNOR(S)	Date of Birth For Ontario			Sex M/F	
		Day	Month	Year		
		For Manitoba				
		Year	Month	Day		

## AFFIDAVIT OF BONA FIDES BY BANK OFFICER OR AGENT

CANADA

PROVINCE OF

COUNTY OR DISTRICT OF

To Wit:

I, P. R. Monsen of the City of St. John's in the Province of Newfoundland make oath and say:

1. THAT I am the Account Manager at St. John's in the Province of Newfoundland and the Agent of Canadian Imperial Bank of Commerce, a Corporation, the Assignee named in the within General Assignment of Accounts made by Rickman Equipment (1985) Limited and dated the 4th day of January 19 85

2. THAT I am aware of the circumstances connected with the Assignment and that I have a personal knowledge of the facts deposed to.

3. THAT the said Assignment is bona fide, was executed in good faith and for good and valuable consideration and not for the mere (1) purpose of protecting the book debts and accounts therein mentioned against the creditors of the Assignor therein mentioned, or for the purpose of preventing such creditors from recovering any claims which they have against the Assignor.

4. THAT the Head Office of the said Canadian Imperial Bank of Commerce is at the City of Toronto in the Province of Ontario.

SWORN before me at the City

of St. John's in the Province of

Newfoundland this 9

day of January 19 85

(1) Delete "mere" where Assignment to be registered in Register (Nfld)

## AFFIDAVIT OF WITNESS WHEN EXECUTED BY INDIVIDUAL

CANADA

PROVINCE OF

COUNTY OR DISTRICT OF

To Wit:

I, \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_ in the Province of \_\_\_\_\_ make oath and say: (Occupation)

1. THAT I was personally present and did see the within General Assignment of Accounts, and duplicate thereof, duly executed by (1) \_\_\_\_\_ the Assignor, one of the parties thereto.

2. THAT the said General Assignment of Accounts, and duplicate thereof, were executed at \_\_\_\_\_ in the said Province on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

3. THAT I know the said Assignor, who is in my belief of the full age of eighteen/nineteen (2) years.

4. THAT I am the subscribing witness to the said General Assignment of Accounts and duplicate thereof, and to the due execution thereof, and that the name \_\_\_\_\_ set and subscribed to the execution thereof is in the proper handwriting of me this deponent.

SWORN before me at the \_\_\_\_\_

of \_\_\_\_\_ in the Province of \_\_\_\_\_

this \_\_\_\_\_

day of \_\_\_\_\_ 19 \_\_\_\_\_

A Commissioner, etc.

(1) Insert name of Assignor, but if he carries on business for himself but under a plural or trade name this should be stated, i.e.: "John Smith who carries on business under the name of John Smith & Co."

(2) Delete inappropriate age of majority.

## AFFIDAVIT OF WITNESS WHEN EXECUTED BY PARTNERSHIP

CANADA

PROVINCE OF

COUNTY OR DISTRICT OF

To Wit:

I, \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_ in the Province of \_\_\_\_\_ make oath and say: (Occupation)

1. THAT I was personally present and did see the within General Assignment of Accounts, and duplicate thereof, duly executed on behalf of the firm of \_\_\_\_\_ by \_\_\_\_\_

(1) \_\_\_\_\_ of the partners (2) of the said firm.

2. THAT the said General Assignment of Accounts, and duplicate thereof, were executed at \_\_\_\_\_ in the said Province on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

3. THAT I know the said partner(s) (2) who is/are in my belief of the full age of eighteen/nineteen (3) years.

4. THAT I am a subscribing witness to the said General Assignment of Accounts and duplicate thereof, and to the due execution thereof, and that the name \_\_\_\_\_ set and subscribed to the execution thereof is in the proper handwriting of me, this deponent.

SWORN before me at the \_\_\_\_\_

of \_\_\_\_\_ in the Province of \_\_\_\_\_

this \_\_\_\_\_

day of \_\_\_\_\_ 19 \_\_\_\_\_

A Commissioner, etc.

(1) If the Assignment is executed by all partners fill in the word "all"; otherwise insert the words "one" or "two" as the case may be.

(2) If the Assignment is executed by an attorney he should be described as such and where it occurs in this affidavit the word "partner(s)" etc. changed to "attorney."

(3) Delete inappropriate age of majority.

adian. Securities Registration Systems (ONCIS)  
ember 29, 2001 5:07PM

ONCISF6045-1  
REGISTERED

# REGISTRATION STATEMENT (NEWFOUNDLAND)

## REGISTRATION INFORMATION

Registration Number	Registration Date	Registration Time	Expiry Date
103243	29 NOV 2001	1:54PM	29 NOV 2006
Type of Registration	Life of Registration		
SECURITY AGREEMENT	5 Year		

## PREVIOUS REGISTRIES REGISTRATION INFORMATION

Pre-PPSA Act	Registration Number	County Code	Registration Date
Registration of De	77-70	0 Not Applicable	29 JAN 1985

## SECURED PARTY INFORMATION

Transit: 82213	PPR Code:
Canadian Imperial Bank of Commerce	
95 Bay Street, 5th floor	
Toronto, ON Canada	M5G 2C2

## DEBTOR INFORMATION

HICKMAN EQUIPMENT (1985) LIMITED  
P.O. BOX 820  
Saint Pearl, NF Canada A1N 3C8

## GENERAL COLLATERAL

All of the Debtor's present and after acquired personal property as defined in Personal Property Act.

## ADDITIONAL INFORMATION

Demand debenture dated January 7, 1985, Registration Number Roll 7, Frame 70, Registration Date January 29, 1985, Registrar of deeds, Newfoundland.

Your Reference :	HICKMAN EQUIP DEB	Billed Amount :	\$78.00
Billed Account :	CUSTOMER - HICKMAN	EQUIPMENT (1985) LIMIT	0010
	00063 00-02801		
	INTERNAL ACCOUNT -	82213 82213 - CIBC Comm Sales	
	(NF)		
Account Manager :	AL29		

## POST REGISTRATION SEARCH WAS PERFORMED ON THE FOLLOWING

Debtor Only

No. \_\_\_\_\_  
This is Exhibit "C" referred to in the  
affidavit of James A. Kirby  
sworn before me this 27 day of  
February, 2003.  
[Signature]  
A Barrister of the Supreme Court of Nova Scotia



**DEMAND DEBENTURE**

PRINCIPAL SUM Three Million  
(\$3,000,000.00)

Date 7th January, 1985

Dollars

(Delete  
inapplicable  
clause)

INTEREST ~~For amount payable of \$3,000,000.00~~  
RATE ~~11 1/4~~ (b) 11 1/4 % per annum, being a nominal annual rate 1/4 percentage points above the Minimum Lending Rate (the "MLR") of Canadian Imperial Bank of Commerce (the "Bank") in effect on the date hereof; provided that if and whenever the MLR is varied by the Bank the interest rate hereunder shall also be varied, effective on the day such variation in the MLR comes into effect, so that at all times the interest rate hereunder shall be the said number of percentage points above the MLR then in effect. The certificate of a Vice-President or Assistant General Manager of the Bank as to the MLR in effect at any time shall be accepted as conclusive evidence thereof for all purposes hereof.

BANK BRANCH AND ADDRESS Atlantic Place, Water Street, St. John's,  
Newfoundland

1.1 Hickman Equipment (1985) Limited (the "Company") for value received incorporated under the laws of Newfoundland hereby acknowledges itself indebted and promises to pay on demand to or to the order of CANADIAN IMPERIAL BANK OF COMMERCE (the "Bank") the above mentioned principal sum in lawful money of Canada on presentation and surrender of this debenture at the Bank's branch mentioned above, or at such other place as the Bank may designate by notice in writing to the Company, and in the meantime to pay interest thereon from the date hereof at the above mentioned rate in like money at the same place monthly on the last day of each month; and, should the Company at any time make default in the payment of any principal or interest, to pay interest on the amount in default both before and after judgment at the same rate in like money at the same place on the same dates.

**SECURITY**

(Delete  
inapplicable  
provisions)

2.1 As security for the due payment of all moneys payable hereunder, the Company as beneficial owner hereby:

- ~~(a) grants, assigns, conveys, mortgages and charges as and by way of a first fixed and specific mortgage and charge to and in favour of the Bank, its successors and assigns~~
- (i) all lands and premises now owned by the Company and described or referred to in Schedule A hereto, including all appurtenances, buildings and fixtures now or hereafter situate thereon, and all other lands and premises, including buildings and fixtures, hereafter acquired by the Company; and
- (ii) all machinery, equipment, plant, vehicles, goods and chattels now owned by the Company and described or referred to in Schedule B hereto and all other machinery, equipment, plant, vehicles, goods and chattels, hereafter acquired by the Company; and

~~charges as and by way of a first floating charge to and in favour of the Bank, its successors and assigns, all its undertaking, property and assets, both present and future, of every nature and kind and wherever situate (other than such as are at all times validly subjected to the first fixed and specific mortgage and charge hereby created) including, without limitation, its franchises and uncalled capital.~~

In this debenture, the mortgages and charges hereby constituted are called the "Security" and the subject matter of the Security is called the "Charged Premises".

2.2 Until the Security becomes enforceable, the Company may dispose of or deal with the subject matter of the floating charge in the ordinary course of its business and for the purpose of carrying on the same provided that the Company will not, without the prior written consent of the Bank, create, assume or have outstanding, except to the Bank, any mortgage, charge or other encumbrance on any part of the Charged Premises ranking or purporting to rank or capable of being enforced in priority to or pari passu with the Security, other than any mortgage, lien or other encumbrance upon property, created or assumed to secure all or any part of the funds required for the purchase of such property or any extension or renewal or replacement thereof upon the same property if the principal amount of the indebtedness secured thereby is not increased, or any inchoate liens for taxes or assessments by public authorities.

2.3 The Security shall not extend or apply to the last day of the term of any lease or agreement therefor but upon the enforcement of the Security the Company shall stand possessed of such last day in trust to assign the same to any person acquiring such term.

2.4 The Bank is the person entitled to receive the money payable hereunder and to give a discharge hereof.

**ENFORCEMENT**

3.1 In the event that the Company makes default in the payment of principal or interest hereunder the Security shall become enforceable.

3.2 Whenever the Security has become enforceable, the Bank may realize upon the Security and enforce its rights by the following remedies:

- (a) entry into possession;
- (b) proceedings in any court of competent jurisdiction for the appointment of a receiver (which term as used in this debenture includes a receiver and manager) of all or any part of the Charged Premises;
- (c) proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Charged Premises;
- (d) filing of proofs of claim and other documents to establish its claims in any proceeding

- (e) appointment by instrument in writing of a receiver of all or any part of the Charged Premises and removal or replacement from time to time of any such receiver; and
- (f) any other remedy or proceeding authorized or permitted hereby or by law or equity.

Such remedies may be exercised from time to time separately or in combination and are in addition to and not in substitution for any other rights of the Bank however created.

### 3.3 Any receiver appointed by instrument in writing shall have power to:

- (a) take possession of, collect and get in all or any part of the Charged Premises and, for that purpose, to take proceedings in the name of the Company or otherwise and to make any arrangement or compromise;
- (b) carry on or concur in carrying on all or any part of the business of the Company;
- (c) borrow or to raise money on all or any part of the Charged Premises in priority to this debenture or otherwise for such purposes as may be approved by the Bank; and
- (d) sell or concur in selling all or any part of the Charged Premises without notice and in such manner as may seem advisable to the receiver, and to effect such sale by conveying in the name and on behalf of the Company or otherwise.

The receiver shall be vested with such other discretions and powers as are granted in the instrument of appointment and any supplement thereto. The receiver shall for all purposes be deemed to be the agent of the Company and not of the Bank, and the Company shall be solely responsible for his acts or defaults and for his remuneration. All moneys from time to time received by the receiver may be applied as follows: first, in discharge of all operating expenses and other outgoings affecting the Charged Premises; second, in keeping in good standing all charges and liens on the Charged Premises having priority over the Security; third, in payment of the remuneration and disbursements of the receiver; fourth, in payment to the Bank of the moneys payable hereunder; and the balance, if any, shall be paid to the Company.

### EXPENSES

4.1 The Company agrees to pay to the Bank forthwith on demand all costs, charges and expenses, including all legal fees, (on a solicitor and his own client basis), incurred by the Bank in connection with the recovery or enforcement of payment of any moneys owing hereunder whether by realization or otherwise. All such sums shall be secured hereby and shall be added to the principal hereof and bear interest at the rate in effect hereunder at the date hereof.

### PLEDGE OF DEBENTURE

5.1 This debenture may be deposited or pledged by the Company as collateral security for its indebtedness and liabilities and, when redelivered to the Company or its nominees, shall be forthwith cancelled; but this debenture shall not be deemed to have been redeemed by reason of the account of the Company having ceased to be in debit while this debenture was so deposited or pledged and no payment shall reduce the amount owing under this debenture unless specifically appropriated to and noted on this debenture at the time of payment.

### NEGOTIABILITY

6.1 This debenture is a negotiable instrument and all rights created hereunder are exercisable by any holder hereof.

### WAIVER

7.1 No consent or waiver by the Bank shall be effective unless made in writing and signed by an authorized officer of the Bank.

### NOTICE

8.1 Any notice to the Company may be given by prepaid registered mail to the Company at its head office and any notice so given shall be deemed to have been duly given on the day on which the envelope containing the notice was deposited prepaid and registered in a post office.

Registered 29th day EDM  
 A.D. 19 85 at 1:45 o'clock P.M.  
 Roll 77 Frame 70  
 Fee Paid 150 WITNESS WHEREOF the Company has duly executed this debenture.

*William P. Helms*

Witness:

*W. Helms*

*a. Barnett (Mtd.)*

HICKMAN EQUIPMENT (1985) LIMITED

(Company name)

By:

(Signature and Title)

PRESIDENT AND DIRECTOR

or

Date: January 7th, 1985

(Name of Company)

HICKMAN EQUIPMENT (1985) LIMITED

to

CANADIAN IMPERIAL BANK OF COMMERCE

DEMAND DEBENTURE

*O'Reilly, O'Reilly*  
Solicitors

O'DEA, GREENE  
263 Duckworth Street  
St. John's, Newfoundland

## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** made on and as of February 1, 1999, is entered into by and among: (i) United Rentals of Canada, Inc. ("United"), an Ontario company and wholly owned subsidiary of United Rentals (North America), Inc.; ("United US"); and (ii) Hickman Equipment (1985) Limited ("Hickman" or the "Corporation").

### RECITALS

**WHEREAS** Hickman is engaged in, and carries on the Business under the name "*Hickman Rent-Alls*" in and from eight (8) facilities located in Newfoundland, Canada;

**AND WHEREAS** United wishes to acquire substantially all of the assets of the Business from Hickman;

**AND WHEREAS** certain capitalized terms used in this Agreement (including the recitals and Schedules) shall have the meanings given to them in the Agreement and/or Schedule 1;

**NOW THEREFORE**, in consideration of the mutual agreements, representations, warranties, provisions and covenants herein contained, the parties hereto, each intending to be bound hereby, agree as follows:

### 1. PURCHASE OF ASSETS

**1.1 Assets to be Purchased.** At Closing, Hickman agrees to sell, transfer and assign to United, and United agrees to purchase and accept from Hickman, effective as of 12:01 a.m. on the Closing Date, the Business as a going concern with all related goodwill, all of the property, assets and rights used by Hickman in and to carry on the Business (other than the Excluded Assets), (collectively, the "Purchased Assets"). The Purchased Assets shall include the following:

- (a) **Equipment** - all right, title and interest of Hickman in and to the Equipment including, without limitation, the rental assets (the "Rental Assets") listed in Schedule 1.1(a) (the "Rental Asset Listing") and the new Equipment listed in Schedule 1.4(c) which is not included in the Rental Asset Listing;
- (b) **Agreements** - all contracts with customers, customer lists, files, data and information relating to the customers of the Business;
- (c) **Books and Records** - originals or copies of all books, records, files and documents relating to the Purchased Assets and/or the Business, including without limitation, books of account, ledgers, journals, sales and purchase records, lists of suppliers, credit information, cost and pricing information, business reports, plans and projections and all

No. 0 referred to in the  
This is Exhibit 0 of James A. Kirby  
affidavit of James A. Kirby  
sworn before me this 27 day of  
February, 2003  
A Barrister of the Supreme Court of Nova Scotia

other correspondence, data and information, financial or otherwise, in any format and media whatsoever, related to the Purchased Assets and/or the Business;

- (d) **Goodwill** - the goodwill of the Business together with the exclusive right of United to represent itself as carrying on the Business in continuation of and in succession to Hickman including the exclusive right to the use of the name "*Hickman Rent-Alls*";
- (e) **Intellectual Property** - all trade names, trade secrets, research data, designs, trademarks, business marks, service marks, copyright, proprietary know-how, technical information, specifications and materials in whatever form or media recording or evidencing technology or proprietary information used in or relating to the Business, and all rights and interests in and to all inventions, patents, applications for patents, copyrights, trade mark registrations, logos, industrial designs and other intellectual property used in or relating to the Business, to the extent assignable or transferable, and rights to telephone and facsimile numbers, all of which are listed in Schedule 3.22 (the "Intellectual Property");
- (f) **Contracts** - the full benefit of all contracts relating to the Purchased Assets and/or the Business granted to Hickman by any third party under all contracts and agreements (written or oral), including without limitation, all contracts and agreements listed in Schedule 3.13;
- (g) **Permits and Licences** - the full benefit of all licences, registrations, permits, consents, approvals, qualifications and franchises which Hickman holds which are required by Hickman to own the Purchased Assets and operate the Business (to the extent assignable or transferable), including without limitation, any Governmental Permits;
- (h) **Office Equipment, etc.** - all office equipment and furniture, tools and equipment, and all of Hickman's right, title and interest in and to all other assets used in or relating to the Business;
- (i) **Real Property Leases** - all of Hickman's right, title and interest in and to the Real Properties to be assigned, leased or sub-leased to United;
- (j) **Inventories** - all inventories and other materials and supplies relating to the Business held for resale or parts, the Inventory Value of which is listed in Schedule 1.4(b) (the "Inventory");

- (k) **Pre-paid Expenses** - the full benefit of the prepaid expenses listed in Schedule 1.4(d), other than any pre-paid expenses relevant to Excluded Assets;
- (l) **Computer Hardware** - all computer hardware listed in Schedule 3.11(a); and
- (m) **Vehicles** - all trucks and other vehicles listed in Schedule 3.11(a).

