



Benson·Myles

BARRISTERS - SOLICITORS - NOTARIES

Suite 900 Atlantic Place
Water Street, P.O. Box 1538
St. John's, Newfoundland
Canada, A1C 5N8

Telephone: (709) 579-2081
Fax: (709) 579-2647
E-Mail: info@bensonmyles.com
Web Site: <http://www.bensonmyles.com>

Date: December 19, 2002

To: ABN Amro Bank Canada –
Aubrey L. Bonnell, Q.C. – 722-7521

ABN Amro Leasing & Tramac Equipment Ltd. –
Brian Winsor, David Timmas, Brent Keenan – 905-331-2020

Bombardier Capital Leasing & Culease Financial Services –
John French – 754-2701

Caterpillar Equipment – Colin D. Grant – 905-849-5512

CAT Finance – James Smyth, Q.C., Philip Warren – 754-5662

Cedarrapids – Nathan Mixdorf – 319-399-4760
Francoise Belzil – 780-413-3152

CIBC Equipment Finance Ltd./CIT Financial Ltd. –
Gregory W. Dickie – 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 – 722-4720
Elaine Gray – 416-863-3527

Fabtek Corp. – Linc A. Rogers – 416-863-2653
Rhodie E. Mercer, Q.C. – 726-5705

GE Capital – Harvey Chaiton – 416-218-1849
Frederic Scalabrini – 905-319-4855

GMAC – Thomas R. Kendall, Q.C. – 722-1763

Group Holdings Ltd., Hickman Equipment/Hickman Holdings Ltd. –
Robert Stack, Griffith D. Roberts – 726-2992

This telecopy is SOLICITOR-CLIENT PRIVILEGED and is intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. If you received this telecopy in error, please notify us by telephone and return the original telecopy to us by mail.

If you have any difficulty receiving this telecopy, please contact Denise Dawe at (709) 579-2081.

Ingersoll-Rand Canada, Inc. -- R. Barry Learmonth, Q.C. -- 739-8151
Jonathan Wigley -- 416-863-6275

John Deere Ltd./John Deere Credit Inc. --
Neil L. Jacobs, Bruce Grant, Maureen Ryan -- 722-4565

MTC Leasing Inc./National Leasing Group Inc. --
R. Paul Burgess -- 754-0915

ORIX Financial Services Canada Ltd. -- Donald Yaeck -- 416-236-3010

Goodman Associates -- Paul G. Goodman -- 902-425-3777

PricewaterhouseCoopers Inc. -- Frederick Constantine -- 722-0483
Carl Holm -- 902-429-8215

Royal Bank of Canada -- Thomas O. Boyne, Q.C. -- 902-463-7500

TD Asset Finance Corp. -- D. Bradford L. Wicks -- 753-5221

Wells Fargo Equipment Finance Co. -- Richard B. Jones -- 416-361-6303

Subject: Our Client -- CIBC

Our File: 8-125

Total Pages Sent: 22, including this page

Sender: Geoffrey L. Spencer

Please find enclosed a copy of an Application and 3 Affidavits filed with the Supreme Court on behalf of CIBC appealing the Trustee's Final Determination with respect to CIBC.

As per the Order of Justice Hall, the copies of these documents, together with the Exhibits to the Affidavit, have been forwarded to the Receiver for posting on the Receiver's website.

This telecopy is **SOLICITOR-CLIENT PRIVILEGED** and is intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. If you received this telecopy in error, please notify us by telephone and return the original telecopy to us by mail.

If you have any difficulty receiving this telecopy, please contact Denise Dawe at (709) 579-2081

SUMMARY OF CURRENT DOCUMENT	
Name of Issuing Party or Person	Canadian Imperial Bank of Commerce
Date of Document	December 17, 2002
Summary of Order/Relief Sought or statement of purpose in filing:	Application appealing the Trustee's Final Determination with respect to Canadian Imperial Bank of Commerce dated December 3, 2002.
Court Sub-File Number:	

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 ("Hickman Equipment")

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 (the "BLA")

AND

District of Newfoundland
Court No. 9733
Estate No. 100\$13

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

**INTERLOCUTORY APPLICATION
(INTER PARTIES)**

BENSON-MYLES
Suite 900, Atlantic Place
P.O. Box 1538
St. John's, NF A1C 5N8
Attention: Geoffrey L. Spencer
Solicitors for Canadian Imperial Bank of Commerce

The Application of Canadian Imperial Bank of Commerce (the "Applicant") says as follows:

1. By Order of this Honourable Court granted on the 13th day of March, 2002 and filed with the Court on the 14th day of March, 2002, it was ordered that PricewaterhouseCoopers Inc. be appointed Receiver of Hickman Equipment (the "Receivership Order").
2. By a Receiving Order (the "Receiving Order") made on the 13th day of March, 2002, pursuant to the provisions of the BIA and filed with the Supreme Court of Newfoundland and Labrador in Bankruptcy and Insolvency on the 14th day of March, 2002, Hickman Equipment was adjudged bankrupt and PricewaterhouseCoopers Inc. was appointed Trustee of the Estate of the bankrupt in bankruptcy (the "Trustee").
3. The Receivership Order gave PricewaterhouseCoopers Inc. the overall mandate of developing a plan and procedural structure for the liquidation of the assets of Hickman Equipment, as defined in paragraph 6 of the Receivership Order, and also a plan for the determination of the rights of all creditors and claimants. In that regard, a Claims Plan was approved by this Honourable Court by an Order dated May 14, 2002 and filed May 17, 2002 (the "Claims Plan").
4. Paragraph 14 of the Claims Plan required the Trustee to issue a Final Determination either allowing a claim as a valid secured claim under s. 135(4) of the BIA or disallowing it as a valid secured claim. As indicated in paragraph 15 of the Claims Plan, claims disallowed by the Trustee under this process are afforded a 30 day right of appeal under the BIA.
5. On the 3rd day of December, 2002, the Trustee issued a Final Determination wherein it allowed the Applicant's claim in part (the "Final Determination").
6. In the Final Determination, the Trustee disallowed the Applicant's claim to have an enforceable General Security Agreement dated January 25, 2000 (the "GSA")

and enforceable security under the *Bank Act* dated October 18, 2000 (the "Bank Act Security").