1.2 **Assumed Liabilities** - On the terms and subject to the conditions contained in this Agreement, at Closing, United assumes and shall thereafter pay, perform, discharge and satisfy only the liabilities of Hickman (the "Assumed Liabilities") specifically set out in Schedule 1.2. Without limiting the generality of the foregoing, it is agreed that United will have no liability for, and that Hickman shall remain liable for and shall pay, satisfy, discharge and fulfill, all other obligations existing as at Closing under any of the following obligations or liabilities:

- (a) any trade payables of Hickman;
- (b) liabilities in respect of any indebtedness of Hickman;
- (c) any liability relating to any Excluded Asset;
- (d) product liability claims and liabilities for warranty or product return claims relating to any product, commodity or service of the Business produced, sold, performed or delivered up to and including the Closing Date;
- (e) liabilities for Taxes, duties, levies, assessments and other such charges, including any penalties, interest and fines with respect thereto, payable, collectible or remittable by Hickman to any federal, provincial, municipal or other government or governmental agency, authority, board, bureau or commission, domestic or foreign, up to and including the Closing Date in respect of the Business and/or the Purchased Assets, including, without limitation, any Taxes payable, collectible or remittable in respect of or measured by the sale, consumption or performance by Hickman of any product, commodity or service and any taxes in respect of remuneration payable to persons employed in the Business and any employer deductions required by statute to be made by Hickman in respect of remuneration payable to all persons employed in the Business up to and including the Closing Date, including, without limitation, under any employee health tax legislation;

- (f) liabilities for salary, bonus, vacation time or pay in lieu thereof, damages for wrongful dismissal, any other employee compensation and liabilities under any employee benefit plans relating to employment of any employee or former employee of the Business up to and including the Closing Date;
- (g) liabilities for claims for injury, disability, death or workers' compensation arising from or related to employment in the Business up to and including the Closing Date;
- (h) any liability (including environmental, contractual, intellectual property infringement, employee injury, occupational disease or disablement, workers compensation or product or service liabilities) resulting from or arising out of the conduct of the Business and the ownership of the Purchased Assets during the period prior to the Closing Date (whether asserted before or after the Closing Date); and
- (i) any liabilities with respect to any present or future litigation, proceedings, claims or investigation based on any cause of action resulting from or arising out of the conduct of the Business and the ownership of the Purchased Assets during the period prior to the Closing Date.

**1.3 Purchase Price.** The purchase price for the Purchased Assets is CAD21,270,000, subject to adjustment as provided for in Sections 1.4 and 1.5 (the "Purchase Price"). The Purchase Price, less the Hold Back shall be paid by United to Hickman in cash by wire transfer or certified cheque at Closing, all in accordance with the allocations, directions and/or elections set forth in Schedule 1.3, which directions shall include a direction to pay the Closing Date Debt (as defined in Section 1.4(a)).

**1.4 Adjustments to Purchase Price.** The Purchase Price shall be adjusted as follows:

- (a) The Closing Date Debt (as defined in this Section 1.4(a)) shall be subtracted from the Purchase Price. The Closing Date Debt is set forth in Schedule 1.4(a) and includes: (i) the amount of the aggregate debt (excluding trade payables) of Hickman relating to the Business outstanding on the Closing Date to be repaid by United at or immediately after the Closing Date and all prepayment penalties incurred or to be incurred by United in connection with the repayment of any such debt as at the Closing Date; (ii) the aggregate amount of the present value of all capitalized lease obligations relating to the Equipment (determined in accordance with generally accepted accounting principles) of Hickman as at the Closing Date; and (iii) the aggregate amount of the present value, discounted at the lease rate

factor, if known, inherent in the lease or, if the lease rate factor is not known, at the rate charged to Hickman by a third party lender in connection with its most recent borrowing to finance equipment, of all lease obligations of Hickman in respect of the Equipment that are not capitalized lease obligations as at the Closing Date. Schedule 1.4(a) includes wire transfer instructions for, together with pay-off letters or instructions from, creditors whose Closing Date Debt will be repaid by United at Closing.

- (b) The Inventory Value (as defined in Section 1.5(c)) of the Inventory set out in Schedule 1.4(b) as at Closing shall be added to the Purchase Price.
- (c) The invoice value of any new Equipment listed in Schedule 1.4(c), which Equipment was not included in the Rental Asset Listing described in Section 1.1(a) because it was acquired by Hickman after the date of the Rental Asset Listing shall be added to the Purchase Price less the greater of the fair market value (as determined by United and Hickman) and the net proceeds to Hickman received from the sale of Equipment (as defined in Section 1.5(b)) sold between the date of the Rental Asset Listing and the Closing Date.
- (d) The prepaid expenses of the Business listed in Schedule 1.4(d) shall be added to the Purchase Price.

The calculation of the adjustments set forth in this Section 1.4 are attached as Schedule 1.4.

#### 1.5 **Hold Back.**

- (a) CAD2,127,000 of the Purchase Price (the "Hold Back") shall be held back by United for the Hold Back Period (up to 180 days from Closing) for later distribution to Hickman pending (i) the determination of the amount of the Equipment Adjustment, Inventory Adjustment and Real Property Adjustment pursuant to Sections 1.5(b), 1.5(c) and 1.5(e) respectively (collectively, the "Adjustments"); and (ii) satisfaction of the covenant in Section 6.7. Subject to the terms of an agreement, substantially in the form of the agreement attached as Schedule 1.5, to be entered into among United, Hickman and an escrow agent to be mutually agreed upon by such parties (the "Hold Back Agreement"), the Hold Back shall be deposited in a Canadian Schedule I bank and bear interest for the account of the party entitled to payment thereof at the highest rate available for 90 day deposits at such bank. United and Hickman will use reasonable commercial efforts to complete the Adjustments within 90 days after the Closing Date (the "Adjustment



Determination Date"), whereupon United shall notify Hickman of the amount of the Adjustments. If there is no disagreement between United and Hickman regarding the Adjustments, the Hold Back will be adjusted by the amount of such Adjustments and the balance of the Hold Back will be paid to Hickman in accordance with the provisions of the Hold Back Agreement. In the event of any disagreement among United and Hickman regarding the dollar amount of the Adjustments, the Hold Back shall be adjusted by the amount of such Adjustments not in dispute and any portion of the Hold Back, as adjusted, that is not in dispute, shall be paid to Hickman. Promptly upon resolution of any such disagreement in accordance with the terms hereof, the remaining portion of the Hold Back shall be adjusted and Hickman shall be paid any remaining portion of the Hold Back, as adjusted, to which Hickman is entitled. Notwithstanding the foregoing, United shall not be limited to the Hold Back as a sole remedy in the event that any Purchase Price adjustment exceeds the Hold Back.

- (b) The Rental Asset Listing attached as Schedule 1.1(a) sets forth, as of May 31, 1998, the asset description, make, model, original cost and net book value of: (i) all equipment held for lease or rent to customers; and (ii) equipment held for repair parts only, in each case, in respect of the Business (collectively the "Equipment"). The Equipment is Rental Ready (as defined in this Section 1.5(b)). Within 30 days following the Closing Date, United and Hickman jointly shall use reasonable commercial efforts to complete a physical inventory of each item of Equipment on the Rental Asset Listing and on Schedule 1.4(c), including by visiting renters' locations as necessary to inspect such Equipment. The Purchase Price shall be reduced (the "Equipment Adjustment") for each item of Equipment listed on the Rental Asset Listing and on Schedule 1.4(c) which has been sold, is missing, is not Rental Ready, or is otherwise not available for rent to customers at the Closing Date. In the case of missing or unavailable Equipment, the reduction in the Purchase Price shall be equal to the aggregate fair market value (as determined by United and Hickman) of all missing or unavailable Equipment. In the case of Equipment which has been sold, the reduction in the Purchase Price shall be equal to greater of the fair market value of such Equipment (as determined by United and Hickman) and the net proceeds to Hickman received from the sale of such Equipment. With respect to non-Rental Ready Equipment, the Purchase Price shall be adjusted by an amount equal to the lesser of the cost of repairs and replacement value where such Equipment is unserviceable. In the event of a Purchase Price reduction due to an Equipment Adjustment, United shall be entitled to be paid a portion of the Hold Back equal to such

reduction. For purposes of this Agreement, an item of Equipment is "Rental Ready" only if all required maintenance has been performed and it does not require repairs in excess of 2.5% of the original cost to make it operable. Any disputes as to the physical count, replacement value or Rental Readiness of any item of Equipment will, if possible, be resolved while the physical inventory of such Equipment is being taken. Any disputes not so resolved will be resolved by arbitration in accordance with Section 10.

- (c) The Purchase Price shall be adjusted (the "Inventory Adjustment") on a dollar-for-dollar basis pursuant to the procedures set forth below by the amount, if any, by which the Inventory Value of the Inventory included in Schedule 1.4(b) as of the Closing Date is greater or less than the Inventory Value (as such term is hereinafter defined). "Inventory Value" shall mean vendor cost based on the invoice value of Inventory held as at the Closing Date, as determined in accordance with generally accepted accounting principles (no value shall be ascribed to non-saleable or obsolete Inventory). Inventory Value shall be determined pursuant to a physical inventory to be taken as of the Closing Date, and United and Hickman shall use reasonable commercial efforts to finalize the Inventory Adjustment on or before the Adjustment Determination Date. Any disputes as to the physical condition, saleability or obsolescence of any item of Inventory will, if possible, be resolved by representatives of United and Hickman while such physical inventory is being taken. Any disputes regarding the foregoing not so resolved will be resolved by arbitration in accordance with Section 10.
- (d) The deposit and subsequent distribution of the Hold Back shall be subject to the terms of the Hold Back Agreement.
- (e) Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered costs of fuel with respect to the Real Property for a taxable period that includes but does not end on the Closing Date shall be apportioned between Hickman and United such that Hickman shall be liable for the amount determined by multiplying the Taxes to be apportioned by a fraction, the numerator of which is the number of days in the taxable period up to and excluding the Closing date and the denominator of which is the total number of days in the taxable period and United shall be liable for the balance.

**1.6 Allocation of Purchase Price** - The Purchase Price shall be allocated among the Purchased Assets and the assets set out in Schedules 1.4(b), (c), and (d) as

provided for in Schedule 1.6. United and Hickman shall file their respective tax returns prepared in accordance with such allocation.

**1.7 Payment of Taxes** - United shall be liable for and shall pay all applicable federal and provincial sales taxes, goods and services taxes, harmonized sales taxes and all other taxes (other than income taxes of Hickman), duties and other like charges properly payable upon and in connection with the conveyance and transfer of the Purchased Assets to United. Hickman will do and cause to be done such things as are reasonably requested to enable United to comply with such obligation in an efficient manner.

**1.8 Harmonized Sales Tax**

- (a) Hickman hereby represents and warrants to United that:
  - (i) Hickman is registered for purposes of Part IX of the *Excise Tax Act* (Canada) (hereinafter, in this section, called the "GST Legislation") and its GST Number is R010234758;
  - (ii) the Purchased Assets represent all or substantially all of the property necessary for United to be capable of carrying on a business; and
  - (iii) the Business is a "commercial activity" for the purpose of the GST Legislation.
- (b) United hereby represents and warrants to Hickman that United is registered for purposes of the GST Legislation and its GST number is 868143843RT0001.
- (c) Each of United and Hickman will jointly execute in the prescribed form, and Hickman shall file within the required time, an election under Section 167(1) of the GST Legislation that no tax be payable pursuant to the GST Legislation with respect to the matters contemplated hereunder.

**1.9 Excluded Assets**. For greater certainty, the Purchased Assets shall not include any of the following property and assets of Hickman (collectively "Excluded Assets"):

- (a) cash on hand or in banks or other depositories;
- (b) accounts receivable;
- (c) indebtedness owed to Hickman by the Business;

- (d) income tax instalments paid by Hickman and the right to receive any refund of income taxes and goods and services tax paid by Hickman;
- (e) software, including, without limitation, all rights under licences and other agreements or instruments relating thereto, all related code, specifications, documentation, revisions, enhancements and modifications thereto, in whatever form and media; and
- (f) insurance held by Hickman.

## 2. **CLOSING TIME AND PLACE**

The Closing shall take place upon the execution of this Agreement at the offices of Chalker Green & Rowe, 5th Floor, Baine Johnson Centre, Fort William Place, St. John's, Newfoundland, on the Closing Date. At the Closing, United and Hickman shall deliver to each other the documents, instruments and other items described in Section 5 of this Agreement.

## 3. **REPRESENTATIONS AND WARRANTIES OF HICKMAN**

Hickman represents and warrants to United that each of the following representations and warranties is true and correct as at Closing and agrees, subject to Section 7.2, that such representations and warranties shall survive the Closing.

3.1 **Organization, Standing and Qualification.** Hickman is duly organized, validly existing and in good standing under the jurisdiction of its incorporation. Hickman has full corporate power and authority to own and lease its properties and to carry on the Business as now conducted. Hickman is duly qualified to conduct the Business in each jurisdiction in which the nature of the Business or the Purchased Assets makes such qualification necessary.

3.2 **Authority for Agreement.** Hickman has full right, power and authority to enter into this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement by Hickman has been duly authorized by its Board of Directors or Shareholders as the case may be. This Agreement has been duly and validly executed and delivered by Hickman and, subject to due authorization, execution and delivery by United, constitutes the legal, valid and binding obligation of Hickman.

3.3 **No Breach or Default.** Execution and delivery by Hickman of this Agreement, and the consummation by Hickman of the transactions contemplated hereby, do not and will not:

- (a) result in the breach of any of the terms or conditions of, or constitute a default under, or allow for the acceleration or termination of, or in

any manner release any party from any obligation under, require any consent under, result in any lien, claim, or encumbrance on the assets of Hickman under any mortgage, lease, note, bond, indenture, or material contract, agreement, license or other instrument or obligation of any kind or nature to which Hickman is a party, or by which Hickman is bound, or by which any of its assets, is or may be bound or affected;

- (b) violate any law or any order, writ, injunction or decree of any court, administrative agency or governmental authority, or require the approval, consent or permission of any governmental or regulatory authority;
- (c) violate any provision of the Articles, Bylaws, other constating documents or resolutions of the Board of Directors (or any committee thereof) or shareholders of Hickman; or
- (d) result in the creation or imposition of any encumbrance on the Purchased Assets.

**3.4 Liabilities.** Schedules 3.4(b), (c) and (d) are accurate lists and descriptions of all liabilities of Hickman described in accordance with Sections 3.4(b), (c) and (d) below:

- (a) There are no liabilities (contingent or otherwise) of Hickman and/or its Affiliates of any kind whatsoever in respect of which United may become liable on or after the consummation of the transactions contemplated by this Agreement, except for the Assumed Liabilities.
- (b) Schedule 3.4(b) lists all liens, claims and encumbrances secured by or otherwise affecting any Purchased Assets, including a description of the nature of such lien, claim or encumbrance, the amount secured if it secures a liability, the nature of the obligation secured, and the party holding such lien, claim or encumbrance.
- (c) Schedule 3.4(c) lists and to the extent not otherwise included in Schedule 3.4(b): (i) all personal property leasehold interests and (ii) the Third Party Leases to be assigned or sub-let in part to United in accordance with the leases or sub-leases, as applicable, appended hereto as Schedule 3.4(c) to which Hickman is a party as lessor or lessee.
- (d) Schedule 3.4(d) lists all claims, suits and proceedings which are pending against Hickman relating to the Business and, to the knowledge of Hickman, all contingent liabilities and all claims, suits and proceedings threatened against Hickman relating to the

Business. For each such liability, the following is provided in Schedule 3.4(d):

- (i) a summary description of such liability together with copies of all material documents, reports and other records relating thereto;
- (ii) all amounts claimed or relief sought with respect to such liability and the identity of the claimant; and
- (iii) without limitation of the foregoing, (A) the name of each court, agency, bureau, board or body before which any such claim, suit or proceeding is pending, (B) the date such claim, suit or proceeding was instituted, (C) the parties to such claim, suit or proceeding, (D) a description of the factual basis alleged to underlie such claim, suit or proceeding, including the date or dates of all material occurrences, (E) the amount claimed and other relief sought, and (F) all material pleadings, briefs and other documents relating thereto to the extent the same are in the possession or under the control of Hickman.

**3.5 Equipment.** The Rental Asset Listing attached as Schedule 1.1(a) lists all of the Equipment as of May 31, 1998 including the asset description, make, model and original cost. All other Equipment acquired or disposed of after May 31, 1998 is listed in Schedule 1.4(c).

**3.6 Permits and Licenses.**

- (a) Schedule 3.6(a) is a full and complete list, and includes copies, of all Governmental Permits owned by, issued to, held by or otherwise benefiting Hickman in respect of the Business as of the Closing Date. Any material conditions to the Governmental Permits and, if applicable, the expiration dates thereof, are also described in Schedule 3.6(a). Schedule 3.6(a) also sets forth the name of any third party from whom Hickman or United must obtain any Required Governmental Consents in order to effect a direct or indirect transfer of the Governmental Permits required as a result of the consummation of the transactions contemplated by this Agreement. Except as set forth in Schedule 3.6(a), all of Governmental Permits enumerated and listed in Schedule 3.6(a) are adequate for the operation of the Business and of each Real Property as presently operated and are valid and in full force and effect. All of said Governmental Permits and agreements have been duly obtained and are in full force and effect, and there are no proceedings pending or, to the knowledge of Hickman, threatened which may result in the

revocation, cancellation, suspension or adverse modification of any of the same. Hickman has no knowledge of any reason why all such Governmental Permits and agreements will not be transferable or assignable to United on or before the consummation of the transactions contemplated hereby.

- (b) Schedule 3.6 (b) lists the Real Properties used by Hickman in the Business, the occupancy and use of which is being sublet, assigned or leased by United. Except as otherwise disclosed in Schedule 3.6 (b):
- (i) each Real Property is fully licensed, permitted and authorized to carry on the Business under all applicable federal, provincial and local statutes, orders, approvals, zoning or land use requirements, rules and regulations and there is no non-conforming use or other activities subject to any restrictions regarding reconstruction;
  - (ii) all activities and operations at the Real Properties are being and have been conducted in compliance in all material respects with the requirements, criteria, standards and conditions set forth in all applicable federal, provincial and local statutes, orders, approvals, permits, zoning or land use requirements and restrictions, variances, licenses, rules and regulations;
  - (iii) the Real Properties are all of the real properties currently owned and/or used legally and/or beneficially by Hickman in respect of the Business and are legally described in Schedule 3.6(b) hereof, which Schedule includes all leases, outstanding mortgages, other Encumbrances and the Surveys/Site Plans in the possession or control of Hickman, which when delivered will accurately depict the respective Real Properties;
  - (iv) there are no circumstances, conditions or reasons which are likely to be the basis for revocation or suspension of any site assessment, permits, licenses, consents, authorizations, zoning or land use permits, variances or approvals relating to the Real Properties; and
  - (v) there are no material physical or mechanical defects in or on any Real Property and each such Real Property is in good condition and repair.

3.7 **No other Purchase Agreements** - No person other than United has any agreement, option, understanding or commitment, or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement, option or commitment, for the purchase or other acquisition from Hickman of any of the Purchased Assets or property of the Business or any rights or interest therein, including without limitation, the right to purchase any Equipment pursuant to an outstanding rental contract.

3.8 **Shareholders' Agreements, etc.** - There are no shareholders' agreements, pooling agreements, voting trusts or other similar agreements which relate in any way to the ownership of or sale of the Purchased Assets or property of the Business.

3.9 **Title to Assets** - Subject to payment of the Closing Debt Date, Hickman is the owner of, and has good and marketable title to, all of the Purchased Assets including the assets listed in Schedules 1.4(b) and (c) hereof free and clear of all Encumbrances whatsoever except Permitted Liens and the Assumed Liabilities, and subject to the requirement to obtain the consents listed in Schedule 3.6(a) hereto in respect of any transfer thereof.

3.10 **Bankruptcy** - Hickman is not insolvent and has not committed an act of bankruptcy, taken any proceedings to have itself declared bankrupt or wound-up, taken any proceeding to have a receiver appointed over any or all of its assets, had any encumbrancers take possession of any of its property, had any execution or distress become enforceable or become levied upon any of its property or assets or, to Hickman's knowledge, had any petition for a receiving order in bankruptcy filed against it.

3.11 **Fixed Assets and Real Property**.