7. In the Final Determination, the Trustee allowed the Applicant's secured claim under its Floating Charge Debenture dated January 7, 1985 and Supplementary Debentures (collectively the "Debenture") dated February 19, 1990, April 17, 1997, August 6, 1997 and July 9, 1998. However, the Trustee held that the Applicant's security interest in the assets covered by the Debenture was subordinated to the interests of the holders of "Permitted Encumbrances" including, *inter alia*, unperfected purchase money security interest ("PMSI") holders. The Trustee further determined that the assets in which the "Permitted Encumbrancers" have a security interest are held in trust by the Applicant for the "Permitted Encumbrancers".
8. In the Final Determination, the Trustee further determined that if the Applicant did have a valid secured claim under the GSA, that the Applicant's security interest in the assets covered by the GSA was subordinated to the interests of the holders of "Permitted Encumbrances", including, *inter alia*, unperfected PMSI holders. The Trustee further determined that the assets in which "Permitted Encumbrancers" have a security interest are held in trust by the Applicant for the "Permitted Encumbrancers".
9. In accordance with paragraph 15 of the Claims Plan and s. 135(4) of the BIA, the Applicant hereby appeals the Final Determination.
10. The grounds of the appeal are as follows:
 - (a) That the Trustee erred in fact and in law in determining that the Applicant did not have a valid secured claim under the GSA;
 - (b) That the Trustee erred in fact and in law in determining that the Applicant did not have a valid secured claim under the Bank Act Security;

- (c) That the Trustee erred in fact and in law in determining that the scope of the Applicant's security interest under the Debenture and, if found to be valid, the GSA was subordinated to the interests of the holders of "Permitted Encumbrances" including, *inter alia*, unperfected PMSI holders and in determining that the assets in which "Permitted Encumbrancers" had a security interest are held in trust by the Applicant for the "Permitted Encumbrancers"
- (d) Such other grounds as counsel for the Applicant may advance and this Honourable Court may consider.
11. The Applicant therefore requests that this Honourable Court reverse the Final Determination as follows:
- (a) That the Applicant be found to have a valid secured claim under the GSA;
- (b) That the Applicant be found to have a valid secured claim under the Bank Act Security;
- (c) That the Applicant's security interest in the assets of Hickman Equipment be found not to be subordinated to the interests of the holders of "Permitted Encumbrances" including, *inter alia*, unperfected PMSI holders, unless and only to the extent that the Applicant has voluntarily executed a valid, binding and enforceable subordination, Priority Agreement or like document with or in favour of any of the "Permitted Encumbrancers";
- (d) That the Applicant be awarded its costs of this Application.

DATED at St. John's, in the Province of Newfoundland and Labrador this **17th** day of December, 2002.

BENSON-MYLES

Per: *Geoffrey L. Spencer*
 Geoffrey L. Spencer

Solicitors for the Applicant
 whose address for service is:
 Suite 900, Atlantic Place
 P.O. Box 1538
 St. John's, NL A1C 5N8

To:		
ABN Amro Bank Canada/ ABN Amro Leasing & Tramac Equipment Ltd.	Aubrey L. Bonnell, Q.C./ Brian Winsor David Timms Brent Keenan	722-7521 905-331-2020
Bombardier Capital Leasing & Lease Financial Services	John French	754-2701
Caterpillar Equipment	Colin D. Grant	905-849-5512
CAT Finance	James Smyth, Q.C./ Philip Warren	754-5662
Cedar Rapids	Nathan Mixdorf/ Francoise Belzil	319-399-4760 780-413-3152
CIBC Equipment Finance Ltd./CIT Financial Ltd./	Gregory W. Dickie	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	722-4720 416-863-3527
Fabtek Corp.	Lino A. Rogers Rhodie E. Mercer, Q.C.	416-863-2653 726-5705
GE Capital	Harvey Chaiton Frederic Scalabrini	416-218-1849 905-319-4855
GMAC	Thomas R. Kendell, Q.C.	722-1763

Group Holdings Ltd/ Hickman Equipment/ Hickman Holdings Ltd.	Robert Stack/ Griffith D. Roberts	726-2992
Ingersoll-Rand Canada Inc.	R. Barry Learnmonth, Q.C. Jonathan Wigley	739-8151 416-863-6275
John Deere Ltd./ John Deere Credit Inc.	Neil L. Jacobs/ Bruce Grant/ Maureen Ryan	722-4565
MTC Leasing Inc./ National Leasing Group Inc.	R. Paul Burgess	754-0915
ORIX Financial Services Canada Ltd.	Donald Yaeck	416-236-3010
Goodman Associates	Paul G. Goodman	902-425-3777
PricewaterhouseCoopers Inc.	Frederick Constantine Carl Holm	722-0483 902-429-8215
Royal Bank of Canada	Thomas O. Boyne, Q.C.	902-463-7500
TD Asset Finance Corp.	D. Bradford L. Wicks	753-5221
Wells Fargo Equipment Finance Co.	Richard B. Jones	416-361-6303

ISSUED AT St. John's, Newfoundland and Labrador, this

day of December, 2002.