- (a) Schedule 3.11(a) lists substantially all the fixed assets (other than Real Property and Equipment included in the Rental Asset Listing or in Schedule 1.4(c)) of Hickman used in the Business, including, without limitation, identification of each vehicle by description and serial number, identification of machinery, equipment and general descriptions of parts, supplies and inventory. Except as described in Schedule 3.11(a), to the knowledge of Hickman, all of the equipment (including the Equipment), vehicles and machinery necessary for the operation of the Business is in a state of good repair and maintenance and is in material compliance with all applicable laws, rules and regulations. All such equipment (including the Equipment) is substantially free of actually known defects that would cause it to fail. All leases of fixed assets are in full force and effect and binding upon the parties thereto; neither Hickman nor any other party to such leases is in breach of any of the material provisions thereof.
- (b) Copies of all existing title insurance policies relating to the Hickman Properties, as well as current commitments for title insurance issued



by a title insurance company satisfactory to United with respect to the Hickman Properties together with copies of all of the title exceptions referred to in said commitments are appended to Schedule 3.11(b) hereof.

- (c) Except as described in Schedule 3.11(b) there are no leases, occupancy agreements, options, rights of first refusal or any other agreements or arrangements, either oral or written, that create or confer on any person or entity the right to acquire, occupy or possess, now or in the future, any Real Property, or any portion thereof, or create in or confer on any person or entity any right, title or interest therein or in any portion thereof.
- (d) The use by Hickman of the Real Properties is not in breach of any building, zoning or other statutes, by-laws, ordinances, regulations, covenants, restrictions, rights or easements affecting the Real Properties. All buildings, structures and improvements situated on the Real Properties (i) are in a state of good maintenance and repair; (ii) are located wholly within the boundaries of the Real Properties; and (iii) comply in all material respects with building, zoning and other statutes, by-laws, ordinances, regulations, covenants, restrictions, rights and easements affecting the Real Properties. There are no outstanding work orders, non-compliance orders, deficiency notices or other such notices relative to the Real Properties which have been issued by any regulatory authority, police or fire department, sanitation, environment, labour, health or other governmental authorities, boards or agencies. There are no material or structural repairs or replacements that are necessary or advisable (and, without limiting the foregoing, there are no repairs to, or replacements of, the roof or the mechanical, electrical, heating, ventilating, air conditioning, plumbing or drainage equipment or systems that are necessary or advisable). No part of the Hickman Properties, and to the knowledge of Hickman, no part of any Third Party Lease has been taken or expropriated by any federal, provincial, municipal, school or other competent authority, nor has any notice or proceeding in respect thereof been given or commenced. Each of the Real Properties (i) is fully serviced by utilities having adequate capacities for the normal operations of the Business thereon; and (ii) has adequate rights of access to and from public streets or highways for the operation of the Business in the ordinary course and Hickman is not aware of any fact or circumstance which could result in the termination or restriction of such access. There is no defect or condition affecting the Real Properties (or the soil or subsoil thereof) or any adjoining property, of which Hickman is aware, which materially impairs the current use of any Real Property. There are no local improvement charges or

special levies outstanding in respect of the Hickman Properties or, to the knowledge of Hickman, in respect of any Third Party Lease. All municipal property taxes, local improvement charges, levies and assessments which are due have been paid in full and no other amounts are owing by Hickman in respect of the Real Properties to any governmental authority or public utility, other than current accounts which are not in arrears. All amounts for labour and materials relating to the construction and repair of or on the Real Properties have been paid in full and no one has filed or has a right to file any construction, builders, mechanics or similar lien in respect thereof.

- (e) Hickman as the tenant under each Third Party Lease is exclusively entitled to all rights and benefits as lessee under each Third Party Lease and has not sublet, assigned, licensed or otherwise conveyed any rights in a Third Party Lease or in the leases to any other person. The terms and conditions of the Third Party Leases will not be affected by, nor will any of the leases be in default as a result of the transactions contemplated hereunder. All rental and other payments and other obligations required to be paid and performed by Hickman as a tenant pursuant to the Third Party Leases have been duly paid and performed and none of the parties to the Third Party Leases are in default of any of their obligations thereunder.

**3.12 Acquisition/Disposal of Assets.** Except as indicated in Schedule 1.4(c), since July 28, 1998, Hickman has not acquired or sold or otherwise disposed of any properties or assets which have a value in excess of \$25,000 in the aggregate, or which are material to the operation of the Business as presently conducted, without the prior written consent of United.

**3.13 Contracts and Agreements; Adverse Restrictions.** Schedule 3.13 lists and includes copies of, all material contracts and agreements (other than leases included with Schedule 3.4(c) and documents included with Schedule 3.4(c)) to which Hickman is a party or by which it or any of its property is bound (including, but not limited to, joint venture or partnership agreements, contracts with any labour organizations, promissory notes, loan agreements, bonds, mortgages, deeds of trust, liens, pledges, conditional sales contracts or other security agreements) in each case, in respect of the Business. Except as disclosed in Schedule 3.13, all such contracts and agreements included in Schedule 3.13 are in full force and effect and binding upon the parties thereto and Hickman is entitled to all rights and benefits thereunder.

**3.14 Personnel.** Schedule 3.14 is a complete list of all employees (by type or classification) of Hickman relating to the Business and their respective rates of compensation, including (i) the portions thereof attributable to bonuses, (ii) any other salary, bonus, stock option, equity participation, or other compensation arrangement made

with or promised to any of them, and (iii) copies of all employment agreements with non-union directors, officers and employees, and length of service. None of the employees of the Business were previously employed by a predecessor or an Affiliate of Hickman, or the Business. Schedule 3.14 also lists the driver's license number for each driver of Hickman motor vehicles owned or leased by Hickman who is required to have a commercial, chauffeur's, or other special class of drivers license in order to operate commercial or heavy vehicles used in the Business. All accruals for unpaid vacation pay, premiums for unemployment insurance, health premiums, Canada Pension Plan premiums, accrued wages, salaries and commissions and employee benefit plan payments pertaining to the employees of the Business have been reflected in the books and records of Hickman and have been paid.

### **3.15 Benefit Plans and Union Contracts.**

- (a) Schedule 3.15(a) is a complete list and includes complete copies of (or, in the case of oral arrangements, descriptions), all employee benefit plans and agreements (written or oral) currently maintained or contributed to by Hickman, including employment agreements and any other agreements containing "golden parachute" provisions, retirement plans, welfare benefit plans and deferred compensation agreements, together with copies of such plans, agreements and any trusts related thereto, and classifications of employees covered thereby as of the Closing Date. Except for the employee benefit plans described in Schedule 3.15(a), Hickman has no employees of the Business entitled to any pension, retirement, welfare, profit sharing, deferred compensation, stock option, employee stock purchase or other employee benefit plans or arrangements.
- (b) Schedule 3.15(a) is a complete list of and includes copies of, all union contracts and agreements between Hickman and any collective bargaining group, including any collective bargaining certificates issued by the Newfoundland Labour Relations Board, its predecessors or similar authorities. Hickman is in compliance in all material respects with all applicable federal, provincial and local laws respecting employment and employment practices, terms and conditions of employment, wages and hours, and nondiscrimination in employment, and is not engaged in any unfair labour practice. There is no charge pending or, to Hickman's knowledge, threatened, against Hickman before any Newfoundland court or agency and alleging unlawful discrimination in employment practices and there is no charge of or proceeding with regard to any unfair labour practice against it pending before the Newfoundland Labour Relations Board. There is no labour strike, dispute, slow down or stoppage as of the Closing Date, existing or threatened against Hickman; no union organizational activity exists respecting employees of Hickman; and

there are no union contracts or other agreements entered into or pending with respect to Hickman. No one has petitioned within the last five years, and no one is now petitioning, for union representation of any employees of Hickman. Hickman has not experienced any labour strike, slow-down, work stoppage, labour difficulty or other job action during the last five years.

- (c) For greater certainty, no notice has been received by Hickman of any complaint filed by any of the employees or former employees of the Business against Hickman claiming that Hickman has violated any applicable employee, human rights or similar legislation and there are no outstanding orders or charges against Hickman and/or the Business under any applicable health and safety or similar legislation. All levies, assessments and penalties made against Hickman and/or the Business pursuant to any applicable workers' compensation or similar legislation have been paid by Hickman and Hickman has not been re-assessed under any such legislation during the past five (5) years.

### **3.16 Standard Form Rental Contracts and Consents and Approvals.**

Schedule 3.16(i) contains true and complete copies of all standard form rental agreements used in connection with the Business. Except as disclosed in Schedule 3.16, leases, instruments, agreements, licenses, permits, certificates or other documents that have been delivered to United in connection with the transactions contemplated hereby are complete and accurate and are true and correct copies of the originals thereof. Except as specifically disclosed in Schedule 3.16(ii), the rights and benefits of Hickman which attach or pertain to the Purchased Assets and are being sold, transferred and assigned to United will not be adversely affected by the transactions contemplated hereby, and the execution of this Agreement and the performance of the obligations hereunder will not violate or result in a breach or constitute a default under any of the terms or provisions applicable thereto. None of such leases, instruments, agreements, licenses, permits, site assessments, certificates or other documents requires notice to, or consent or approval of, any governmental agency or other third party to any of the transactions contemplated hereby, except such consents and approvals as are listed on Schedule 3.16(ii).

**3.17 Product Quality, Warranty Claims, Product Liability.** All products and services sold, rented, leased, provided or delivered by Hickman to customers relating to the Business conform to applicable contractual commitments, express and implied warranties, product and service specifications and quality standards, and Hickman has no liability (and there is no basis for any present or future action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand against Hickman giving rise to any liability) for replacement or repair thereof or other damages in connection therewith. No product or service sold, leased, rented, provided or delivered by Hickman to customers relating to the Business is subject to any guaranty, warranty or other indemnity beyond the applicable standard terms and conditions of sale, rent or lease. Except as set forth on

Schedule 3.17, Hickman has no liability (and there is no basis for any present or future action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand against Hickman which might give rise to any liability) arising out of any injury to a person or property as a result of the ownership, possession, provision or use of any Equipment, product or service sold, rented, leased, provided or delivered by Hickman relating to the Business. All product liability claims that have been asserted against Hickman since January 1, 1995, whether covered by insurance or not, and whether litigation has resulted or not, are listed and summarized in Schedule 3.17.

**3.18 No Change With Respect to the Business.** Except as set forth on Schedule 3.18, since May 31, 1998, the Business has been conducted only in the ordinary course and there has been no change in the condition (financial or otherwise) of the assets, liabilities or operations of the Business other than changes in the ordinary course of business, none of which either singly or in the aggregate has been materially adverse. Specifically, and without limiting the generality of the foregoing, except as set forth on Schedule 3.18, with respect to the Business, since such date, there has not been:

- (a) any change in its financial condition, assets, liabilities (contingent or otherwise), income, operations or business which would have a material adverse effect on the financial condition, assets, liabilities (contingent or otherwise), income or operations of the Business, taken as a whole;
- (b) any damage, destruction or loss (whether or not covered by insurance) adversely affecting any material portion of the Purchased Assets;
- (c) any increase or bonus or promised increase or bonus in the compensation payable or to become payable by it, in excess of usual and customary practices, to any of the employees or agents of the Business, or any accrual or arrangement for or payment of any bonus or other special compensation to any such employees or agents or any severance or termination pay paid to any such employees;
- (d) any labour dispute or any other event or condition of any character, materially adversely affecting the Business or future prospects;
- (e) any other transaction outside the ordinary course of the Business;
- (f) any authorization, agreement or other commitment to do any of the foregoing; or
- (g) any contracts between Hickman or its Affiliates and any other person not dealing at arm's length with Hickman or any such Affiliates (within the meaning of the *Tax Act*) or any Affiliate of any of the foregoing

other than employment agreements or with respect to the lease of the Hickman Properties.

**3.19 Compliance With Laws.** Except as disclosed in Schedule 3.19, the Business and all activities undertaken on any and all Real Properties have complied with, and the Business and all such activities are presently in material compliance with all Laws, including, but not limited to, all Environmental Laws. Except as disclosed in Schedule 3.19, there has been no assertion by any party that the Business is in violation of any Laws including Environmental Laws. Specifically and without limiting the generality of the foregoing, except as disclosed in Schedule 3.19, in respect of the Business: (i) except as permitted under Environmental Laws and in accordance with Governmental Permits, where required, Hickman or its Affiliates have not processed, handled, transferred, generated, treated, stored or disposed of any Hazardous Material, (ii) no Hazardous Material has been disposed of, other than as allowed under Environmental Laws and in accordance with Governmental Permits, or otherwise Released on any Real Properties, (iii) no Hazardous Materials have been disposed of, other than as permitted under Environmental Laws and in accordance with Governmental Permits, where required, or otherwise Released on any Real Property, and (iv) no Real Property has ever been subject to or received any notice of any private, administrative or judicial action, or notice of any intended private, administrative or judicial action relating to the presence or alleged presence of Hazardous Material in, under, upon or emanating from any Real Property.

**3.20 Powers of Attorney.** Hickman has not granted any power of attorney (except routine powers of attorney relating to representation before governmental agencies) or entered into any agency or similar agreement whereby a third party may bind or commit Hickman in respect of the Business in any manner.

**3.21 Underground Storage Tanks.** No UST containing petroleum products or wastes or other Hazardous Material is currently or has been located on any Real Property.

**3.22 Patents, Trademarks, Trade Names, etc.** Schedule 3.22 lists all Intellectual Property owned by Hickman or which it is licensed to use in respect of the Business (other than licenses to use software for personal computer operating systems that were provided when the computer was purchased and licenses to use software for personal computers that are granted to retail purchasers of such software), including particulars of registration or application for registration where applicable. To the knowledge of Hickman, no Intellectual Property used by Hickman in the Business infringe on any patents, trademarks, or copyrights, or any other rights of any person. Hickman has no knowledge of, or has any reason to believe, that there are any claims of third parties to the use of any such Intellectual Property, or knows of or has any reason to believe that there exists any basis for any such claim or claims.

**3.23 No Expropriation.** No part of the Purchased Assets or any Real Property has been taken or expropriated by any federal, provincial, municipal or other authority nor has any notice or proceeding in respect thereof been given or commenced, nor is Hickman

aware of any intent or proposal to give any such notice or commence any such proceedings.

**3.24 Manufacturers, Suppliers and Customers.** To the knowledge of Hickman, the relations between Hickman and its customers of the Business are good in all material respects. Hickman has no reason to believe (other than general economic and industry conditions) that any of the manufacturers or suppliers supplying products, components or materials to Hickman or the Business intend to cease providing such items to Hickman, nor does Hickman have knowledge of any fact (other than general economic and industry conditions) which indicates that any of the customers of Hickman or the Business intend to terminate, limit or reduce their business relations with Hickman. Hickman has no reason to believe that the benefits of any relationship with any major customers or suppliers of the Business will not continue after the Closing Date in substantially the same manner as prior to the date of this Agreement.

**3.25 Absence of Certain Business Practices.** Hickman has not, directly or indirectly, within the past five years, given or agreed to give any credit concession, gift or similar benefit to any customer, supplier, governmental employee or other person who is or may be in a position to help or hinder the Business in connection with any actual or proposed transaction which (a) might subject the Business to any damage or penalty in any civil, criminal or governmental litigation or proceeding, (b) if not given in the past, might have had an adverse effect on the financial condition, business or results of operations of the Business, or (c) if not continued in the future, might materially adversely affect the financial condition, business or operations of the Business or which might subject the Business to suit or penalty in any private or governmental litigation or proceeding.

**3.26 Disclosure Schedules.** Any matter disclosed on any Schedule to this Agreement shall be deemed to have been disclosed on every other Schedule that refers to such Schedule by cross reference so long as the nature of the matter disclosed is obvious from a fair reading of the Schedule on which the matter is disclosed.

**3.27 No Misleading Statements.** The representations and warranties of Hickman contained in this Agreement, the Recitals, the Exhibits and Schedules hereto and all other documents and information furnished to United and their representatives pursuant hereto are complete and accurate in all material respects and do not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements made and to be made not misleading.

**3.28 Accurate and Complete Records.** The corporate books, ledgers, financial records and other records of Hickman relating to the Business:

- (a) have been made available to United and its agents;
- (b) have been, in all material respects, maintained in accordance with all applicable laws, rules and regulations; and

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- (c) are accurate and complete, and do not contain or reflect any material discrepancies.

**3.29 Knowledge.** Wherever reference is made in this Agreement to the "knowledge" of Hickman, such term means the actual knowledge of any management employee, officer or director of Hickman or any knowledge which should have been obtained by any such person upon reasonable inquiry by a reasonable business person.

**3.30 Financial Statements.** The Financial Statements, copies of which are appended hereto as Schedule 3.30, have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods indicated and fairly, completely and accurately present the financial position of the Business and the results of Hickman's operations in the Business as of the dates and throughout the periods indicated and there has been no material adverse change in the Business or the financial position of Hickman in the Business from that reflected in the Financial Statements.

**3.31 Taxes.** There are no outstanding liabilities for Taxes payable, collectible or remittable by Hickman, whether assessed or not, which may result in an encumbrance on or other claim against or seizure or sale of all or any part of the Purchased Assets or would otherwise adversely affect the Business or would result in United becoming liable or responsible therefor. There are no actions, suits, proceedings, investigations or claims pending or, to the knowledge of Hickman, threatened against Hickman in respect of Taxes which may result in an encumbrance on or other claim against or seizure or sale of any of the Purchased Assets or liability or responsibility on the part of United for Taxes payable, collectible or remittable by Hickman nor are any material matters under discussion with any governmental authority relating to Taxes. Hickman has withheld, collected and paid to the proper governmental authority within the time required under applicable legislation all Taxes required to have been withheld, collected and remitted in connection with (i) amounts paid, credited or owing to any current or former employee, independent or dependent contractor, creditor, shareholder, non-resident of Canada or other third party, and (ii) goods and services received from or provided to any person (including taxable benefits).

**3.32 Tax Basis.** The tax basis of the Purchased Assets by category including the classification of such assets as being depreciable or amortizable as reflected in their respective tax returns and related work papers is true and correct in all material respects.

**3.33 Sufficiency of Purchased Assets.** The Purchased Assets are sufficient to carry on the Business, consistent with past practice and, except for the Excluded Assets, constitute all of the assets used or held by Hickman in the operation of the Business.

**3.34 Material Facts Disclosed.** Hickman and its management have disclosed to the Purchaser all facts known to them relating to the Business and the Purchased

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Assets which could reasonably be expected to be material to an intending purchaser of the Purchased Assets.

3.35 **Hickman Resident in Canada.** Hickman is not a non-resident of Canada under the *Tax Act*.

#### 4. **REPRESENTATIONS AND WARRANTIES OF UNITED**

United represents and warrants to Hickman that each of the following representations and warranties is true and correct as at the Closing and agrees, subject to Section 7.2, that such representations and warranties shall survive the Closing:

4.1 **Existence and Good Standing.** United is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction at incorporation and has been duly registered to carry on the Business in Newfoundland.

4.2 **No Contractual Restrictions.** No provisions exist in any article, document or instrument to which United is a party or by which it is bound which would be violated by consummation of the transactions contemplated by this Agreement.

4.3 **Authorization of Agreement.** This Agreement has been duly authorized, executed and delivered by United and, subject to the due authorization, execution and delivery by Hickman, constitutes a legal, valid and binding obligation of United. United has full corporate power, legal right and corporate authority to enter into and perform its obligations under this Agreement and to carry on its business as presently conducted. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and the fulfilment of and compliance with the terms and conditions hereof do not and will not, after the giving of notice, or the lapse of time or otherwise: (a) violate any provisions of any judicial or administrative order, award, judgment or decree applicable to United; (b) conflict with any of the provisions of the Certificate of Incorporation or Bylaws of United; or (c) conflict with, result in a breach of or constitute a default under any material agreement or instrument to which United is a party or by which it is bound.

4.4 **No Misleading Statements.** The representations and warranties of United contained in this Agreement, the Recitals, Exhibits and Schedules hereto and all other documents and information furnished to Hickman pursuant hereto are materially complete and accurate, and do not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements made and to be made not misleading as of the Closing Date.

4.5 **Disclosure Schedules.** Any matter disclosed by United on any Schedule to this Agreement shall be deemed to have been disclosed on every other Schedule that refers to such Schedule by cross reference so long as the nature disclosed is obvious from a fair reading of the Schedule on which the matter is disclosed.



## 5. CLOSING DELIVERIES

At Closing, the respective parties shall make the following deliveries:

### 5.1 United Deliveries.

United shall make, or cause to be made, the following deliveries:

- (a) payment of the Purchase Price to Hickman pursuant to Section 1.3;
- (b) an opinion of counsel for United dated as of the Closing Date substantially in the form or Schedule 5.1(b);
- (c) the Hold Back Agreement;
- (d) with respect to the Hickman Properties, a triple-net lease for one (1) Hickman Property and triple-net leases for a portion of three (3) Hickman Properties (including a surrender of each current lease), each with Hickman or one of its Affiliate(s), substantially in the form attached as Schedule 5.2(e); and
- (e) with respect to the Third Party Leases, an assignment of lease for two (2) Third Party Leases and subleases for two (2) Third Party Lease, to and in favour of United, all in form and substance satisfactory to United.

### 5.2 Hickman Deliveries.

Hickman shall make, or cause to be made, the following deliveries:

- (a) all necessary deeds, conveyances, bills of sale, assurances, transfers, assignments and any other documentation reasonably required to transfer the Purchased Assets to United with good and marketable title, free and clear of all liens, security interests, claims and encumbrances except Permitted Liens and Assumed Liabilities, required consents and payment of the Closing Date Debt, such documents to be in a form acceptable to United and its counsel, including, without limitation a Bill of Sale substantially in the form set forth in Schedule 5.2(a);
- (b) an opinion of counsel for Hickman dated as of the Closing Date substantially in the form attached as Schedule 5.2(b);
- (c) evidence reasonably satisfactory to United that all required third party consents to the transactions contemplated hereby, including without

limitation all Required Governmental Consents, consents under dealership agreements (if available) and an assignment of lease or sublease for each Third Party Lease in form and substance satisfactory to United;

- (d) an unqualified certificate issued under the *Retail Sales Tax Act* (Newfoundland);
- (e) with respect to the Hickman Properties, a triple net lease for one (1) Hickman Property and triple-net leases for three (3) Hickman Properties, each with United and Hickman or one of its Affiliates (including a surrender of the current lease), together with a Non-Disturbance Agreement to and in favour of United from each mortgagee of a Hickman Property, all substantially in the form attached as Schedule 5.2(e);
- (f) with respect to the Third Party Leases, an assignment of lease for two (2) Third Party Leases and subleases for two (2) Third Party Leases to and in favour of United, all in form and substance satisfactory to United together with a Landlord's Acknowledgement and Consent in favour of United and Hickman from each Landlord substantially in the form attached as Schedule 5.2(f);
- (g) the Hold Back Agreement;
- (h) a support services agreement providing for, *inter alia*, certain payroll services and continued benefits for employees of the Business accepting United's offer of employment substantially in the form attached as Schedule 5.2(h);
- (i) a consulting agreement with each of Hubert Hunt and William Parsons providing for their respective services substantially in the form attached as Schedule 5.2(i); and
- (j) the books and records referred to in Section 1.1(c).

## **6. ADDITIONAL COVENANTS OF UNITED AND HICKMAN**

**6.1 Further Assurances and Additional Conveyances.** Following Closing, Hickman and United shall each deliver or cause to be delivered at such times and places as shall be reasonably agreed upon such additional instruments as United or Hickman may reasonably request for the purpose of carrying out this Agreement. Hickman will cooperate with United on and after the Closing Date in furnishing information, evidence, testimony and other assistance in connection with any actions, proceedings or disputes of any nature with respect to matters pertaining to all periods prior to the Closing Date.

6.2 **Confidentiality.** Neither Hickman nor United shall disclose or make any public announcements of the transactions contemplated by this Agreement without the prior written consent of the other, unless required to make such disclosure or announcement by law, in which event the party making the disclosure or announcement shall notify the other at least 24 hours before such disclosure or announcement is expected to be made.

6.3 **Brokers' and Finders' Fees.** Each party shall pay and be responsible for any broker's, finder's or financial advisory fee incurred by such party in connection with the transactions contemplated by this Agreement.

6.4 **Consistent Tax Reporting.** Hickman and United shall (i) treat and report the transactions contemplated by this Agreement in all respects consistently for purposes of any Canadian federal, provincial, local or foreign (i.e non-Canadian) tax and (ii) not take any actions or positions inconsistent with the obligations of the parties set forth herein.

6.5 **Access to Records.** Following Closing, and for a period of two years thereafter, Hickman shall provide United with reasonable access to the books, records, contracts, inventories and other assets and information pertaining to the Purchased Assets.

6.6 **United to Offer Employment.** United shall, after the Closing, offer to employ, all of the employees of Hickman currently employed in the Business (other than those identified in Schedule 6.6) on, with respect to each such employee, comparable terms and conditions of employment (including, without limitation, salary and other benefits) which are in aggregate at least as favourable to each such employee as those in effect immediately prior to the Closing. United shall have no obligations to, or any liability for, any employee of Hickman who does not accept United's offer of employment or is otherwise identified in Schedule 6.6.

6.7 **Bulk Sales Act.** United and Hickman agree to waive compliance with the *Bulk Sales Act* (Newfoundland). Hickman covenants and agrees to (i) pay all unsecured trade payables of Hickman as at January 31, 1999, on or before February 28, 1999, and to provide United with evidence reasonably satisfactory to United that such payment has been made and (ii) provide United with waivers from all secured creditors of Hickman as at January 31, 1999.

## 7. **INDEMNIFICATION**

7.1 **Indemnity by Hickman.** Hickman, subject to the limitations set forth in Section 7.2, covenants and agrees that it will indemnify and hold harmless United and its respective directors, officers and agents and its respective successors and assigns (the "United Indemnitees"), from and after the Closing, against any and all losses, damages, assessments, fines, penalties, adjustments, liabilities, Claims, deficiencies, costs,

expenses (including specifically, but without limitation, reasonable attorneys' fees and expenses of investigation), expenditures, including, without limitation, any Environmental Site Losses identified by a United Indemnitee in a Claims Notice, or asserted by a United Indemnitee in litigation commenced against Hickman provided that in either case any such Claims Notice shall be given or the litigation commenced prior to the expiration of the periods set forth in Section 7.2(b) (irrespective of the date of discovery), with respect to each of the following contingencies (all, the "Indemnity Events"):

- (a) any misrepresentation, breach of warranty, or nonfulfillment of any agreement or covenant on the part of Hickman pursuant to the terms of this Agreement or any misrepresentation in or omission from any Exhibit, Recital, Schedule, list, certificate, or other instrument furnished or to be furnished to United pursuant to the terms of this Agreement, regardless of whether, in the case of a breach of a representation or a warranty, United relied on the truth of such representation or warranty or had any knowledge of any breach thereof;
- (b) any Environmental Site Losses;
- (c) waiver of compliance with the *Bulk Sales Act* (Newfoundland);
- (d) the operations of the Business and Purchased Assets prior to the Closing (other than the Assumed Liabilities).

## **7.2 Limitations on Hickman's Indemnities.**

- (a) The obligations of Hickman to indemnify United Indemnitees as provided in Section 7.1 shall be equal to the amount by which the cumulative amount of all such liabilities, Claims, damages deficiencies, actions, suits, proceedings, demands, assessments, adjustments, costs and expenses, expenditures and Environmental Site Losses with respect to any or all Indemnity Events exceed \$25,000 (the "General Deductible Amount"); provided, that the amount of any obligation of indemnity arising pursuant to Section 7.1 with respect to any representation, warranty or covenant contained in Sections 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.9 and 3.10 hereof shall not be subject to the General Deductible Amount and the amount of any indemnity obligation arising pursuant to Section 3.4, 3.5 and/or 6.7 with respect to Claims based on the Inventory Value and the Equipment included on the Rental Asset Listing shall be subject to the applicable amounts set forth in Section 1.4 in lieu of the General Deductible Amount.

- (b) The obligations of Hickman under Section 7.1 shall expire on the following dates unless a Claims Notice is given or litigation is commenced, on or prior to such time:
- (i) with respect to Sections 3.1, 3.2, 3.3, 3.4, 3.9, 3.11(c) and 3.25 all environmental (including with respect to USTs), tax related matters and product liability (and related Schedules), upon expiration of the applicable statute of limitations; and
  - (ii) with respect to all other Indemnity Events, two (2) years from the Closing Date,

except that any Claim based on intentional misrepresentations, fraud or the absence of title shall not expire and may be brought at any time.

### **7.3 Notice of Indemnity Claim.**

- (a) In the event that any Claim is hereafter asserted against or arises with respect to any United Indemnitee as to which such Indemnitee may be entitled to indemnification hereunder, a United Indemnitee shall notify Hickman in writing thereof (the "Claims Notice") within 10 days after (i) receipt of written notice of commencement of any third party litigation against such United Indemnitee, (ii) receipt by such United Indemnitee of written notice of any third party Claim pursuant to an invoice, notice of Claim or assessment, against such United Indemnitee, or (iii) such United Indemnitee becomes aware of the existence of any other event in respect of which indemnification may be sought from Hickman (including, without limitation, any inaccuracy of any representation or warranty or breach of any covenant). The Claims Notice shall describe the Claim and the specific facts and circumstances in reasonable detail, and shall indicate the amount, if known, or an estimate, if possible, of the losses that have been or may be incurred or suffered by a United Indemnitee.
- (b) Hickman may elect to defend any Claim for money damages where the cumulative total of all Claims (including such Claims) exceeds the limit set forth in Section 7.2 at the time the Claim is made, by Hickman's own counsel; provided, however, Hickman may assume and undertake the defence of such a third party Claim only upon written agreement by Hickman that Hickman is obligated to fully indemnify a United Indemnitee with respect to such action. The United Indemnitee may participate, at the United Indemnitee's own expense, in the defence of any Claim assumed by Hickman. Without the written approval of the United Indemnitee, which approval shall

not be unreasonably withheld, Hickman shall not agree to any compromise of a Claim defended by Hickman.

- (c) If, within 30 days of Hickman's receipt of a Claims Notice, Hickman shall not have provided the written agreement required by Section 7.3(b) and elected to defend the Claim, the United Indemnitee shall have the right to assume control of the defence and/or compromise of such Claim, and the costs and expenses of such defence, including reasonable attorneys' fees, shall be added to the Claim. Hickman shall promptly, and in any event within 30 days after demand therefor, reimburse the United Indemnitee for the costs of defending the Claim, including attorneys' fees and expenses.
- (d) The party assuming the defence of any Claim shall keep the other party reasonably informed at all times of the progress and development of its or their defence of and compromise efforts with respect to such Claim and shall furnish the other party with copies of all relevant pleadings, correspondence and other papers. In addition, the parties to this Agreement shall cooperate with each other and make available to each other and their representatives all available relevant records or other materials required by them for their use in defending, compromising or contesting any Claim. The failure to timely deliver a Claims Notice or otherwise notify Hickman of the commencement of such actions in accordance with this Section 7.3 shall not relieve Hickman from the obligation to indemnify hereunder but only to the extent that Hickman establishes by competent evidence that it has been prejudiced thereby.
- (e) In the event both the United Indemnitee and Hickman are named as defendants in an action or proceeding initiated by a third party, they shall both be represented by the same counsel (on whom they shall agree), unless such counsel, the United Indemnitee, or Hickman shall determine that such counsel has a conflict of interest in representing both the United Indemnitee and Hickman in the same action or proceeding and the United Indemnitee and Hickman do not waive such conflict to the satisfaction of such counsel.

**7.4 Indemnity by United.** United, subject to the limitations set forth below, covenants and agrees that it will indemnify and hold harmless Hickman and its respective directors, officers and agents and its respective successors and assigns, from and after the Closing, against any and all losses, damages, assessments, fines, penalties, adjustments, liabilities, Claims, deficiencies, costs, expenses (including specifically, but without limitation, reasonable attorneys' fees and expenses of investigation), expenditures, including without limitation any misrepresentation, breach of warranty or nonfulfillment of any agreement or covenant on the part of United pursuant to the terms of this Agreement

United shall be entitled to injunctive relief to enforce the terms of the Restrictive Covenants and to restrain Hickman and/or its Affiliates from any violation thereof.

- (b) **Accounting.** The right and remedy to require Hickman to account for and pay over to United all compensation, profits, monies, accruals, increments or other benefits derived or received by Hickman and/or its Affiliates as the result of any transactions constituting a breach of these Restrictive Covenants.
- (c) **Severability of Covenants.** Hickman acknowledges and agrees that the Restrictive Covenants are reasonable and valid in geographical and temporal scope and in all other respects. If any court determines that any of the Restrictive Covenants, or any part thereof, is unreasonable, invalid or unenforceable, Hickman agrees to be bound by such reduced geographical or temporal scope as the court may deem reasonable and that the remainder of the Restrictive Covenants shall not thereby be affected and shall be given full effect, without regard to the invalid portions.
- (d) **Enforceability In Jurisdiction.** United and Hickman intend to and hereby confer jurisdiction to enforce the Restrictive Covenants upon the courts of any jurisdiction within the geographic scope of the Restrictive Covenants. If the courts of any one or more of such jurisdictions hold the Restrictive Covenants unenforceable by reason of the breadth of such scope or otherwise, it is the intention of United and Hickman that such determination not bar or in any way affect United's right to the relief provided above in the courts of any other jurisdiction within the geographic scope of the Restrictive Covenants as to breaches of such covenants in such other respective jurisdictions, such covenants as they relate to each jurisdiction being, for this purpose, severable into diverse and independent covenants.

## 9. **GENERAL**

9.1 **Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, the successors or assigns of United and Hickman; provided, however, that any such assignment shall be subject to the terms of this Agreement and shall not relieve the assignor of its responsibilities under this Agreement.

9.2 **Counterparts.** This Agreement and the other documents referred to herein and/or otherwise required to complete the transactions contemplated hereby may be executed in two or more counterparts, including by facsimile, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

**9.3 Notices.** All notices, requests, demands and other communications hereunder shall be deemed to have been duly given if in writing and either delivered personally, sent by facsimile transmission or by air courier service, to the addresses designated below or such other addresses as may be designated in writing by notice given hereunder, and shall be effective upon personal delivery or facsimile transmission thereof with proof of transmission receipt or upon delivery by air courier service:

If to Hickman:

**Hickman Equipment (1985) Limited**  
1269 Topsail Road  
P.O. Box 820  
Mount Pearl, Newfoundland A1N 3C8  
Attention: President and Secretary  
FAX: 709-368-0403

With a copy to:

**Chalker Green & Rowe**  
Baine Johnson Building  
10 Fort William Place, P.O. Box 5939  
St. John's, Newfoundland A1C 5X4  
Attention: John Green  
FAX: 709-722-1763

If to United:

**United**  
c/o Four Greenwich Office Park  
Greenwich, CT 06830  
Attention: Mr. John N. Milne  
FAX: (203) 622 6080

With a copy to:

**Macleod Dixon**  
1800 - 121 King Street West  
Toronto, Ontario M5H 3T9  
Attention: Byron W. Loeppky  
FAX: (416) 360-8277

Failure to send a copy to counsel will not invalidate notices.

**9.4 Attorneys' Fees.** In the event of any dispute or controversy between United on the one hand and Hickman on the other hand relating to the interpretation of this Agreement or to the transactions contemplated hereby, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party. Such award shall include post judgment attorney's fees and costs.

**9.5 Applicable Law and Attornment.** This Agreement shall be governed by and construed in accordance with the laws of the province of Newfoundland and the laws of Canada applicable therein. Each of the parties to this Agreement irrevocably attorns to the jurisdiction of the courts of Newfoundland.



9.6 **Payment of Fees and Expenses.** Whether or not the transactions herein contemplated shall be consummated, each party hereto will pay its own fees, expenses and disbursements incurred in connection herewith and all other costs and expenses incurred in the performance and compliance with all conditions to be performed hereunder.

9.7 **Incorporation by Reference.** The Recitals and all Schedules and Exhibits attached hereto are incorporated herein by reference as though fully set forth at each point referred to in this Agreement.

9.8 **Captions and References.** The captions in this Agreement are for convenience only and shall not be considered a part hereof or affect the construction or interpretation of any provisions of this Agreement. Unless otherwise indicated, references to Articles, Sections, Schedules and Exhibits are references to the Articles, Sections, Schedules and Exhibits in, of and to this Agreement.

9.9 **Number and Gender of Words.** Whenever the singular number is used herein, the same shall include the plural where appropriate, and shall apply to all of such number, and to each of them, jointly and severally, and words of any gender shall include each other gender where appropriate.

9.10 **Entire Agreement.** This Agreement (including the Schedules and Exhibits hereto) and the other documents delivered pursuant hereto constitute the entire Agreement and understanding between Hickman and United and supersede any prior agreement and understanding relating to the subject matter of this Agreement. This Agreement may be modified or amended only by a written instrument executed by Hickman and United acting through their respective officers, duly authorized by their respective Boards of Directors.

9.11 **Waiver.** No waiver by any party hereto at any time of any breach of, or compliance with, any condition or provision of this Agreement to be performed by any other party hereto may be deemed a waiver of similar or dissimilar provisions or conditions at the same time or at any prior or subsequent time.

9.12 **Construction.** The language in all parts of this Agreement must be in all cases construed simply according to its fair meaning and not strictly for or against any party. Unless expressly stated otherwise, cross-references herein refer to provisions within this Agreement and are not references to the overall transaction or to any other document.

9.13 **Time of Essence.** Time shall be of the essence hereunder.

9.14 **Currency.** Unless otherwise indicated, all dollar amounts in this Agreement are expressed in Canadian funds.

# **10. ARBITRATION AND DISPUTE RESOLUTION.**

The parties waive their right to seek remedies in court, including any right to a jury trial, with respect to any dispute concerning determination of the Adjustments. The parties agree that in the event United and Hickman are unable to resolve a dispute concerning determination of the Adjustments, such dispute shall be resolved exclusively by arbitration to be conducted only in St. John's, Newfoundland in accordance with the rules of the *Arbitration Act* (Newfoundland). The parties agree that such arbitration shall be conducted by an arbitrator who shall be selected from a list of three (3) persons submitted by each party who is experienced in dispute resolution regarding business acquisitions and accounting matters. If the parties are unable to agree on an arbitrator, the arbitrator shall be selected by a judge of the Supreme Court of Newfoundland Trial Division, from the lists submitted by each of the parties. The parties also agree that discovery shall not be permitted except as required by the *Arbitration Act* (Newfoundland), that the arbitration award shall not include factual findings or conclusions of law, and that no punitive damages shall be awarded. The parties understand that any party's right to appeal or to seek modification of any ruling or award of the arbitrator is severely limited. Any award rendered by the arbitrator shall be final and binding, and judgment may be entered on it in any court of competent jurisdiction as otherwise provided by law. Unless the parties otherwise agree, the arbitration shall be heard within 30 days following the appointment of the arbitrator. The successful party will be entitled to receive its legal costs on a party and party basis from the other party. The preceding portion of this Section does not apply to any dispute relating to any other provision of the Agreement, or to any other aspect of the transactions contemplated herein, and such other dispute may be resolved by the parties by any means available, including, without limitation, court action and a jury trial. The parties expressly do not waive any right to pursue any remedy available with respect to any dispute other than one concerning determination of the Adjustments to the Purchase Price and expressly do not waive the right to trial with respect to any other dispute.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement by its duly authorized representatives as of the date first above written.