NOTICE

You are hereby notified that the foregoing Application will be heard by a Judge of the Supreme Court of Newfoundland, Trial Division, sitting at St. John's, Newfoundland on the

day of _____, 2003 at _____ a.m./p.m. or soon thereafter as the Application can be heard.

To:

ABN Amro Bank Canada/ ABN Amro Leasing & Tramac Equipment Ltd.	Aubrey L. Bonnell, Q.C./ Brian Winsor David Timms Brent Keenan	722-7521 905-331-2020
Bombardier Capital Leasing & Culease Financial Services	John French	754-2701
Caterpillar Equipment	Colin D. Grant	905-849-5512
CAT Finance	James Smyth, Q.C./ Philip Warren	754-5662
Cedarapids	Nathan Mixdorf/ Francoise Belzil	319-399-4760 780-413-3152
CIBC Equipment Finance Ltd./CIT Financial Ltd./	Gregory W. Dickie	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	722-4720 416-863-3527
Fabtek Corp.	Line A. Rogers Rhodie E. Mercer, Q.C.	416-863-2653 726-5705
GE Capital	Harvey Chaiton Frederic Scalabrini	416-218-1849 905-319-4855
GMAC	Thomas R. Kendall, Q.C.	722-1763
Group Holdings Ltd./	Robert Stack/	

Hickman Equipment/ Hickman Holdings Ltd.	Griffith D. Roberts	726-2992
Ingersoll-Rand Canada Inc.	R. Barry Learmonth, Q.C. Jonathan Wigley	739-8151 416-863-6275
John Deere Ltd/ John Deere Credit Inc.	Nail L. Jacobs/ Bruce Grant/ Maureen Ryan	722-4565
MTC Leasing Inc./ National Leasing Group Inc.	R. Paul Burgess	754-0915
ORDX Financial Services Canada Ltd.	Donald Yaeck	416-236-3010
Goodman Associates	Paul G. Goodman	902-425-3777
PricewaterhouseCoopers Inc.	Frederick Constantine Carl Holm	722-0483 902-429-8215
Royal Bank of Canada	Thomas O. Boyne, Q.C.	902-463-7500
TD Asset Finance Corp.	D. Bradford L. Wicks	753-5221
Wells Fargo Equipment Finance Co.	Richard B. Jones	416-361-6303

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 ("Hickman Equipment")

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 (the "BIA")

AND

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

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

ORDER

BEFORE THE HONOURABLE MR. JUSTICE HALL.

WHEREAS this matter having come on for hearing on the day of , 2003;

AND WHEREAS the parties listed in Schedule "A" to this Order having been served with Notice of this Application;

AND WHEREAS the parties listed in Schedule "B" to this Order having appeared and having been heard;

- 2 -

AND UPON READING the Affidavit of Jennifer Lee, Associate, Commercial Credit with Canadian Imperial Bank of Commerce dated December , 2002; John H. Webber, Director – Commercial Banking of Canadian Imperial Bank of Commerce dated November 21, 2002; and Gary C. Bishop, Vice President, Finance and Chief Financial Officer of Hickman Motors Limited dated November 29, 2002;

IT IS THIS DAY ORDERED as follows:

1. The Trustee's Final Determination with respect to the secured claim of Canadian Imperial Bank of Commerce ("CIBC") is hereby reversed as follows:
 - (a) That CIBC be found to have a valid secured claim under the General Security Agreement dated January 25, 2000;
 - (b) That CIBC be found to have a valid secured claim under the Bank Act Security dated October 18, 2000;
 - (c) That CIBC's security interest in the assets of Hickman Equipment be found not to be subordinated to the interests of the holders of "Permitted Encumbrances" including, *inter alia*, unperfected PMSI holders, unless and only to the extent that CIBC has voluntarily executed a valid, binding and enforceable subordination, Priority Agreement or like document with or in favour of any of the "Permitted Encumbrancers";
 - (d) That CIBC is hereby awarded its costs of this Application on a party and party basis.

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

The Court

SUMMARY OF CURRENT DOCUMENT	
Name of Issuing Party or Person:	Canadian Imperial Bank of Commerce
Date of Document:	November ²¹ , 2002
Summary of Order/Relief Sought or statement of purpose in filing:	Affidavit of
Court Sub-File Number	

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 LABRADOR
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF
HICKMAN EQUIPMENT (1985) LIMITED**

AFFIDAVIT

I, John H. Webber, of Victoria, in the Province of British Columbia, make oath and state as follows:

1. THAT I was a Director - Commercial Banking of Canadian Imperial Bank of Commerce ("CIBC") at all relevant times herein and as such have full knowledge of the facts deposed to herein;
2. THAT on or about the 25th day of January, 2000, CIBC requested Hickman Equipment (1985) Limited ("Hickman Equipment") to execute a General Security Agreement (the "General Security Agreement") as security for Hickman Equipment's indebtedness to CIBC. CIBC required the General Security Agreement in order to continue to provide, *inter alia*, the operating line to Hickman Equipment. If Hickman Equipment refused to execute the General Security Agreement, CIBC would have been entitled to regard that as sufficient grounds to demand payment of the operating line.
3. THAT the General Security Agreement was intended to be continuing security for all of the present and future indebtedness and liability of Hickman Equipment to CIBC, on an ongoing basis, unless and until such time as Hickman Equipment paid such indebtedness in full.
4. THAT after Hickman Equipment's execution of the General Security Agreement, Hickman Equipment's operating line with CIBC continued to operate and revolve, and it was my understanding that the General Security Agreement continued to act as security for all such indebtedness.
5. THAT on April 17, 2000 and June 19, 2000, CIBC requested Hickman Equipment to execute credit agreements (the "2000 Credit Agreements").
6. THAT at the time that Hickman Equipment executed the 2000 Credit Agreements, it was my understanding that the General Security Agreement was to

continue to act as security over the present and future indebtedness and liability of Hickman Equipment to CIBC.