**UNITED RENTALS OF CANADA, INC.**

By: \_\_\_\_\_  
John N. Milne, President

**HICKMAN EQUIPMENT (1985) LIMITED**

By: \_\_\_\_\_  
Howard J. Hickman, President

By: \_\_\_\_\_  
Hubert W. Hunt, Vice President

# **APPROVAL OF CONTENTS OF SCHEDULES BY HICKMAN**

<b>SCHEDULE #</b>	<b>TITLE</b>	<b>HICKMAN (Initials Only)</b>
Schedule 1.1	Defined Terms	#
Schedule 1.1 (a)	Rental Asset Listing	#
Schedule 1.2	Assumed Liabilities	#
Schedule 1.3	Closing Date Allocations, Directions and Elections	#
Schedule 1.4	Closing Date Statement of Adjustments	deliverable
Schedule 1.4(a)	Closing Date Debt	#
Schedule 1.4(b)	Inventory held for resale to the extent not included in Schedule 1.1(a)	#
Schedule 1.4(c)	Equipment acquired or disposed of after May 31, 1998 not included in Schedules 1.1(a) or 1.4(b)	#
Schedule 1.4(d)	Prepaid Expenses	#
Schedule 1.5	Form of Hold Back Agreement	deliverable
Schedule 1.6	Allocation of Purchase Price	#
Schedule 3.4(b)	Encumbrances	#
Schedule 3.4(c)	Real and Personal Property Leasehold Interests	#
Schedule 3.4(d)	Claims, Suits and Proceedings	#
Schedule 3.6(a)	Governmental Permits and Licenses	#
Schedule 3.6(b)	Real Properties	#
Schedule 3.11(a)	Fixed Assets	#
Schedule 3.11(b)	Title Insurance	#

SCHEDULE #	TITLE	HICKMAN (Initials Only)
Schedule 3.13	Material Contracts and Agreements	<i>h</i>
Schedule 3.14	Personnel	<i>h</i>
Schedule 3.15(a)	Benefit Plans and Union Contracts	<i>h</i>
Schedule 3.16(i)	Standard Form Rental Agreements	<i>h</i>
Schedule 3.16(ii)	Required Consents and Approvals	<i>h</i>
Schedule 3.17	Product Liability Claims	<i>h</i>
Schedule 3.18	Conduct of the Business	<i>h</i>
Schedule 3.19	Compliance with Laws	<i>h</i>
Schedule 3.21	Underground Storage Tanks	<i>h</i>
Schedule 3.22	Intellectual Property	<i>h</i>
Schedule 3.30	Financial Statements	<i>h</i>
Schedule 5.1(b)	Form of Opinion of counsel for United	deliverable
Schedule 5.2(a)	General Conveyance Documents	deliverable
Schedule 5.2(b)	Form of Opinion of counsel for Hickman	deliverable
Schedule 5.2(e)	Form of 10 Year Triple Net Lease and Non-Disturbance Agreement	deliverable
Schedule 5.2(f)	Form of Landlord's Acknowledgment and Consent	deliverable
Schedule 5.2(h)	Form of Support Services Agreement	deliverable
Schedule 5.2(i)	Form of Consulting Agreements	deliverable
Schedule 6.6	Certain Employees	<i>h</i>

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**SCHEDULE 3.4(b)****ENCUMBRANCES**

See Schedule 1.4(a) re: Closing Date Debt

<b>Secured Party</b>	<b>Nature of Encumbrance</b>	<b>Amount Secured</b>	<b>Nature of Obligation</b>
<b>CIBC</b>	<b>Debenture</b>	<b>\$20,000,000</b>	<b>Demand</b>
<b>GMAC</b>	<b>Debenture</b>	<b>\$10,000,000</b>	<b>Demand</b>
<b>John Deere Limited</b>	<b>Debenture</b>	<b>\$ 500,000</b>	<b>Demand</b>

**Liens on Real Property**

<b>Secured Party</b>	<b>Nature of Encumbrance</b>	<b>Amount Secured</b>	<b>Location Charged</b>
<b>CIBC Mortgage Corporation</b>	<b>Mortgage</b>	<b>\$ 500,000</b>	<b>Corner Brook</b>
<b>CIBC Mortgage Corporation</b>	<b>Mortgage</b>	<b>\$ 277,000</b>	<b>Clareville</b>
<b>CIBC</b>	<b>Debenture</b>	<b>\$ 20,000,000</b>	<b>Grand Falls</b>
<b>CIBC</b>	<b>Debenture</b>	<b>\$ 4,600,000</b>	<b>Mount Pearl</b>

JUN-03-2002 12:35

P.02/13

No. \_\_\_\_\_  
This is Exhibit "E" referred to in the  
affidavit of James A. Kirby  
sworn before me this 27th day of  
February, 2003.

[Signature]  
A Barrister of the Supreme Court of Nova Scotia

# PowerPlan® MERCHANT AGREEMENT

Merchant Hickman Equipment (1985) Limited  
Town Mount Pearl  
Province Newfoundland

JUN-03-2002 12:35

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POWERPLAN AN ADDITION TO ABBOTT AND ASSOCIATES

POWERPLAN AN ADDITION TO ABBOTT AND ASSOCIATES

JAN-24-2002 14:58

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## POWERPLAN ACCOUNT DEBIT AUTHORIZATION

TO: JOHN DEERE CREDIT INC.

This authorization is provided for your benefit and the benefit of the financial institution named below "Financial Institution") in consideration of the Financial Institution agreeing to process debits against the account described below (the "Account") in accordance with the *Rules of the Canadian Payments Association*. I (We) hereby authorize you and the Financial Institution to draw on the Account for payment of amounts due under the PowerPlan Merc Agreement I (we) have entered into with you as the same may be amended from time to time commencing the 4<sup>th</sup> day of October, 1999.

I (We) confirm that all persons whose signatures are required to sign on the Account have signed this authorization. I (We) acknowledge that delivery of this authorization to you constitutes delivery to the Financial Institution. I (We) acknowledge and agree that you will have no obligation to send notice(s) of the amount(s) to be debited and the due date(s) of debiting after the date of this authorization. I (We) acknowledge that the Financial Institution is required to verify that a pre-authorized debit ("PAD") has been issued in accordance with the particulars of this authorization, or that the purposes for which this authorization is given have been fulfilled by you, before debiting the Account. I (We) may dispute a PAD if: (a) it was not drawn in accordance with this authorization; or (b) this authorization was canceled. I (We) understand that, in order to dispute a PAD: (i) within 10 business days after the PAD is disputed and posted to the Account, I (we) must complete and present a declaration stating the reason the PAD is being disputed to a branch of the Financial Institution holding the Account; or (ii) at any other time, I (we) must resolve the PAD in dispute solely with you. You may disclose the following information to the financial institution which holds your account to be credited with the PAD.

## CUSTOMER INFORMATION

Name/Address: Hickman Equipment (1985) Limited  
1269 Topsail Road, Mount Pearl, NF A1N 3C8

## NAME OF FINANCIAL INSTITUTION

Name/Address: CIBC  
Atlantic Place, 215 Water Street, St. John's, NF A1C 5J9

Phone Number: 709 576-8996

Current ☐Chequing ☒

(check one)

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Branch/Transit Number

0	1	0
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Institution Number

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Account Number

\*\*\*PLEASE PROVIDE A SAMPLE CHEQUE MARKED "VOID"\*\*\*

I (We) understand that I (we) may cancel this authorization at any time by written notice to you. I (We) also understand that this authorization applies only to the method by which I (we) pay you and does not affect any agreement for the supply of goods or services between us. I (We) will give you written notice of any change in the Account information provided in this authorization prior to the next due date of a PAD.

DATED this 1ST day of October, 1999

AGREED:

Hickman Equipment (1985) Limited  
Full Legal Name of Customer

By: [Signature]  
Name and Title:

Vice President/General Manager



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POWERPLAN AUTHORIZATION FOR ELECTRONIC FUNDS TRANSFERHickman Equipment (1985) Limited

Name

Mount Pearl

City

NF

Province

Merchant Number JD 013Contact Person (please print) Anne Williams

PowerPlan is hereby authorized to initiate Electronic Funds Transfer (EFT) via Automated Clearing House Credits (ACH Credits) and my (our) financial institution is hereby authorized to accept credit entries, and, if necessary, debit entries and adjustments to correct any credit entries made in error, to my (our) Account Number 0063-0002801

at CIBC, Atlantic Place, 215 Water St. St. John's, NF (name of financial institution) for payment on the PowerPlan customer account transaction data we submit. A voided/cancelled cheque from my deposit/chequing account is attached to help in setting up the authorization. This authorization is to remain in effect until you are notified in writing to the contrary.

Sincerely,

Hickman Equipment (1985) Limited

(Business Name)

By: [Signature]  
(Officer, General Partner or Owner)Date: 1 OCTOBER 1999Title: Vice President/General Manager

NOTE TO MERCHANT: The ACH Credits shall indicate "PowerPlan". Please return this completed document and voided/cancelled cheque to:

PowerPlan  
1001 Champlain Avenue, Suite 301  
Burlington, Ontario  
L7L 5Z4

PLEASE ATTACH VOIDED/CANCELLED CHEQUE HERE

EFT (99-09)

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## POWERPLAN APPLICATION AND MERCHANT AGREEMENT

Hickman Equipment (1985) Limited  
Legal Business Name (Hereinafter referred to as MERCHANT)

Hickman Equipment  
Doing Business As (If Different Name)

1269 Topsail Road  
Mailing Address

Mount Pearl  
City

NF  
Province

A1N 3C1  
Postal Code

Shipping Address

City

Province

Postal Code

County

Telephone ( 709 ) 368-9660 Fax ( 709 ) 368-1146

Year Business Started 1984 Corporate Account Number/Social Insurance Number \_\_\_\_\_

## BUSINESS STRUCTURE

☒ Corporation ☐ Partnership ☐ Sole Proprietorship ☐ Other (Specify) \_\_\_\_\_

Has this business ever filed for bankruptcy? ☐ Yes ☒ No Has a judgment ever been filed against this business? ☐ Yes

## BANK REFERENCE

CIBC  
Bank Name

St. John's  
City

NF  
Province

Telephone ( 709 ) 576-8996 Fax ( 709 ) 576-8744

Check all that apply: ☐ Chequing Account ☐ Unsecured Loan ☐ Secured Loan

Bank Contact Brian Henchey - Director of Corporate Banking

## MANUFACTURERS

John Deere Limited  
Primary Name

Grimsby  
City

ON  
Province

Telephone ( 905 ) 945-9281 Fax ( 905 ) 945-1267

Contact Name

Balance Owng

Terms

Secondary Name

City

Province

Telephone ( )

Fax ( )

Contact Name

Balance Owng

Terms



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POWERPLAN CREDIT PROGRAM  
MERCHANT AGREEMENT

## TERMS AND CONDITIONS

## 1. DEFINITIONS:

- a. **ACCEPTANCE DATE:** Earlier of (1) the Conversion Date or (2) the date of the first PowerPlan Account transaction submitted by Merchant and processed by PowerPlan.
- b. **CONVERSION BALANCE:** Each existing Merchant account receivable purchased by PowerPlan on Conversion Date which meets the conditions set forth by PowerPlan, including but not limited to those listed in section 8 of this Agreement.
- c. **CONVERSION DATE:** Date selected by Merchant and PowerPlan for purchase of Conversion Balances.
- d. **CUSTOMER:** A person who has a Customer Account with Merchant.
- e. **CUSTOMER ACCOUNT:** The PowerPlan Credit Program account of a Customer. A Customer may have a Preferred Account or a Merchant Authorized Account. Each of such accounts will be designated as either a Revolving Account or a Pay by Invoice Account. Merchant may designate any of such accounts as an NSC Account.
- f. **CUSTOMER CREDIT LIMIT:** Customer Account credit limit, set by PowerPlan or Merchant, for extensions of credit, as established in accordance with section 7.
- g. **DISCOUNT CHARGE:** The percentage established in accordance with section 15 by which the face amount of PowerPlan sales transactions submitted by Merchant is reduced to establish the payment due to Merchant.
- h. **INELIGIBLE PRODUCTS:** Products not eligible for financing under the PowerPlan Credit Program as designated by PowerPlan from time to time, including but not limited to all-terrain vehicles; cash advances; down payments; firearms; licensed/titled motorized vehicles; purchases by authorized Merchants at their own business; snowmobiles and warranty claims of any kind.
- i. **MANUAL:** The PowerPlan Credit Program Procedures manual to be issued to Merchant and as modified by PowerPlan from time to time.
- j. **MERCHANT AUTHORIZED ACCOUNT:** Account approved by Merchant for extension of credit with full recourse to Merchant, subject to the terms of this Agreement.
- k. **MERCHANT AUTHORIZED TRANSACTION:** Any PowerPlan Credit Program transaction with a Customer who has a Merchant Authorized Account made in accordance with this Agreement or any transaction with a Customer who has a Preferred Account that is in excess of that Customer's Preferred Credit Limit but approved by Merchant. Merchant Authorized Transactions include, but are not limited to, transactions with Customers who do not have a Preferred Account, or transactions involving the extension of credit in excess of the Customer's existing Preferred Credit Limit, set up as part of one account or as a separate account.

- l. **PAY BY INVOICE ACCOUNT:** Customer Account designated as such by either Merchant or Customer, the entire outstanding balance of which must be paid in full each month.
- m. **PREFERRED ACCOUNT:** Accounts approved by PowerPlan for extension of credit without recourse to Merchant, subject to the terms of this Agreement.
- n. **REVOLVING ACCOUNT:** Customer Account designated as such by either Merchant or Customer, the entire outstanding balance of which need not be paid in full on or before the payment due date, subject to a minimum required payment due each billing cycle in which there is an outstanding balance on the Customer's Account.
- o. **NSC (No Service Charge) ACCOUNT:** Customer Account designated as such by Merchant which will not be subject to finance charges. Any Customer Account held by a government agency shall be deemed to be an NSC Account.

- 2. **PARTICIPATION AND FEE:** Upon acceptance of this Agreement, PowerPlan authorizes Merchant to participate in the PowerPlan Credit Program under the terms of this Agreement. Upon submitting this Agreement Merchant shall pay applicable enrollment fee as determined by PowerPlan from time to time.
- 3. **GENERAL:** Merchant shall comply with the operating procedures set forth in the Manual. Merchant consents and agrees, and shall obtain the consent and agreement of its, his or her representatives, employees and agents (if any), as required by law, that telephone conversations with PowerPlan may be monitored and recorded for educational purposes to further improve PowerPlan customer service.
- 4. **ELIGIBLE GOODS & SERVICES:** The PowerPlan Credit Program is available to Merchants authorized by PowerPlan to finance the sale(s) of goods or services other than Ineligible Products sold to Customers by such Merchants in the ordinary course of business, for commercial or governmental use.
- 5. **SPECIAL PROMOTIONS:** From time to time, special promotions and financing programs may be made available by PowerPlan to Merchant. PowerPlan will specify the terms of each such program including but not limited to applicable discounts and the applicable time period. In writing to Merchant. Suppliers of merchandise and/or services or other third parties may also sponsor such programs. If so, any warranties and/or guarantees of the third party will not replace or otherwise affect the guarantees, warranties or any other provisions of this Agreement.

Merchant agrees to comply with all of the terms of any special promotion it uses, as specified by PowerPlan.

- 6. **MERCHANT AUTHORIZED ACCOUNTS AND TRANSACTIONS:** Upon Merchant's request and with written consent of PowerPlan, Merchant may establish Merchant Authorized Accounts to which Customers may charge Merchant Authorized Transactions. PowerPlan will have full recourse to Merchant, and Merchant will be liable in

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PowerPlan, for all amounts charged on a Merchant Authorized Account. Merchant must comply with the Manual in establishing Merchant Authorized Accounts, including the

- 9. **CONVERSION BALANCE RESERVE:** If PowerPlan purchases any of Merchant's Conversion Balances, PowerPlan maintain with PowerPlan a separate

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PowerPlan, for all amounts charged on a Merchant Authorized Account. Merchant must comply with the Manual in establishing Merchant Authorized Accounts, including the provision of a copy of the PowerPlan credit agreement (the "Credit Agreement") to each Customer for whom the Merchant wishes to establish a Merchant Authorized Account prior to completing the first transaction in respect of such Merchant Authorized Account. PowerPlan reserves the right to accept or reject without prior notice any Merchant Authorized Account or any Merchant Authorized Transaction.

7. **ACCOUNT CREDIT LIMITS:** Each Customer may have either a Preferred Account Credit Limit or a Merchant Authorized Account Credit Limit. PowerPlan shall assign a Preferred Account Credit Limit to each Preferred Account. Merchant shall assign a Merchant Authorized Account Credit Limit to each Merchant Authorized Account. Merchant Authorized Account Credit Limits in excess of the maximum amount per Customer Account, specified by notice from PowerPlan, require prior approval from PowerPlan, to be given on a case by case basis at PowerPlan's sole discretion. PowerPlan shall monitor and enforce the Credit Limits of all PowerPlan Customers. PowerPlan may permit any Customer to exceed its Merchant Authorized Credit Limit by up to 10% of such Credit Limit, such excess to be with full recourse to Merchant. PowerPlan may reduce or revoke a Customer Credit Limit at any time. Merchant shall make no further PowerPlan Credit Program sales to a Customer upon notice from PowerPlan that the Customer Account has been restricted.

Transactions in excess of a Customer's assigned Credit Limit, regardless of the type of account, may be approved by Merchant on a transaction by transaction basis. Any charges made in such cases will be with full recourse to Merchant.

8. **CONVERSION BALANCE:** On the Conversion Date, PowerPlan may purchase, with full recourse to Merchant, those existing accounts receivable of Merchant (each a "Conversion Balance") of which: no payment is 90 days or more past due; no claim, dispute, set-off or secured interest exists or has been asserted against Merchant; the account debtor is not the subject of bankruptcy, insolvency or reorganization proceedings; the account debtor is not an affiliate of, related to, or controlled by Merchant, or is an officer, director, shareholder, or partner of Merchant or a member of their immediate families; and the Conversion Balance outstanding on the Conversion Date is equal to or less than the maximum amount specified to Merchant by notice from PowerPlan, unless PowerPlan has specifically approved the account. The purchase price shall be equal to the sum of the Merchant's Conversion Balances in respect of the accounts to be purchased in accordance herewith, less the Discount Charge, and shall be paid to Merchant by a credit to the Conversion Balance Reserve pursuant to section 9, with the balance paid by cheque or wire transfer to Merchant or a joint cheque made payable to Merchant and to any party asserting a claim to accounts of Merchant or their proceeds. Merchant warrants that all accounts receivable composing the Conversion Balance were incurred and have been maintained in accordance with applicable laws and that, as of the Conversion Date, Merchant will have the ability and authority to assign to PowerPlan all Conversion Balances free of any lien, encumbrance or security interest. To evidence the conversion, Merchant shall provide a Conversion Balance listing and execute financing statements or such other documents as PowerPlan may request to evidence the assignment of the Conversion Balances. For each account purchased by PowerPlan, Merchant shall also designate each such account as either a Revolving Account or a Pay by Invoice Account. Merchant acknowledges and agrees that such designation, once made by Merchant, may be changed by the Customer by notice in writing to PowerPlan. Merchant may also designate each account as an NSC Account.