- 7. THAT to the best of my knowledge, information and belief, CIBC has never informed Hickman Equipment that CIBC intended to cancel the General Security Agreement. I always understood that the General Security Agreement continued to act as security for, *inter alia*, Hickman Equipment's operating line.
- 8. THAT it was never my understanding nor to the best of my knowledge, information and belief the intention of CIBC that the General Security Agreement would be terminated by virtue of the execution of the 2000 Credit Agreements.

SWORN TO at Victoria , in)
 the Province of British Columbia ,)
 this 21 day of)
 November, 2002 before me:)



DOUGLAS S. JOHNSON
 Suite B, 777 Blanshard Street
 Victoria, B.C. V8W 2G9
 Solicitor



CANADA

PROVINCE OF NEWFOUNDLAND AND LABRADOR

CITY OF ST. JOHN'S

AFFIDAVIT

I, Gary C. Bishop, of the City of St. John's, in the Province of Newfoundland and Labrador, Chartered Accountant, make oath and state as follows:

1. THAT since January 2002 I have been Vice-President, Finance and Chief Financial Officer of Hickman Motors Limited and prior to that date and at all relevant times herein held the position of Comptroller and Secretary of Hickman Motors Limited and as such have full knowledge of the facts deposed to herein.
2. THAT in the foregoing capacity, I coordinated the overall banking arrangements of the Hickman Group of Companies, including Hickman Equipment (1985) Limited ("Hickman Equipment").
3. THAT the Hickman Group of Companies, including Hickman Equipment, maintained credit facilities with Canadian Imperial Bank of Commerce ("CIBC"). Hickman Equipment's credit facilities with CIBC included a demand operating line of credit (the "Operating Line").
4. THAT in early January, 2000, I together with Albert Hickman, a director of Hickman Equipment, were requested by John Weber, then account manager of Canadian Imperial Bank of Commerce ("CIBC"), to arrange for the execution of a General Security Agreement (the "General Security Agreement") on behalf of Hickman Equipment as security for Hickman Equipment's indebtedness to CIBC. I understood that the General Security Agreement was requested at that time due to the recent implementation of the *Personal Property Security Act* (Newfoundland and Labrador) and that CIBC required the General Security

- 2 -

Agreement in order to continue to provide, *inter alia*, the Operating Line to Hickman Equipment.

5. THAT to the best of my recollection, I was provided with a copy of the General Security Agreement by John Weber which I then forwarded to Gary Hillyard and Hubert Hunt, signing officers of Hickman Equipment, for execution.
6. THAT on or about the 28th day of January, 2000, I, together with Albert Hickman, met with John Weber and provided the executed General Security Agreement to him.
7. THAT at the time of the execution of the General Security Agreement, I understood that it was intended to be continuing security for all of the present and future indebtedness and liability of Hickman Equipment to CIBC, on an ongoing basis, unless and until such time as Hickman Equipment paid such indebtedness in full.
8. THAT after the execution of the General Security Agreement, Hickman Equipment's Operating Line with CIBC continued to operate and revolve, and it was my understanding that the General Security Agreement continued to act as security for all such indebtedness.
9. THAT I am aware from time to time in the year 2000 that Hickman Equipment was requested by CIBC to execute credit agreements (the "2000 Credit Agreements").
10. THAT at the time that Hickman Equipment executed the 2000 Credit Agreements, it was my understanding that the General Security Agreement was to continue to act as security over the present and future indebtedness and liability of Hickman Equipment to CIBC.
11. THAT to the best of my knowledge, information and belief, CIBC has never informed Hickman Equipment that CIBC intended to cancel the General Security

Agreement. I always understood that the General Security Agreement continued to act as security for, *inter alia*, the Operating Line.

- 12. THAT it was never my understanding nor, to the best of my knowledge, information and belief, the intention of Hicksman Equipment that the General Security Agreement would be terminated by virtue of the execution of the 2000 Credit Agreements.

SWORN TO at St. John's, in
 the Province of Newfoundland,
 this 29 day of
 November, 2002 before me:

Becky Petten

Becky Petten

"A Commissioner for Oaths in and for the
 Province of Newfoundland"

My Appointment Expires December 31, 2004

Gary Bishop
 GARY C. BISHOP

SUMMARY OF CURRENT DOCUMENT	
Name of Issuing Party or Person	Canadian Imperial Bank of Commerce
Date of Document:	December 17 th , 2002
Summary of Order/Relief Sought or statement of purpose in filing:	Application appealing the Trustee's Final Determination with respect to Canadian Imperial Bank of Commerce dated December 3, 2002.
Court Sub-File Number:	

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 ("Hickman Equipment")

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 (the "BIA")

AND

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

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

AFFIDAVIT

I, Jennifer Lee, of St. John's, in the Province of Newfoundland and Labrador, make oath and state as follows:

1. That I am an Associate, Commercial Credit with Canadian Imperial Bank of Commerce ("CIBC");
2. That I have knowledge of all of the circumstances referred to herein except as otherwise stated;
3. That CIBC is a secured creditor of Hickman Equipment and currently has a claim in the bankrupt estate of Hickman Equipment in the amount of \$15,433,523.95, together with interest and costs. A copy of CIBC's Proof of Claim is attached hereto as Exhibit "A";
4. That CIBC holds the following security for the indebtedness of Hickman Equipment:
 - (a) General Assignment of Accounts, etc., dated January 4, 1985 and registered at the Assignment of Book Debts Registry on January 16, 1985 as registration no. 16040 (continued under the PPSA on June 29, 2001 as registration no. 1063565) (a copy of which is hereby attached as Exhibit "B").
 - (b) Floating Charge Debenture in the amount of \$3,000,000.00 dated January 7, 1985 and registered at the Registry of Deeds on January 29, 1985 at Roll 77, Frame 70 (a copy of which is hereby attached as Exhibit "C"), as supplemented by the following Debentures:
 - (i) Supplemental Debenture dated February 19, 1990 and registered on February 22, 1990 at the Registry of Deeds at Roll 732, Frame 839, which added a fixed charge to the Debenture (a copy of which is hereby attached as Exhibit "D");
 - (ii) Supplemental Debenture dated April 17, 1997 and registered on April 30, 1997 at the Registry of Deeds at Roll 1521, Frame 1435,

which increased the principal amount of the Debenture to \$5,000,000.00 (a copy of which is hereby attached as Exhibit "E");

(iii) Supplemental Debenture dated August 6, 1997 and registered August 29, 1997 at the Registry of Deeds at Roll 1564, Frame 2095, which increased the principal amount of the Debenture to \$10,000,000 (a copy of which is hereby attached as Exhibit "F");

(iv) Supplemental Debenture dated July 9, 1998 and registered at the Registry of Deeds on July 15, 1998 at Roll 1668, Frame 1748, which increased the principal amount of the Debenture to \$20,000,000.00 (a copy of which is hereby attached as Exhibit "G")

(continued under the PPSA on November 29, 2001 as registration no. 1403243).

(c) General Security Agreement dated January 25, 2000 and registered under the PPSA on January 28, 2000 as registration no. 78490 (a copy of which is hereby attached as Exhibit "H").

(d) Bank Act Security registered on October 26, 2000 as registration no. 01074579 (a copy of which is hereby attached as Exhibit "I")

(collectively referred to as "CIBC's Security Documents")

5. That from time to time, CIBC would require Hickman Equipment to execute Credit Agreements and other documentation in relation to its credit facilities and related banking relations, including the following Credit Agreements:

(a) Credit Agreement dated March 17, 1997 between CIBC and Hickman Equipment, with Standard Credit Terms attached (a copy of which is hereby attached as Exhibit "J");

- (b) Credit Agreement dated July 18, 1997 between CIBC and Hickman Equipment, with Standard Credit Terms attached (a copy of which is hereby attached as Exhibit "K");
 - (c) Credit Agreement dated June 26, 1998 between CIBC and Hickman Equipment, with Standard Credit Terms attached (a copy of which is hereby attached as Exhibit "L");
 - (d) Credit Agreement dated April 17, 2000 between CIBC and Hickman Equipment, with Standard Credit Terms attached (a copy of which is hereby attached as Exhibit "M");
 - (e) Credit Agreement dated June 19, 2000 between CIBC and Hickman Equipment, with Standard Credit Terms attached (a copy of which is hereby attached as Exhibit "N").
6. That in my experience it is not the customary or common commercial and banking practice to define and limit the entire scope of the customer-bank relationship in a Credit Agreement. There are often numerous other documents and agreements that commonly co-exist with the Credit Agreement, ranging from current account operating agreements, overdraft agreements and various forms of security agreements.
7. That it has always been my understanding that CIBC's Security Documents provided CIBC with a first charge over all of Hickman Equipment's present and after-acquired property. I was never aware of any provision in CIBC's Security Documents which would subordinate CIBC's security interest to subsequent creditors. In fact, CIBC routinely received requests from other lenders who had or were considering having relations with Hickman Equipment seeking CIBC's agreement to voluntarily subordinate its first priority position in favour of a subsequent lender. From my review of Hickman Equipment's security files, I located 30 waiver letters executed by the local CIBC branch in response to requests from lenders, copies of which are attached hereto as Exhibit "O".

8. That I make this Affidavit in support of CIBC's application appealing the Trustee's Final Determination with respect to CIBC dated December 3, 2002, a copy of which is attached hereto as Exhibit "P".

SWORN TO before me at St. John's,
in the Province of Newfoundland and
Labrador, this 19th day of
December, 2002:



BARZISZEWSKI



JENNIFER LEE

Sworn before me
this 19th day of December, 2002

PROOF OF CLAIM

(Subsection 50.1(1), paragraph 51(1)(e) and 66.14(b)
and subsections 81.2(1), 102(2) and 128(1)



In the matter of the bankruptcy (or proposal or receivership of the property) of **Hickman Equipment (1985) Limited**(debtor) of the City of Mount Pearl, in the Province of Newfoundland and the claim of Canadian Imperial Bank of Commerce (creditor). All correspondence should be mailed to **BENSON-MYLES**, Suite 900, Atlantic Place, P.O. Box 1538, St. John's, Newfoundland, A1C 5N8, Attention: R.Wayne Myles.

I, John Webber, Director, Commercial Banking, on behalf of Canadian Imperial Bank of Commerce, of the City of St. John's, Newfoundland, do hereby certify:

1. That I am the Director, Commercial Banking, on behalf of Canadian Imperial Bank of Commerce in Newfoundland and Labrador.
2. That I have knowledge of all the circumstances connected with the claim referred to in this form.
3. That the said debtor was at the date of bankruptcy, namely the 13th day of March, 2002, and still is indebted to the above-named creditor (referred to in this form as the "creditor") in the sum of \$15,433,523.95*, plus interest, as shown by the statement of account attached hereto and marked Schedule "A", after deducting any counterclaims to which the debtor is entitled.
4. (Check and complete appropriate category.)
 - () A. UNSECURED CLAIM
That in respect of the said debt, I do not hold any assets of the debtor as security and
(Check appropriate description)
 - () I do not claim a right to a priority.
 - () I claim a right to a priority under section 136 of the Bankruptcy and Insolvency Act. (Set out on an attached schedule details to support priority claim).
 - (x) B. SECURED CLAIM
That in respect of the said debt, the creditor holds assets of the debtor valued at \$7,433,523.95* as security, particulars of which are contained in the following security:
 - 1) General Assignment of Accounts, Etc., dated January 4, 1985 and registered at the Assignment of Book Debts Registry on January 16, 1985 as registration no. 16040 (continued under the PPSA on June 29, 2001 as registration no. 1063565);
 - 2) Floating Charge Debenture in the amount of \$3,000,000.00 dated January 7, 1985 and registered at the Registry of Deeds on January 29, 1985 at Roll 77, Frame 70 (continued under the PPSA on November 29, 2001 as registration no. 1403243), as supplemented by the following Debentures:

- (i) Supplemental Debenture dated February 19, 1990 and registered on February 22, 1990 at the Registry of Deeds at Roll 732, Frame 839, which added a fixed charge to the Debenture;
 - (ii) Supplemental Debenture dated April 17, 1997 and registered on April 30, 1997 at the Registry of Deeds at Roll 1521, Frame 1435, which increased the principal amount of the Debenture to \$5,000,000.00;
 - (iii) Supplemental Debenture dated August 6, 1997 and registered August 29, 1997 at the Registry of Deeds at Roll 1564, Frame 2095, which increased the principal amount of the Debenture to \$10,000,000.00;
 - (iv) Supplemental Debenture dated July 9, 1998 and registered at the Registry of Deeds on July 15, 1998 at Roll 1668, Frame 1748, which increased the principal amount of the Debenture to \$20,000,000.00.
- 3) General Security Agreement dated January 25, 2000 and registered under the PPSA on January 28, 2000 as registration no. 78490;
 - 4) Bank Act Security registered on October 26, 2000 as registration no. 01074579.

(* This figure is a preliminary estimate, as there is insufficient information and numerous possible variables that could materially change the allocation between the value of the creditor's security and the unsecured portion of the creditor's claim.)

() C. CLAIM BY FARMER, FISHERMAN OR AQUACULTURIST

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

- 5. That to the best of my knowledge and belief, the above-named creditor is not related to the debtor within the meaning of section 4 of the *Bankruptcy and Insolvency Act*.
- 6. That the following are the payments that the creditor has received from and the credits that the creditor has allowed to the debtor within the three months immediately preceding the date of bankruptcy:
 - (X) 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.
 - (X) 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.
 - (X) 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 St. John's, in the Province of Newfoundland this 17th day of April, 2002.

WITNESS

JOHN WEBBER

SCHEDULE A

MARCH 13, 2002

Term Loan 63 / 5881-054

Principal:	\$12,246,055.62
Interest Accrued (Pre-Class.):	48,849.25
Accrued Interest (Current):	33,411.67
Fees (Pre-Class):	<u>680.00</u>
Total	\$ 12,328,996.54

Term Loan 63 / 5181-151

Principal:	\$ 2,935,458.77
Interest Accrued (Pre-Class.):	13,109.00
Accrued Interest (Current):	<u>8,042.35</u>
Total	\$ 2,956,610.12

Term Loan 63 / 3900-754

Principal:	\$ 24,100.00
Interest Accrued (Pre-Class.):	72.90
Accrued Interest (Current):	<u>60.75</u>
Total	\$ 24,233.65

Operating Account 63 / 5881-054

Principal:	\$ 16,683.64
Interest Accrued:	<u>0.00</u>
Total	\$ 16,683.64

Letters of Guarantee

Total Outstanding	\$ 107,000.00
-------------------	---------------

Total Liabilities	\$ 15,433,523.95
--------------------------	-------------------------

This is exhibit B referred to in
the affidavit of Jennifer Lee sworn
or affirmed before me this 19th day
of December 2002

Canadian Securities Registration Systems (BCCISG)
July 3, 2001 10:43AM

BCCI66F40306-1
REGISTERED

REGISTRATION STATEMENT (NEWFOUNDLAND)

REGISTRATION INFORMATION

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

PREVIOUS REGISTRIES REGISTRATION INFORMATION

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

SECURED PARTY INFORMATION

PPR Code:
Remit: 82213 ANADIAN 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)

(1) Insert full name of assignor.

Hickman Equipment (1981) Limited
 of P.O. Box 2130, St. John's, Newfoundland (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 its 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 advice 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 constitutes 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 4th day of Jan 1981.

Witness:

[Handwritten signature]

[Handwritten signature] SEAL

RECEIPT OF A COPY OF THE WITHIN SECURITY AGREEMENT IS HEREBY ACKNOWLEDGED.

DATE Jan 4 1981 SIGNATURE *[Handwritten signature]*

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

If an individual(s), first given name, initial of second given name, if any, then surname. Record full address including postal code.