9. **CONVERSION BALANCE RESERVE:** If PowerPlan purchases any of Merchant's Conversion Balances, PowerPlan may require Merchant to maintain with PowerPlan a separate interest bearing reserve account ("Conversion Balance Reserve") of ten per cent (10%) of the face amount of the Merchant Conversion Balance.

The Conversion Balance Reserve shall be credited with interest monthly on its average daily balance, at the six (6) month Canadian Treasury Bill rate, adjusted semi-annually on the first day of April and October.

The Conversion Balance Reserve will be reviewed and adjusted monthly by PowerPlan. If the Conversion Balance Reserve exceeds the Conversion Balance Outstanding, PowerPlan will refund the difference to Merchant and to those parties who have asserted a claim to the Conversion Balance.

PowerPlan shall provide Merchant with periodic reports of all credits and charges to the Conversion Balance Reserve.

10. **MERCHANT LIABILITY:** PowerPlan will establish and provide in writing the maximum aggregate outstanding balance permitted for all Merchant Authorized Accounts to be established by Merchant. PowerPlan reserves the right to accept or reject processing of any Merchant Authorized Transaction which would result in the aggregate outstanding balance of Merchant's Merchant Authorized Accounts to exceed Merchant's permitted aggregate outstanding balance, as established by PowerPlan.

PowerPlan will provide Merchant with periodic detail of current outstanding Merchant liability for each Merchant Authorized Account.

11. **AUTHORIZATION:** Merchant shall obtain PowerPlan's prior authorization for each sale to a Customer. All items purchased concurrently by a Customer at the same location shall constitute a single sale and shall be evidenced by a single sales transaction or ticket. Sales transactions shall not be split. If a PowerPlan Account card is issued to Merchant, Merchant shall use, and shall cause its employees and any other person for whom Merchant is responsible at law to use, any such card only in accordance with bona fide instructions of the Customer. Merchant shall bear full responsibility for any costs of resolving any disputes resulting between Merchant and Customer as a result of understated or improperly conducted charges.

12. **TRANSMISSION OF ITEMS:** Merchant shall transmit all PowerPlan Credit Program transaction data to PowerPlan electronically or by mail within five (5) business days of the date of the actual transaction. When electronically transmitting PowerPlan Credit Program sales and credit memo data to PowerPlan, Merchant will only use hardware and/or software approved in writing by PowerPlan. Otherwise, Merchant will mail sales tickets and credit memos to PowerPlan and agrees to pay the additional Discount Charge as specified in section 15. PowerPlan may, at its option, require that Merchant immediately discontinue electronic transmissions and mail all sales and credit memo data to PowerPlan prior to processing; if so required PowerPlan will also waive additional Discount Charges for manual processing.

PowerPlan may reject and return to Merchant any sales ticket or credit memo which is not processed in accordance with section 13, is illegible, unsigned, or for which a required authorization from PowerPlan was not obtained and noted on the sales ticket. Merchant may resubmit corrected deficiency items within ten (10) business days after ticket is returned to Merchant.

13. **SALES TICKETS:** All transactions subject to the PowerPlan Credit Program shall be evidenced by a sales ticket specifying the name of Merchant, address, or item sold, amount charged,

a. That the transaction is genuine and bears the signature of the Customer (or that of his authorized agent) for the Customer Account against which the transaction is to be charged; that the

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13. **SALES TICKETS:** All transactions subject to the PowerPlan Credit Program shall be evidenced by a sales ticket specifying the name of Merchant, service or item (and quantity thereof) purchased, price paid and such items as may be required from time to time in accordance with the Manual. No such sales ticket shall contain terms inconsistent with the PowerPlan Credit Agreement which the Customer has executed. Merchant shall either: (i) staple a signed point of sale transaction authorization slip to each sales ticket (in the case of an authorization obtained through a point of sale terminal); or (ii) manually stamp the following language: "This purchase is subject to the terms of the PowerPlan Credit Agreement" and record the authorization code obtained on the sales ticket (in the case of an authorization obtained by means other than through a point of sale terminal). All copies of sales ticket(s) for PowerPlan Credit Program transactions shall be signed by the Customer in accordance with the Manual.

14. **PAYMENT TO MERCHANT:** For Customer transactions submitted to and accepted by PowerPlan in accordance with this Agreement, Merchant shall receive payment from PowerPlan in an amount equal to the unpaid principal indebtedness thereunder, less the Discount Charge and any other charges, payable by Merchant under this Agreement, when applicable.

Merchant hereby authorizes PowerPlan to initiate Electronic Funds Transfer (EFT) via Automated Clearing House Credits (ACH Credits) for payment of amount due Merchant. Payments to Merchant transferred through EFT will be deposited in the financial institution account as specified by the Merchant. Merchant understands that if it does not use the EFT payment method, payment will be via cheque sent regular Canadian mail.

15. **DISCOUNT CHARGE:** Upon acceptance of this Agreement by PowerPlan, Merchant will be notified of the applicable discount charge rates to be used in calculating payment to Merchant. Each of the base discount charge, the Pay by Invoice discount charge and the NSC discount charge will be disclosed in the discount schedule provided in the Manual. A Discount Charge equal to the base discount charge will apply to all Customer Account transactions submitted during Merchant's first twelve (12) months as a PowerPlan Merchant. Thereafter the base discount charge will be adjusted monthly to reflect Merchant's total charge volume submitted to PowerPlan for processing during the previous twelve (12) months. Each Customer Account transaction that is charged to a Customer Account designated as a Pay by Invoice Account will be subject to a Discount Charge equal to the base discount charge plus the Pay by Invoice discount charge. Each Customer Account transaction that is charged to a Customer Account designated as an NSC Account will be subject to a Discount Charge equal to the base discount charge plus the NSC discount charge. Each Customer Account transaction that is charged to a Customer Account designated as an NSC Account and as a Pay by Invoice Account will be subject to a Discount Charge equal to the base discount charge plus the Pay by Invoice Account discount charge plus the NSC discount charge.

If Merchant elects to mail sales tickets and credit memos to PowerPlan instead of transmitting them electronically, the applicable Discount Charge will be increased by one-half of one per cent (1/2%) of the face amount of the Customer Account transactions.

16. **MERCHANT'S WARRANTIES:** Merchant warrants for each Customer Account transaction submitted to PowerPlan:

a. That the transaction is genuine and bears the signature of the Customer (or that of his authorized agent) for the Customer Account against which the transaction is to be charged; that the Customer is of legal age; that the transaction is for eligible goods and services in accordance with section 4; and that the transaction complies with the terms of this Agreement, the PowerPlan Credit Agreement, and the requirements of the Manual.

b. That the transaction represents a bona fide sale of merchandise or service that are not Ineligible Products and under which Merchant has delivered or performed all of its obligations and which complies with this Agreement and all applicable laws and regulations.

c. That each PowerPlan Credit Program credit memo submitted to PowerPlan represents a credit to a Customer Account arising from a bona fide return of goods or a price adjustment on a previous PowerPlan Credit Program sale.

d. That the transaction document(s) accurately identifies the purchase specifying the item(s) or service received and their quantity, selling price, down payment, trade-in allowance or other identifying information.

e. That the transaction was not used as part of a split financing arrangement, refinancing arrangement or used as a cash advance including but not limited to down payments and payments or deposit on any other credit transaction.

f. That at the time of the sale evidenced by each transaction, Merchant has no knowledge that the credit standing of the Customer or the enforceability or collectability of the Customer's Account is impaired.

g. That each transaction was generated from a direct sale by Merchant and not a third party.

h. That Merchant has not imposed any surcharge or other fee or charge upon Customer for using PowerPlan Credit Program financing.

i. That there have been no material changes in Merchant's financial or ownership status since acceptance of this agreement unless said changes have been approved by PowerPlan in writing 60 days prior to change.

j. That Merchant and Merchant's employees have used the PowerPlan Account cards in Merchant's possession in accordance with bona fide instructions of the Customer or of any person designated by the Customer as an Authorized User of such card.

17. **CUSTOMER PAYMENTS:** Merchant may accept Customer payments on Customer Accounts. Merchant will not encourage Customers to make payment to any party other than directly to PowerPlan. In the event that Merchant or its agents or employees receives or subsequently come into possession of a Customer payment, such payment shall be held in trust by Merchant and Merchant shall forward it to PowerPlan the same day as received. Cheques shall be endorsed if necessary and the Customer's Account number shall be indicated on the cheque and the remittance stub shall be attached when possible.

Cash payments received from Customer may be submitted as a credit memo on the Customer's Account. PowerPlan reserves the right to refuse to process credit memos for payments received by Merchant. In such circumstances, if cash payment is received, Merchant shall draft a cheque on Merchant's account in the amount of the Customer's payment and such cash payment shall be held in trust by Merchant until Merchant's cheque has been presented to and accepted by

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Merchant's bank. Merchant shall indicate Customer's name, Customer's Account Number, and date of payment on the cheque mailed to PowerPlan.

by Canada Post, and for whom Merchant is unable to furnish a corrected address;

i. The unpaid balance of purchases made at Merchant's business which at the time the purchase was made, the

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Merchant's bank. Merchant shall indicate Customer's name, Customer's Account Number, and date of payment on the cheque mailed to PowerPlan.

For the purpose of convenience and efficiency, Merchant agrees that PowerPlan may authorize persons to sign and endorse Merchant's name upon any cheques, drafts, money orders or other forms of payment made on Customer Accounts. Merchant agrees that PowerPlan may authorize persons to sign Merchant's name and endorse Merchant's name on any other instrument necessary to carry out the intent of this Agreement.

Customer payments received by PowerPlan will be applied as specified in the PowerPlan Credit Agreement. Exceptions may exist for special promotions, as specified by PowerPlan.

If PowerPlan receives a payment from a Customer whose account has been charged back to Merchant pursuant to this Agreement, PowerPlan will first apply the payment against any amount due PowerPlan from Merchant.

18. **RETURNS AND ADJUSTMENTS:** Merchant shall not make cash refunds to Customers for returns and adjustments, but shall originate and transmit to PowerPlan a credit memo to credit the Customer's Account. PowerPlan reserves the right to accept or reject credit memos from Merchant. Credit memos may be offset from daily sales transactions or billed to Merchant for immediate payment.

19. **COLLECTION ASSISTANCE:** PowerPlan shall employ reasonable diligence in collecting or attempting to collect Customer Accounts and in curing any delinquencies thereon. Merchant shall provide to PowerPlan, without charge, any reasonable collection assistance requested by PowerPlan including, without limitation, information concerning the location of a Customer or his assets, notifications to delinquent Customers, storage of repossessed goods and Merchant's credit and collection experience with Customers.

Merchant agrees not to take legal action, or make any other recovery efforts on any Customer Account without the prior approval of PowerPlan. Merchant is responsible for ensuring its own notes, and those of its employees and agents are in compliance with applicable law. In assisting PowerPlan in collecting on a Customer Account, Merchant is an independent contractor and assumes full responsibility for its actions and the actions of its officers, partners, employees and agents.

20. **RECOURSE TO MERCHANT:** Merchant shall, upon request, reimburse PowerPlan directly for, and PowerPlan may set off against amounts owing to Merchant, the following amounts:

a. The entire account balance, or the affected portion thereof, of any Customer Account with respect to which Merchant has breached any of its obligations or warranties to PowerPlan in this Agreement;

b. The portion of any Customer Account which the Customer refuses to pay or which PowerPlan reimburses to a Customer because of any asserted claim, dispute, defense, or set-off against Merchant which arises out of or relates to a PowerPlan Credit Program transaction;

c. The unpaid account balance of any Conversion Balance which is 120 days delinquent;

d. The unpaid account balance of each Merchant Authorized Account which is 120 days delinquent;

e. The account balance of any Conversion Balance or Merchant Authorized Account whose statement is deemed undeliverable

by Canada Post, and for whom Merchant is unable to furnish a corrected address;

f. The unpaid balance of purchases made at Merchant's business which, at the time the purchase was made, the Customer was a director, officer, partner or manager of Merchant (or a member of the immediate family of any such persons) which is either 120 days delinquent or deemed uncollectible;

g. The full unpaid balance of any Merchant Authorized Account or Conversion Balance if a petition in bankruptcy has been filed by or against Customer or if Customer is subject to insolvency proceedings, has sought the protection of credit relief statutes or has been adjudicated as bankrupt;

h. The unpaid account balance of any Customer Account that is subject to a dispute between Merchant and Customer arising from the quality of service or material provided to Customer that is not resolved within 60 days of the date a dispute notice is provided to PowerPlan by either Merchant or Customer.

For greater certainty, in all cases the account balances referred to above for which PowerPlan may have recourse to the Merchant and in respect of which Merchant has agreed to reimburse PowerPlan include all charges and interest accruing on the principal amounts of such balances at the applicable charge or rates of interest established by PowerPlan for such Accounts.

21. **CUSTOMER DISPUTE PROCESS:** The resolution of disputes relating to products or services provided by Merchant is the responsibility of the Merchant and Customer. If Merchant and Customer do not reach agreement within 60 days of the Merchant receiving notice of such disputed charge, such charge will be reassigned to Merchant. Generally, disputed charges under \$1000 will be automatically reassigned to Merchant. Merchant agrees to accept as final and binding decisions of PowerPlan relative to Customer disputes.

22. **MERCHANT PAYMENTS:** Merchant acknowledges that PowerPlan has the right to charge back certain Customer Account balances to Merchant pursuant to this Agreement. In the event of an obligation arising due to a breach of this Agreement, PowerPlan may demand immediate payment in full of any or all of the Accounts to which the breach relates. PowerPlan will elect to deduct any amounts due under this Agreement and any balances on Merchant's own PowerPlan Credit Program account, if any, from subsequent remittances due Merchant from PowerPlan. PowerPlan may elect to continue its collection efforts on delinquent Merchant Authorized Accounts or to refer such accounts for outside collection. Upon payment in full by Merchant, PowerPlan will assign the account to Merchant without warranty or representation as to the collectability of the account. Merchant is responsible for and agrees to pay any collection costs, expenses and legal fees incurred after notice of charge back in addition to the charged back amounts then remaining uncollected.

All Merchant charges must be paid immediately. If charges are not paid immediately, PowerPlan will assess an interest fee of 18% per annum, calculated and payable monthly, on the balance due to PowerPlan from the chargeback date or such lesser amount per annum as PowerPlan may designate from time to time.

23. **HARDWARE AND SOFTWARE LICENCE:** PowerPlan may provide various items of hardware and software under licence to allow Merchant to transmit transaction information to PowerPlan and to allow Merchant to receive certain information from PowerPlan. Merchant agrees to comply with

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the terms of any such licence. Monthly lease and/or support charges due will be those charged by PowerPlan, as modified from time to time by PowerPlan, and will be paid in advance

24. **MERCHANT'S RECORDS:** Merchant acknowledges that Customer Account transaction records and Customer files are the property of PowerPlan and that PowerPlan may at any time

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the terms of any such licence. Monthly lease and/or support charges due will be those charged by PowerPlan, as modified from time to time by PowerPlan, and will be paid in advance for each month thereafter. Merchant will pay all installation costs and applicable taxes.

**a. Ownership:** Merchant acknowledges that subject to any licence arrangements between PowerPlan and third party suppliers, PowerPlan owns the entire right, title and interest in the hardware and software provided by PowerPlan to Merchant pursuant to this Agreement. Merchant acknowledges that any software provided by PowerPlan (the "Software") is copyrighted property of PowerPlan. PowerPlan grants, and Merchant agrees to accept, a non-transferable and non-exclusive licence to use any software provided by PowerPlan. Merchant warrants that copies of the Software will be made only for backup purposes and will be destroyed upon termination of this Agreement. Merchant agrees not to provide or disclose, in any form, the Software to any person or entity without prior written consent from PowerPlan.

**b. Maintenance:** PowerPlan will be responsible for the repair or replacement of defective hardware and maintenance or updates to the Software. Merchant will pay for normal operational supplies required to operate hardware or software provided by PowerPlan. Merchant will pay for repair or replacement of the hardware if it is lost or damaged from any cause except ordinary commercial use. Any attempt to alter the Software, or other transaction data stored in the hardware constitutes a material breach of this Agreement.

**c. Shipping:** In the event that defective hardware needs to be replaced, PowerPlan, at its expense, will ship replacement hardware to Merchant. Merchant shall bear the cost of shipping the defective hardware back to PowerPlan.

**d. Limitation of Liability:** Merchant assumes all risks of electronic transmission of PowerPlan transaction data, including the hardware and Software, and shall defend, indemnify and hold harmless PowerPlan from any claims arising from or relating to the use of the electronic transmission of PowerPlan transaction data, including the hardware and Software, by Merchant, its employees or others.

**e. Warranty:** Any hardware or Software is provided "as is". PowerPlan DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

PowerPlan does not warrant that the hardware or Software will meet your requirements or that the operation of the Software will be uninterrupted or error free.

Some provinces do not allow the exclusion of implied warranties, so the above exclusion may not apply to you.

**24. MERCHANT'S RECORDS:** Merchant acknowledges that Customer Account transaction records and Customer files are the property of PowerPlan and that PowerPlan may at any time use any such records and files, as permitted by law. Merchant shall maintain copies of all documentation necessary to reconstruct any Customer Account, including information required to be maintained in accordance with the Manual. This information shall be maintained in sequential order by transaction date or document reference number, for a period of not less than seven (7) years following the date of each Customer transaction. When requested, Merchant will provide such original or copy to PowerPlan within five (5) business days of any such request. At any time during normal business hours PowerPlan may inspect, copy, or audit Merchant records relating to Customer Account transactions. Merchant's obligation to maintain and retrieve PowerPlan Credit Program sales tickets and credit memos shall continue and survive termination of this Agreement. Merchant will maintain a file of all original account applications that have been declined at their business for a period of twenty-five (25) months.

**25. FINANCIAL STATEMENTS:** Merchant shall deliver to PowerPlan a copy of its most recent audited annual financial statements at the time of the execution of this Agreement. As soon as practicable and in any event within 30 days of the end of the each fiscal quarter thereafter Merchant shall deliver to PowerPlan, in a form satisfactory to PowerPlan, its interim unaudited financial statements as at the end of such quarter. As soon as practicable and in any event within 100 days of each fiscal year end thereafter Merchant shall deliver to PowerPlan, in a form satisfactory to PowerPlan, its audited annual financial statements.

**26. INDEMNIFICATION:** Merchant agrees to defend, hold harmless and indemnify PowerPlan against all expenses or liability from all claims of any kind by any person arising out of any act or omission by Merchant, its employees or agents in respect of the PowerPlan Credit Program. In no case shall Merchant or any of Merchant's employees or agents be considered an employee, agent or representative of PowerPlan. Merchant and its employees and agents shall have no authority to bind PowerPlan by any representations, statements, agreements, or in any manner whatsoever.

**27. RESOLUTION OF DISPUTES BETWEEN MERCHANT AND POWERPLAN:** Merchant agrees to submit all disputes or differences with PowerPlan involving claims totalling an amount less than \$25,000 to binding arbitration for settlement in accordance with the Rules of Conduct of Arbitrations of the Arbitration and Mediation Institute of Ontario Inc., in effect at the date of commencement of such arbitration, by one (1) Arbitrator appointed in accordance with the said Rules. The arbitration will take place in the City of Toronto unless otherwise agreed and the award will be final and binding and there shall be no appeal therefrom. The law governing the procedures and the substance of the arbitration will be the laws of Ontario and of Canada applicable therein. The parties agree that any such arbitration award should be enforceable as a judgment in any court of competent jurisdiction.