FULL NAME AND ADDRESS OF ASSIGNOR(S)	If given by individual(s) record					For Manitoba only Driver's License No. (if available)
	Initial 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. Nonnen
of the City of St. John's
in the Province of Newfoundland, make oath and say:

1. THAT I am the Account Manager in the Province of Newfoundland, a Corporation, the Assignee named in the within General Assignment of Accounts made by Hickman Equipment (1985) Limited and dated the 4th day of January 1985.
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 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 9th day of January 1985

[Handwritten signature]
A Commissioner, etc.
[Handwritten signature]

(1) Delete "mere" where Assignment is to be registered in any jurisdiction.

AFFIDAVIT OF WITNESS WHEN EXECUTED BY INDIVIDUAL

CANADA
PROVINCE OF
COUNTY OR DISTRICT OF

To Wit: I, of the
of in the Province of
(Occupation) make oath and say:

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 therein.
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
(Occupation) make oath and say:

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 (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)" changed to "attorney."
(3) Delete inappropriate age of majority.

DEMAND DEBENTURE

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

Date 7th January, 1985

Dollars

(Delete
in applicable
clauses)

INTEREST ~~7 1/2% per annum~~ (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") 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

~~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 relative to the Company;

- (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 290h day 20M
 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. Gibbs

Witness:

W. Gibbs

a partner (M.P.)

HICKMAN EQUIPMENT (1985) LIMITED

(Company name)

By: _____

(Signature and Title)

PRESIDENT AND DIRECTOR

d/s

William P. Gibbs

Date: January 7th, 1985

(Name of Company)

HICKMAN EQUIPMENT (1985) LIMITED

to

CANADIAN IMPERIAL BANK OF COMMERCE

DEMAND DEBENTURE

O'Neill, O'Reilly

Solicitors

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

December, 2002

[Handwritten Signature]

FBI 15 15 0
RT32/F833

SUBSEQUENT AGREEMENT

WHEREAS

1. In and by a Demand Debenture (hereinafter called "the Debenture") dated the 7th day of January, A.D., 1985 and registered in the Registry of Deeds for the Province of Newfoundland in Roll 77, Frame 70 and made between Hickman Equipment (1985) Limited (in the Demand Debenture and herein the "Company") of the one part and the Canadian Imperial Bank of Commerce (in the Demand Debenture and herein the "Bank") of the other part, the Company charged unto the Bank as and by way of a first floating charge All undertakings, property and assets of the Company, to secure the sum of Three Million Dollars (\$3,000,000.00) (the principal sum) with interest thereon as stipulated therein;

2. At the request of the Bank, the Company has agreed to grant unto the Bank a specific charge on lands and premises which are described in Schedule "A" hereto for and to secure (i) the payment of the principal sum and interest and other moneys, if any, from time to time owing on the Debenture and (ii) the performance of the obligations and of the covenants of the Company contained in the Debenture.

NOW THEREFORE THIS INDENTURE WITNESSETH AS FOLLOWS:

1. In consideration of the sum of One dollar (\$1.00) and of these presents and as security for (i) the payment of the principal sum, interest and other moneys, if any from time to time owing on the Debenture, and (ii) the performance of the

Debenture and any other instrument which may be executed by the Company in connection with the Debenture and this Supplemental Debenture shall be deemed to be a first mortgage in favour of the Bank, its successors and assigns, in and to the piece or parcel of land more particularly described in Schedule "A" hereto (which Schedule "A" forms part of the Debenture) TOGETHER WITH all buildings and erections thereon TO HOLD the same unto the Bank absolutely and forever, SUBJECT to the proviso for redemption in the Debenture contained.

2. The Company hereby declares and covenants and agrees with the Bank that (a) this Supplemental Debenture shall be supplementary to and form one instrument with the Debenture, (b) the Debenture by this reference shall be incorporated herein with the same effect as if set forth at length herein and shall for all purposes be deemed to form part hereof, and (c) unless there is something in the subject or context inconsistent herewith, expressions used in this Supplemental Debenture shall have the same meaning as ascribed to corresponding expressions in the Debenture.

3. The Company hereby declares and covenants and agrees with the Bank that the Debenture and all of the covenants, provisions, agreements and powers contained therein as supplemented or amended by this Supplemental Debenture and the lien and security created thereby are in all respects confirmed and preserved.

4. The Company hereby agrees that the Supplemental Debenture shall be binding upon it and its successors and assigns.

IN WITNESS WHEREOF

the Board of Directors
of the said Company

THE COMMON SEAL of the PHOENIX COMPANY
Company was hereunto
affixed in the presence
of:

Richard Smith
Secretary



ALL THAT piece of land...
...in the Provincial Electoral...
abutted and bounded as follows...
point which measures two hundred...
a bearing of South Eighty-four degrees...
seconds East from Control Station...
southerly limit of Hardy Avenue...
minutes East for Eighty-four decimal...
running South zero degrees twenty...
decimal two six metres; thence...
Thirty-five minutes West for One...
Seven Nine metres; thence along...
N.L.R.C. North Forty-eight degrees...
Ninety-one decimal four four metres; thence...
East limit of Bayley Street, North...
minutes East for Eighty decimal...
the most Easterly limit of Bayley Street...
North Twenty-five degrees thirty...
line distance of Forty-four decimal...
along the most Easterly limit of Bayley Street...
degrees Forty-two minutes East for...
metres to point of beginning and containing...
hectares. All bearings are referred to Grid North

CANADA
NEWFOUNDLAND
ST. JOHN'S

AFFIDAVIT

I, Randall W. Smith, of the City of St. John's, Province of Newfoundland, Solicitor, make oath and say as follows:

1. That I am a member of the law firm O'Reilly, Roseworthy, solicitors for Hickman Equipment (1985) Limited and as such have knowledge of the facts herein deposed to.
2. That the within document is supplemental to a Debenture earlier registered at Roll 77, Frame 70 and there are no additional monies being advanced to the Company by reason of the within Supplemental Debenture.
3. This Affidavit is provided for registration purposes only.