**28. TRADE-MARKS:** PowerPlan grants Merchant a non-exclusive, non-transferable, licence without right to sub-license, to use the PowerPlan trade-marks while this Agreement remains in effect. Merchant agrees that it shall use the PowerPlan trade-marks only in association with services which conform in nature and quality and are performed by Merchant in compliance with the standards and specifications as may be set by PowerPlan, in its sole discretion, and communicated to Merchant from time to time. PowerPlan shall have the right to terminate this Agreement effective immediately upon notice to Merchant if Merchant fails to comply with PowerPlan standards. Merchant shall prominently

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display such marks at its place of business and in its advertising in the manner and form prescribed by PowerPlan. Merchant will assist PowerPlan in covering new Customers

PowerPlan, and Merchant shall not destroy or otherwise reduce the usability of such documents without PowerPlan's prior written permission. Upon termination, PowerPlan shall



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display such marks at its place of business and in its advertising in the manner and form prescribed by PowerPlan. Merchant will assist PowerPlan in securing new Customer Accounts by displaying current PowerPlan promotional materials. Any item used to promote or service Customer Accounts not purchased directly from PowerPlan shall be approved by PowerPlan. The use of items not purchased from PowerPlan shall be subject to the prior written approval of PowerPlan. Merchant shall protect the proprietary rights of PowerPlan in all forms and supplies used in connection with PowerPlan. Merchant acknowledges and agrees that Deere & Company is the exclusive owner of the PowerPlan trade-marks, and goodwill associated therewith, and Merchant further agrees not to dispute or contest, directly or indirectly, both during and after the term of this Agreement, the validity, ownership or enforceability of any of the PowerPlan trade-marks.

PowerPlan or its authorized agents shall have the right at any time during business hours to inspect the services, and the advertisement or performance thereof and any relevant documents, materials and records pertaining to the services in order to determine whether Merchant is complying with PowerPlan standards.

29. **AMENDMENT:** PowerPlan may amend this Agreement in any respect by giving Merchant written notice of any proposed amendment not less than 30 days before its effective date. Any such amendment shall take effect on the date specified in the notice unless at least 15 days prior to that date Merchant shall have given PowerPlan written notice of termination under section 30. Otherwise, this Agreement may be amended only by written agreement signed by both parties.
30. **TERMINATION:** Either party may terminate this Agreement or hardware and Software licence by sending written notice to the other not less than 30 days before the effective termination date. In addition, in the event of a material breach of this Agreement or the Manual by Merchant, PowerPlan may terminate this Agreement immediately by written notice to Merchant. PowerPlan may also immediately terminate this Agreement 1) if Merchant fails to produce PowerPlan Credit Program sales activity for any consecutive 9-month period unless Merchant has prior written approval from PowerPlan; 2) if Merchant loses its franchise or other major supplier affiliation; or 3) if, without prior notice to and approval by PowerPlan, there is any material change in the ownership or control of Merchant.

The parties agree that this Agreement shall terminate immediately and without further notice to Merchant upon any dissolution, termination of existence, insolvency, bankruptcy or business failure of Merchant or any guarantor of Merchant's obligations to PowerPlan ("Guarantor"), upon the application for or the appointment of a receiver manager of any part of the property of the Merchant or any Guarantor or the commencement by or against the Merchant or Guarantor of any proceeding under any bankruptcy, arrangement, reorganization, dissolution, liquidation, insolvency or similar law for the relief of or otherwise affecting creditors of Merchant or Guarantor or upon the issue of any writ of execution, attachment, garnishment or similar process against Merchant or Guarantor or any part of the property thereof.

Upon termination of this Agreement, Merchant shall cease making PowerPlan Credit Program sales to Customers and shall discontinue all use of PowerPlan trade-marks, including removing all signs, emblems, logos or other displays relating to the PowerPlan Credit Program from Merchant's premises, vehicles or property. Notwithstanding these requirements, all Customer Account balances arising prior to termination, and the documentation evidencing them, shall remain subject to the terms of this Agreement and shall be administered by

PowerPlan, and Merchant shall not destroy or otherwise reduce the usability of such documents without PowerPlan's prior express written permission. Upon termination, PowerPlan shall have the option to charge back to Merchant any or all amounts owing to PowerPlan from unpaid Conversion Balances and all Merchant Authorized Accounts plus any amounts owed PowerPlan by Merchant, and may set off such amounts against amounts owing from PowerPlan to Merchant.

In addition, upon termination of this Agreement or the hardware and Software licence, Merchant shall at Merchant's expense promptly return all hardware and Software to PowerPlan at its office in Burlington, Ontario. If Merchant fails to return said hardware within 30 days of termination, Merchant agrees to reimburse PowerPlan the then current price for similar new items.

Obligations of Merchant and PowerPlan under this Agreement in connection with transactions prior to termination of this Agreement, shall survive any such termination and remain enforceable. Merchant agrees to pay all costs of collection, including reasonable legal fees, incurred by PowerPlan in enforcing its rights to payment under this Agreement.

31. **EFFECT OF AGREEMENT:** This Agreement is subject to acceptance by PowerPlan in the Province of Ontario, shall be construed under the laws of the Province of Ontario, and shall become effective as of the Acceptance Date. Merchant may not assign its rights hereunder.

Any extension, delay or waiver of the enforcement of any provision of this Agreement will not act as an extension or waiver of any other provision of this Agreement. The parties agree that, regarding all of the provisions of this Agreement, time is of the essence. PowerPlan can delay enforcing its rights under this Agreement without waiving such rights.

If any provision of this Agreement is held to be invalid or unenforceable, all the remaining provisions will remain in full force and effect.

The section headings appearing in this Agreement are for reference only and will not be used to construe or interpret the Agreement.

Unless otherwise agreed in writing, this Agreement shall, at the option of PowerPlan, be void if no PowerPlan Credit Program sales transaction occurs or if the Conversion Date does not occur within 90 days following the Acceptance Date. If Merchant fails to participate in PowerPlan Credit Program within this period, Merchant shall forfeit the full enrollment fee. Merchant may, however, reapply for PowerPlan Credit Program participation at any time. The parties confirm their express wish that this Agreement and all documents related thereto be drawn up in English. Les parties confirment leur volonté expresse de voir le présent contrat et tous les documents s'y rattachant être rédigés en anglais.

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# Timberjack

## Invoice

Invoice Date:

11/21/00

Order Date:

8/1/00

Customer Number:

Invoice Number:

CD11369

Order Number:

C1003965

PO Number

55584

Main Reference:

Vat Number:

**MERRICK HOLM**  
BARRISTERS & SOLICITORS

February 14, 2003  
(File #38455)  
(Fax #1-416-360-8277)

Mr. Robert Frank  
MacLeod Dixon LLP  
Suite 3900, Canada Trust Tower  
161 Bay Street  
PO Box 505  
Toronto, ON M5J 2S1

Dear Mr. Frank:

**Re: Hickman Equipment (1985) Limited ("HEL")  
Claim of United Rentals ("UR") of an Entitlement to Set-off**

I write on behalf of PricewaterhouseCoopers Inc. ("PWC") in its capacity as receiver of all of the property, assets, entitlements and undertaking (the "Assets") of HEL pursuant to an Order (the "Receivership Order") of the Supreme Court of Newfoundland and Labrador (the "Court") made on March 13, 2002.

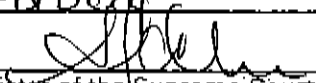
UR, in a Proof of Claim made under the provisions of the BIA in the Estate of HEL in Bankruptcy and dated April 11, 2002, asserted an entitlement to set off the amount of \$329,254.74 (acknowledged by UR to be owed by it to HEL) against amounts claimed to be owed by HEL to UR.

PWC, in its capacity as Trustee, has not to date reviewed the Proof of Claim for purposes of allowing or disallowing it in the Bankruptcy Estate as, at this time, it appears unlikely any amounts will be available for distribution to unsecured creditors.

UR's claim to an entitlement to set off the \$329,254.74 it owes to HEL against amounts claimed to be owed by HEL to UR has been evaluated.

Based on the facts known to it, PWC as Receiver has determined, for the reasons set out below, that UR is not entitled to a set-off as claimed. The \$329,254.74 owed by UR to HEL is payable to PWC as Receiver of HEL.

If there are facts known to your client and not noted herein which you believe could cause the Receiver to reach a different conclusion, please advise of same immediately, providing particulars and supporting documents.

No. \_\_\_\_\_  
This is Exhibit "F" referred to in the  
affidavit of James A. Kirby  
sworn before me this 27th day of  
February, 2003.  
  
A Barrister of the Supreme Court of Nova Scotia

**Carl A. Holm, Q.C.**  
Direct Dial (902) 482-7001  
cholm@merrickholm.com

1801 Hollis Street, Suite 2100  
PO Box 1054  
Halifax, NS B3J 2X6

Tel: (902) 429-4111  
Toll Free: 1-866-429-4111  
Fax: (902) 429-8215  
<http://www.merrickholm.com>

If there are no facts to add, please advise as to your client's intention to pay the Receiver the amount claimed.

Absent additional facts which cause PWC to reach a different conclusion or payment by UR to PWC of the \$329,254.74, the Receiver will be applying to the Court for advice and direction:

- (a) as to its entitlement to the sum of \$329,254.74;
- (b) as to UR's entitlement to set off any of the sum of \$329,254.74 against the amount claiming to be owed to it by HEL;
- (c) if UR is found not to be entitled to set off the sum of \$329,254.74, an Order compelling UR to pay the sum it is not entitled to set off plus interest to PWC in its capacity as Receiver for distribution to creditors in accordance with the terms of the Receivership Order and Claims Plan made under it; and
- (d) if UR is entitled to set off the amount payable in respect of the JD Unit, a declaration that the conveyance of the JD Unit is a preference as described in s.95(2) of the BIA.

At a case management hearing held on February 13<sup>th</sup>, the Court set February 27, 2003 as the date for the Receiver to file applications in respect of Receiver Issues, which would include issues relating to UR. I understand it has set March 7, 2003 as the date for filing responses and March 12, 2002 as a hearing date. The hearing date will be a case management hearing in respect of the matters raised in the Receiver's applications.

**Reasons for Determination:**

**Facts**

UR's Proof of Claim dated April 16, 2002 indicates UR owed HEL the aggregate sum of \$329,254.74 on January 18, 2002.

UR wrote HEL on January 18, 2002 attaching a list of invoices with respect to amounts said to be due and owing to UR by HEL in the aggregate amount of \$1,265,654.07 (the "United Receivable") and a list of invoices due and owing to HEL by UR in the aggregate amount of \$329,254.74 (the "Hickman Receivable").

UR's letter states:

United Rentals hereby sets off the Hickman Receivable, against the United Receivable, such that the Hickman Receivable has been paid in full and thereby reducing the United Receivable to CAD \$936,399.33.

(See letter attached as Schedule "A")

The letter does not indicate there is a "Set-Off Agreement" between UR and HEL. The Receiver is not aware of a "Set-Off Agreement" existing.

On January 4, 1985, HEL executed and delivered a General Assignment of Book Debts and Accounts ("GABD") to the Canadian Imperial Bank of Commerce ("CIBC").

On January 7, 1985, HEL executed and delivered a Floating Charge Debenture (the "Debenture") to CIBC.

The Receiver has determined that the GABD and Debenture create valid, enforceable security interests in the assets described in them in favour of CIBC. The Receiver has determined that the effective dates of perfection of the security interests created by the GABD and Debenture for purposes of s.36 of the PPSA are respectively January 16, 1985 and January 29, 1985. (The Receiver's Determination can be seen on its website at [www.pwcglobal.com/brs-hel](http://www.pwcglobal.com/brs-hel).)

The Hickman Receivable sought to be set off is described in both the GABD and Debenture.

By an agreement made as of February 1, 1999, UR agreed to purchase certain assets of HEL. The Agreement purports to be signed on behalf of UR by Mr. John Milne, its President. It provides, in part:

3.4 Liabilities: Schedules 3.4(b), (c) and (d) are accurate lists and descriptions of all liabilities of Hickman described in accordance with Sections 3.4(b), (c) and (d) below:

- (a) ...
- (b) Schedule 3.4(b) lists all liens, claims and encumbrances secured by or otherwise affecting any Purchased Assets, including a description of the nature of such lien, claim or encumbrance, the amount secured if it secures a liability, the nature of the obligation secured, and the party holding such lien, claim or encumbrance.

Schedule 3.4(b) refers to a Demand Debenture held by CIBC as security for the amount of \$20,000,000.

HEL entered into a "Power Plan Merchant Agreement" (the "Power Plan") dated October 1, 1999 with John Deere Credit Inc. ("JDCI"). The Power Plan creates a credit program to finance accounts of approved customers of HEL. Under the Power Plan, HEL is paid by Power Plan for eligible products sold to approved customers. The customers' accounts are, in turn, assigned to JDCI with recourse (in most cases) back to HEL.

A number of the Hickman Receivables are Power Plan accounts assigned to JDCI. Attached as Schedule "B" is a list of invoices for which UR has claimed a right of set-off. I have identified the invoices on which the credit or debit is described as "Total Power Plan".

On February 7, 2002, the Court issued an Order pursuant to the provisions of the *Companies' Creditors Arrangement Act* (Canada) in respect of HEL (the "CCAA Order").

The CCAA Order provided, in part, on paragraph 4(e) that:

all Persons are restrained and prohibited from exercising any extra-judicial remedy against the Applicant, including...set off or consolidation of accounts in relation to amounts due or accruing due in respect of or arising from any indebtedness or obligation of the Applicant as at the date hereof.

The Receivership Order dated March 13, 2002 appointed PWC receiver of all of the Assets of HEL and pursuant to paragraph 37(a), paragraph 4 of the CCAA including the stay provision contained in paragraph 4(e), were continued and remain in full force and effect.

NOTE: The CCAA Order and the Receivership Order can be seen on the Receiver's website.

Among the amounts which UR seeks to set off is the sum of \$171,350. This represents the unpaid purchase price for a John Deere 160LC Excavator, Serial #P0016OXO41476 (the "JD Unit") plus HST.

UR has provided documents relating to the Purchase of the JD Unit which include:

- (a) a copy of a purchase order on UR stationery for the JD Unit dated February 4, 2002;
- (b) a document entitled "United Rental Capital Expenditure Request" dated January 18, 2002 signed by the District Manager of UR which appears to be an internal request for \$149,000 for purchase of the JD Unit;
- (c) an HEL invoice bearing Invoice #000924 dated November 21, 2001 made out to UR and setting out the purchase price and HST for the JD Unit. The Invoice provided is stamped "COPY" and bears a stamp indicating "Received February 8, 2002, United Rentals of Canada".

### The Law

In the absence of an agreement granting a right of set-off, a party must demonstrate it has a right of set-off at law or a right of set-off in equity (*Holt v. Telford* [1987] 2 S.C.R. 193 (S.C.C.) at paragraph 20).

For there to be a set-off at law, there must be mutual debts due from one party to the other and vice versa.

Any assignment destroys mutuality and the possibility of set-off at law (*Holt v. Telford*, paragraph 25).

A set-off is available in equity notwithstanding an assignment and the lack of mutuality if:

- (a) the sum sought to be set off accrued and became due before the person claiming the right to set-off had notice of the assignment;
- (b) the sum sought to be set off arose out of the same contract or series of events which gave rise to the debt sought to be set off against.

(*Holt v. Telford*, paragraph 26)

The PPSA, s.42(2), parallels the rules concerning set-off at common law and s.48 provides that registration of a financing statement under the provisions of the PPSA does not constitute notice or knowledge of the existence of an assignment or security.

#### Application of the Law to the Facts

There being no agreement granting UR a right of set-off, if UR is to be entitled to set-off, it must demonstrate it has a right of set-off at law or in equity.

As all HEL's receivables including the Hickman Receivable were assigned to CIBC pursuant to the terms of the GABD and charged by a perfected charge under the Debenture, mutuality was destroyed. No right of set-off exists at law in respect to the Hickman Receivable.

In addition, mutuality in respect of the Power Plan amounts was destroyed by the assignment of those accounts to JDCI pursuant to the Power Plan Agreement. No right of set-off at law can exist in respect of these accounts.

UR is not entitled to assert equitable set-off as:

1. UR had acquired actual notice of the assignment and security interest of CIBC in the Hickman Receivable prior to set-off. UR's actual knowledge is evidenced by the 1999 Agreement signed by UR's President, in which CIBC's charge is specifically recognized. UR acquired actual notice of the assignment of amounts to John Deere Credit Inc. through the notation on the invoices and its participation in the Power Plan Program;
2. there is no evidence that any of the sums sought to be set off arose out of the same contract or series of events as the debts against which they are sought to be set off.

Even if UR is entitled to assert equitable set-off in respect of portions of the Hickman Receivable, on the face of the documents provided, there can be no set-off in respect of UR's obligations for the unpaid purchase price of the John Deere 160LC.

On the date (January 18, 2002) UR purported to set this obligation off against amounts owed to it by HEL, it had no obligation; a purchase order was not issued until February 4, 2002; an invoice for the purchase price does not appear to have been received by UR until February 8, 2002; the

invoice was received by UR after the issuance of the CCAA Order which stayed parties from exercising rights to set-off.

The BIA

PWC as trustee has no entitlement to institute actions against UR for the recovery of debts against which UR could seek to raise the defence of set-off. All assets of HEL including entitlements to institute actions are held by PWC in its capacity as Receiver. There is no mutuality between UR and PWC as Receiver.

If UR has an entitlement to set-off in respect of the JD Unit in the absence of evidence to the contrary, it is our opinion the transfer or conveyance would be presumed a preference under the provisions of s.95(2) of the BIA.

Other

I have provided copies of this letter to counsel for CIBC, John Deere Credit Inc ("JDCI") and TD Assets Finance as the parties most likely to have an interest in the issues raised here.

The basis of CIBC and JDCI's interest will be apparent to you.

TD Asset Finance may have an interest in the receivable relating to the JD 160LC. The Receiver's records identify the JD Unit as having been sold out of Trust by HEL and TD Asset Finance claiming to have a security interest in it.

Absent payment or some other resolution of this matter, I will be proceeding immediately with drafting documents for an application.

Yours sincerely,

MERRICK HOLM

Carl A. Holm

CAH/clh

c: Mr. James Kirby  
c: Mr. Bruce Grant  
c: Mr. Geoff Spencer  
c: Mr. D. Bradford Wicks

## SCHEDULE A



United Rentals of Canada, Inc.  
Maritime District Office  
1269 Topsail Road, P.O. Box 939  
Mount Pearl, Newfoundland  
A1N 3C9

Tel: 709-748-3319  
Fax: 709-748-3330  
Web: [www.unitedrentals.com](http://www.unitedrentals.com)

January 18, 2002

*By Facsimile*

Hickman Equipment (1985) Limited  
1269 Topsail Road  
P.O. Box 820  
Mount Pearl, Newfoundland  
A1N 3C8

Attention: Mr. Hubert Hunt, Vice-President & General Manager

Dear Mr. Hunt:

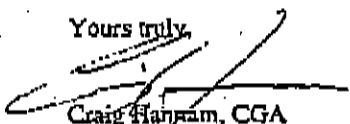
Re: Outstanding Receivables - United Rentals of Canada, Inc. ("United Rentals") and Hickman Equipment (1985) Limited ("Hickman")

Please find attached as Schedule "A" a list of invoices with respect to amounts presently due and owing to United Rentals from Hickman in the aggregate amount of CAD\$1,265,654.07 (the "United Receivable").

In addition, attached as Schedule "B" is a list of invoices with respect to amounts presently due and owing to Hickman from United Rentals in the aggregate amount of CAD\$329,254.74 (the "Hickman Receivable").

United Rentals hereby sets off the Hickman Receivable against the United Receivable, such that the Hickman Receivable has been paid in full, and thereby reducing the United Receivable to CAD\$936,399.33.

Yours truly,

  
Craig Hanham, CGA  
District Controller, Atlantic Canada District  
United Rentals of Canada, Inc.



## Schedule "B" List of Hickman Receivables from UR Proof of Claim

## Hickman Equipment A/P invoices

Invoice No.	Inv Amt	
M18625	19.76	*
M18655	10.74	*
M18656	7,360.00	*
M18694	265.42	*
M18704	43.88	*
M18705	172.36	*
M18745	25.84	*
M18746	132.10	*
M18769	48.16	*
M18776	8.35	*
M18860	37.45	*
R19801	189.75	*
R19802	977.50	*
W49354	227.01	
W49495	91.77	
W49651	282.56	
B09756	-846.40	
B10275	226.90	
B10297	133.98	
B10357	64.72	
D06181	4,427.50	
D06182	2,178.68	
D06282	105.84	
M18335	121.37	
R19739	201.82	
W48791	3,045.79	
W48989	170.26	
W49374	713.85	
D05962	23.92	
D06141	197.73	
D06142	13.14	
DM-8161 V	-2,185.00	
F10863	100.86	
M18563	56.12	*
M18578	-14.54	*
PICPAK	20.01	*
R19779	2,418.65	*
R19780	1,838.45	*
R19781	201.82	*
W48006	6,285.04	*
W49373	-713.85	*
B09399	1,424.85	
B09532	284.40	
B09731	447.84	
B09778	-203.55	
B09804	130.66	
B09954	82.04	

All Invoices marked with an asterisk identify the Invoice amount as "Total Power Plan"

## Total Power Plan Invoices

Debits	\$37,319.61
Credits	<u>\$14,745.71</u>
Net Balance	\$32,573.90

## Schedule "B"

## Hickman Equipment A/P invoices

Invoice No.	Inv Amt
B10152	142.14
B10169	299.23
B10298	-133.98
D05564	220.68
D05707	336.38
D05879	191.87
D06022	24.77
D06023	27.88
F10039	52.49
F10203	168.97
F10265	-52.49
M14080	292.68 *
M17200	38.24 *
M17289	165.39 *
M17348	367.08 *
M17353	134.98 *
M17354	7.13 *
M17534	44.34 *
M17574	46.46 *
M17640	41.17 *
M17652	67.01 *
M17666	165.39 *
M17675	55.61 *
M17698	62.64 *
M17703	953.97 *
M17704	41.17 *
M17744	53.59 *
M17745	69.23 *
M17822	26.28 *
M17825	6.90 *
M17933	86.39 *
M17941	532.64 *
M17942	89.68 *
M17961	571.11 *
M17994	274.05 *
M18131	56.93 *
R19443	1,197.54 *
R19445	7,360.00 *
R19492	201.82 *
R19508	177.58 *
R19509	24.58 *
R19583	350.00 *
R19643	2,178.77 *
R19644	1,692.52 *
R19649	3,864.00 *
R19698	177.58 *
R19699	24.58 *

**Schedule "B"****Hickman Equipment A/P invoices**

Invoice No.	Inv Amt	
R19712	-1,564.00	*
W44287	267.25	*
W47210	27,509.84	
W47211	38,125.26	
W47212	37,941.72	
000924	171,350.00	
M18953	74.18	*
M18923	22.97	*
M18924	473.49	*
W48498	1,403.18	
W47681	550.62	
B09777	-148.93	
R19719	-613.32	*
R19686	-1,840.00	*
B10474	80.73	
B10475	51.80	
W48498	1,403.18	
B10607	106.21	
W49485	338.04	
	<b>329,254.74</b>	

SUMMARY OF CURRENT DOCUMENT	
Name of Issuing Party or Person:	PricewaterhouseCoopers Inc., in its capacities as Receiver and Trustee of Hickman Equipment (1985) Limited
Date of Document:	February 27, 2003
Summary of Order/Relief Sought Of statement of purpose in filing:	Memorandum of Facts and Law in support of an application for advice and directions involving a claim for set-off by United Rentals of Canada, Inc.
Court Sub-File Number:	7: 55

2002 01T 0352

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR**

**IN THE MATTER OF** the *Companies' Creditors Arrangement Act*,  
Chapter C-36 of the Revised Statutes of Canada, 1985, as amended

**AND IN THE MATTER OF** the plan of compromise or  
arrangement of Hickman Equipment (1985) Limited

**AND IN THE MATTER OF** Rule 25 of the *Rules of the  
Supreme Court*, 1986 under the *Judicature Act*, R.S.N. 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

**AND**

**District of Newfoundland  
Court No. 9733  
Estate No. 100813**

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRATOR  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF  
HICKMAN EQUIPMENT (1985) LIMITED**, carrying  
on business at 1269 Topsail Road, in the City of  
Mt. Pearl, in the Province of Newfoundland and  
Labrador

**Memorandum of Facts and Law filed on behalf of  
PricewaterhouseCoopers Inc. as Receiver**

1. PricewaterhouseCoopers Inc. ("PWC") in its capacity as Receiver of Hickman Equipment (1985) Limited ("Hickman Equipment") makes the following submission in respect of the application for advice and directions involving a claim of set-off by United Rentals of Canada, Inc. ("United Rentals").
2. The affidavit of James Kirby, dated the 27<sup>th</sup> day of February and filed with the Court refers to various documents and defines those documents by means of certain acronyms. For ease of reference the same acronyms will be used in this memorandum.
3. In its January 18, 2002 set-off letter, United Rentals attempts to unilaterally set-off the amount of \$329,254.74 ("set-off amount") from the monies owed to it by Hickman Equipment. The set-off letter includes the following:

In addition, attached as Schedule "B" is a list of invoices with respect to amounts presently due and owing to Hickman from United Rentals in the aggregate amount of CAD\$329,254.74 (the "Hickman Receivable").

United Rentals hereby sets off the Hickman Receivable, against the United Receivable, such that the Hickman Receivable has been paid in full and thereby reducing the United Receivable to CAD \$936,399.33.

**Kirby affidavit, Exhibit "A"**

4. PWC is unaware of any set-off agreement between United Rentals and Hickman Equipment.
5. A right of set-off may exist at law and in equity notwithstanding the absence of a set-off agreement. It is a right that is available against a receiver in certain situations.

**Holt v. Telford, [1987] S.C.J. No. 53,  
First Investors Corp (Re), [1989] A.J. No. 906**

6. For set-off to occur at law, both obligations must be debts and both debts must be mutual cross-obligations.

**Holt v. Telford supra, at par 24**

7. Any assignment of one or more of the cross-obligations destroys mutuality and destroys the possibility of set-off at law.

**Holt v. Telford supra, at par 25**

8. The Hickman Equipment receivables were validly assigned to the CIBC pursuant to a GABD it enacted in favour of the CIBC in January, 1985. The specific wording of the GABD assigning the receivables is as follows:

Hickman Equipment (1985) Limited ... hereby assign(s) and transfer(s) all debts, accounts, claims moneys and choses in action which now are of [sic] which may at any time hereafter be due or owing or owned by the undersigned ... to the CANADIAN IMPERIAL BANK OF COMMERCE

**Kirby affidavit, Exhibit "B"**

9. The Hickman Equipment receivables were validly secured by CIBC pursuant to a demand debenture originally executed in 1985, as amended. The specific wording of the demand debenture assigning the receivables is as follows:

Hickman Equipment (1985) Limited ... charges by way of a first floating charge to and in favour of the Bank, its successors and assigns, all of its undertaking, property and assets, both present and future, of every nature and kind and wherever situate ...

**Kirby affidavit, Exhibit "C"**

10. By virtue of the above-noted assignments there is no mutuality between the Hickman Equipment receivables and its debts to United Rentals.
11. Financing statements were registered under the *Personal Property Security Act* ("PPSA") for both the GABD and demand debenture on June 29, 2001 and November 29, 2001, respectively.

**Kirby affidavit, Exhibits "B" and "C"**

12. By virtue of section 36 of the PPSA, CIBC has priority over United Rentals in the Hickman Equipment receivables pursuant to its registered GABD and demand debenture.
13. PWC submits that there is no set-off at law for any of the Hickman Equipment receivables.
14. In addition to the above-noted assignments, a portion of the set-off amount relates to receivables covered by the Power Plan. Pursuant to the terms of the Power Plan, those receivables were payable directly to John Deere and not to Hickman Equipment as evidenced by the following paragraphs:

1(e) **CUSTOMER ACCOUNT:** The PowerPlan Credit Program account of a Customer. A Customer may have a Preferred Account or a Merchant Authorized Account. Each of these accounts will be designated as either a Revolving Account or a Pay by Invoice Account. Merchant may designate any of such accounts as an NSC Account.

7. **ACCOUNT CREDIT LIMITS:** Each Customer may have either a Preferred Account Credit Limit or a Merchant Authorized Account Credit Limit. PowerPlan shall assign a Preferred Account Credit Limit to each Preferred Account. Merchant shall assign a Merchant Authorized Account Credit Limit to each Merchant Authorized Account. Merchant Authorized Account Credit

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Limits in excess of the maximum amount per Customer Account, specified by notice from PowerPlan, require prior approval from PowerPlan, to be given on a case by case basis at PowerPlan's sole discretion. PowerPlan shall monitor and enforce the Credit Limits of all PowerPlan Customers. PowerPlan may permit any Customer to exceed its Merchant Authorized Credit Limit by up to 10% of such Credit Limit, such excess to be with full recourse to Merchant. PowerPlan may reduce or revoke a Customer Credit Limit at any time. Merchant shall make no further PowerPlan Credit Program sales to a Customer upon notice from PowerPlan that the Customer Account has been restricted.

Transactions in excess of a Customer's assigned Credit Limit, regardless of the type of account, may be approved by Merchant on a transaction by transaction basis. Any charges made in such cases will be with full recourse to Merchant.

**14. PAYMENT TO MERCHANT:** For Customer transactions submitted to and accepted by PowerPlan in accordance with this Agreement, Merchant shall receive payment from PowerPlan in an amount equal to the unpaid principal indebtedness thereunder, less the Discount Charge and any other charges, payable by Merchant under this Agreement, when applicable.

Merchant hereby authorizes PowerPlan to initiate Electronic Funds Transfer (EFT) via Automated Clearing House Credits (ACH Credits) for payment of amount due Merchant. Payments to Merchant transferred through EFT will be deposited in the financial institution account as specified by the Merchant. Merchant understands that if it does not use the EFT payment method, payment will be via cheque sent regular Canadian mail.

**17. CUSTOMER PAYMENTS:** Merchant may accept Customer payments on Customer Accounts. Merchant will not encourage Customers to make payment to any party other than directly to PowerPlan. In the event that Merchant or its agents or employees receives or subsequently come into possession of a Customer payment, such payment shall be held in trust by Merchant and Merchant shall forward it to PowerPlan the same day as received. Cheques shall be endorsed if necessary and the Customer's Account number shall be indicated on the cheque and the remittance stub shall be attached when possible.

Cash payments received from Customer may be submitted as a credit memo on the Customer's Account. PowerPlan reserves the right to refuse to process credit memos for payments received by Merchant. In such circumstances, if cash payment is received, Merchant shall draft a cheque on Merchant's account in the amount of the Customer's payment and such cash payment shall be held in trust by Merchant until Merchant's cheque has been presented to and accepted by Merchant's bank. Merchant shall indicate Customer's name, Customer's Account Number, and date of payment on the cheque mailed to PowerPlan.

For the purpose of convenience and efficiency, Merchant agrees that PowerPlan may authorize persons to sign and endorse Merchant's name upon any cheques, drafts, money orders or other forms of payment made on Customer Accounts. Merchant agrees that PowerPlan may authorize persons to sign Merchant's name and endorse Merchant's name on any other instrument necessary to carry out the intent of this Agreement.

If PowerPlan receives a payment from a Customer whose account has been charged back to Merchant pursuant to this Agreement, PowerPlan will first apply the payment against any amount due PowerPlan from Merchant.

19. **COLLECTION ASSISTANCE:** PowerPlan shall employ reasonable diligence in collecting or attempting to collect Customer Accounts and in curing any delinquencies thereon. Merchant shall provide to PowerPlan, without charge, any reasonable collection assistance, requested by PowerPlan including, without limitation, information concerning the location of a Customer or his assets, notifications to delinquent Customers, storage of repossessed goods and Merchant's credit and collection experience with Customers.

Merchant agrees not to take legal action, or make any other recovery efforts on any Customer Account, without the prior approval of PowerPlan. Merchant is responsible for ensuring its own acts, and those of its employees and agents are in compliance with applicable law. In assisting PowerPlan in collecting on a Customer Account, Merchant is an independent contractor and assumes full responsibility for its actions and the actions of its officers, partners, employees and agents.

(emphasis mine)

**Kirby affidavit, Exhibit "E"**

15. Due to the existence of John Deere as a third party for a portion of the set-off amount, which portion totals \$32,573.90, there is no mutuality for that amount as between Hickman Equipment and United Rentals.

**Kirby affidavit, Exhibit "F" and Schedule "B" thereto**

16. Set-off in equity can occur under the following situations:

- a. Where the money sum sought to be set off has accrued and become due prior to the notice of its assignment; or
- b. Where the money sum sought to be set-off arose out of the same contract or series of events, or was clearly connected to the same contract or series of events, that gave rise to the debt

Set-off in equity does not require mutuality.

**Holt v. Telford, supra at par 26.**

17. United Rentals had specific notice of CIBC's interest in the demand debenture no later than February 1, 1999, the date of the Asset Purchase Agreement between United Rentals and Hickman Equipment.

**Kirby affidavit, Exhibit "D"**

18. In the Asset Purchase Agreement, specific reference is made to the demand debenture in favour of CIBC as follows:

Liabilities. Schedules 3.4(b), (c) and (d) are accurate lists and descriptions of all liabilities of Hickman described in accordance with Sections 3.4(b), (c) and (d) below:



- (b) Schedule 3.4(b) lists all liens, claims and encumbrances secured by or otherwise affecting any Purchased Assets, including a description of the nature of such lien, claim or encumbrance, the amount secured if it secures a liability, the nature of the obligation secured, and the party holding such lien, claim or encumbrance.

19. The demand debenture is specifically listed in Schedule 3.4(b).
20. All monies claimed by United Rentals as part of the set-off amount arose subsequent to February 1, 1999 (a review of the Back-up to Schedule B invoices confirms that they all arose subsequent to April of 2001), and therefore subsequent to the notice of assignment in the Asset Purchase Agreement.

**Kirby affidavit, Exhibit "A"**

21. A further review of the Back-up to Schedule B invoices confirms that they relate to specific contracts and obligations, each independent of the other.

**Kirby affidavit, Exhibit "A"**

22. A review of the invoices provided in support of the amount owing by Hickman Equipment to United Rentals (Back-up to Schedule A), confirms that they also relate to specific contracts and obligations, each independent of the other and independent of the invoices in the Back-up to Schedule B.

**Kirby affidavit, Exhibit "A"**

23. There is no interrelationship between the amounts found in the Back-up to Schedule A and the Back-up to Schedule B and thus no right of equitable set-off between the two amounts.

**Canadian Imperial Bank of Commerce (CIBC) v. Twin Richfield Oils Ltd., [1992] A.J. No. 210 (at p. 9)**

24. The Back-up to Schedule B includes documentation in support of the purchase of a JD Unit by United Rentals from Hickman Equipment. A review of the purchase order (dated February 4, 2002) and the invoice (not stamped as received until February 8, 2002) confirms that the obligation was not due and owing until sometime in February. As of January 18, 2002, the date of the alleged set-off, there was no obligation by United Rentals for the JD Unit.
25. The portion of the set-off amount that relates to the JD Unit cannot be set-off as against the amounts owing by Hickman Equipment.

26. The date of the receipt of the invoice by United Rentals is February 8, 2002, one day after the date on which an Order was granted by this Honourable Court pursuant to the *Companies Creditors Arrangement Act* (CCAA Order).

27. Paragraph 4 of the CCAA Order provides for a stay of proceedings. More particularly, paragraph 4 (e) states:

all Persons are restrained and prohibited from exercising any extra-judicial remedy against the Applicant, including the registration of re-registration of any securities owned by the Applicant into the name of such Persons or their nominees, the exercise of any voting rights attaching to securities owned by the Applicant, any right of distress, repossession, set off or consolidation of accounts in relation to amounts due or accruing due in respect of or arising from any indebtedness or obligation of the Application as at the date hereof;

28. The stay provisions found in paragraph 4 of the CCAA Order were retained by paragraph 37 a) of the Receivership Order. It reads as follows:

THIS COURT ORDERS that, from and after 6:00 p.m., Newfoundland Standard Time, on the date of this Order, the Initial Order and the February 22 Order shall be of no further force and effect, save and except only that:

paragraphs 2, 4, 5 and 6 of the Initial Order shall remain in full force and effect provided that any waiver, consent or permission that could have been exercised by the Applicant shall hereafter only be exercised by the Receiver;

29. Pursuant to the terms of the CCAA Order as retained by the Receivership Order, United Rentals is precluded from asserting a claim of set-off as it relates to the JD Unit.

30. In the event this Honourable Court holds that United Rentals is entitled to set-off the amount relating to the JD Unit, reference is made to s.95 of the *Bankruptcy and Insolvency Act* ("BIA"). It reads as follows:

95. (1) Avoidance of preference in certain cases – Every conveyance or transfer of property or charge thereon made, every payment made, every obligation incurred and every judicial proceeding taken or suffered by any insolvent person in favour of any creditor or of any person in trust for any creditor with a view to giving that creditor a preference over the other creditors is, where it is made, incurred, taken or suffered within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date the insolvent person became bankrupt, both dates included, deemed fraudulent and void as against the trustee in the bankruptcy.

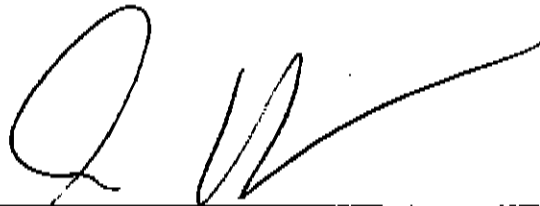
(2) When view to prefer presumed – Where any conveyance, transfer, charge, payment, obligation or judicial proceeding mentioned in subsection (1) has the effect of giving any creditor a preference over other creditors, or over any one or more of them, it shall be presumed, in the absence of evidence to the contrary, to have been made, incurred, taken, paid or suffered with a view to giving the creditor a preference over other creditors, whether or not it was made voluntarily or under pressure and evidence of pressure shall not be admissible to support the transaction.

(2.1) Exception – Subsection (2) does not apply in respect of a margin deposit made by a clearing member with a clearing house.

31. PWC submits that by virtue of the wording of s.95(2) of the BIA any set-off amount relating to the JD Unit is presumed to be a preference and ought not to be upheld.

ALL of which is respectfully submitted.

DATED at Halifax, Nova Scotia, this 26<sup>th</sup> day of February, 2003.



**CARL A. HOLM, Q.C.**

Solicitors for PricewaterhouseCoopers Inc.  
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