SWORN TO at St. John's in the Province of Newfoundland, this 21st day of February, 1990, in the presence of:

Richard Ingraham
Barrister

Randall W. Smith
RANDALL W. SMITH

Registered 22 day Feb
A.D. 19 90 at 9:10.5 o'clock P m
Roll 732 Frame 839
Fees Paid 22.40 Rec. No. 153,405

William P. Hillier
Registrar of Deeds (2022)

This is exhibit E referred to in
the affidavit of Jennifer Lee sworn
or affirmed before me this 19th day
of December 2002

[Signature]

Registered 30 day 1/11/03
A.D. 19 97 at 11:55 o'clock 11 a.m.
Roll 1521 Frame 1773
Fee Paid \$ 6.00 Rec. No. 235151

HICKMAN EQUIPMENT (1985) LIMITED

SUPPLEMENTAL DEBENTURE

WHEREAS:

1. By a Demand Debenture (hereinafter called the "Debenture") dated the 7th day of January, A.D., 1985 and registered in the Registry of Deeds for Newfoundland in Roll 77, Frame 70 and made between Hickman Equipment (1985) Limited (in the Demand Debenture and herein called the "Company") of the one part and the Canadian Imperial Bank of Commerce (in the Demand Debenture and herein called the "Bank") of the other part, the Company charged unto the Bank as and by way of a first floating charge ALL undertakings, property and assets both present and future, of the Company as security for the repayment of the sum of Three million (3,000,000.00) dollars (the "Principal Sum") with interest thereon as stipulated therein;

2. By a Demand Debenture (hereinafter called the "John Deere Debenture") dated the 11th day of March, A.D., 1985 and registered in the Registry of Deeds for Newfoundland in Roll 81, Frame 2215 and made between the Company of the one part and John Deere Limited (in the John Deere Debenture and herein called "John Deere") of the other part, the Company charged unto John Deere as and by way of a first floating charge ALL undertakings, property and assets both present and future, of the Company as security for the repayment of the sum of Five million (5,000,000.00) dollars with interest thereon as stipulated therein;

3. By a Demand Debenture (hereinafter called the "1990 Debenture") dated the 19th day of February, A.D., 1990 and made between the Company of the one part and the Bank of the other part, the Company charged unto the Bank as and by way of a first floating charge ALL undertakings, property and assets both present and future, of the Company as security for the repayment of the sum of Five million (5,000,000.00) dollars with interest thereon as stipulated therein;

1990 and registered in Roll 712, Frame 800 of the Registry of Deeds for Newfoundland and made between the Company of the one part and the Bank of the other part, the Company charged unto the Bank as and by way of first fixed and specific charge all this piece or parcel of land situate and being at Bayley Street, Grand Falls, in the Province of Newfoundland and being more particularly described in Schedule "A" attached thereto as further security for the repayment of the principal sum and interest and other moneys, if any, from time to time owing on the Debenture;

4. The Company has requested and the Bank has agreed to advance a further sum of Two million (\$2,000,000.00) dollars, in addition to the principal sum accrued by the Debenture and the 1990 Supplemental Debenture;

NOW THIS SUPPLEMENTAL DEBENTURE WITNESSETH that in pursuance of the Agreement hereinbefore recited and in consideration of the additional sum of Two million (\$2,000,000.00) of lawful money of Canada now paid by the Bank to the Company (the receipt whereof is hereby acknowledged) the Company as beneficial owner hereby covenants, agrees and undertakes as follows:

1. As of the date hereof, the first paragraph of the conditions set forth herein shall be read as follows:

"The principal sum shall be Two million dollars (\$2,000,000)

2. The interest rate shall be the rate per year equal to the rate in effect on the date hereof. The variable rate shall be the rate in effect as established by the Bank from time to time for the prime rate for Canada in dollar terms. The rate shall be the "Prime Rate" of the Bank as set forth in the prospectus under the Debenture.

as amended, will vary automatically from time to time without notice on the date the Prime Rate is varied by the Bank. The applicable interest rate on the date hereof is Five point seven five (5.75) per cent per annum."

2. That as of the date hereof, Paragraph 2.1 of the Debenture shall be amended to read as follows:

"Security:

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

- a) grants, assigns, conveys, mortgages and charges as and by way of a fixed and specific mortgage and charge to and in favour of the Bank, its successors and assigns, ALL lands and premises 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 appurtenances, buildings and fixtures now owned or hereafter acquired by the Company TO HAVE AND TO HOLD the same unto the Bank, its successors and assigns, forever; and
- b) 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 wheresoever 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 franchise and uncalled capital.

If the Bank gives value for the purpose of enabling the Company to acquire rights in or to any of the Charged Property, the Company grants the Bank a purchase money security interest in such Charged Property to the extent that the value

is applied to acquire such rights. In this Debenture the mortgages and charges hereby constituted are called the "Security" and the subject matter of the Security is called the "Charged Property".

3. The Company and the Bank covenant and agree that the Debenture, as amended, shall be subject to the terms of that Priority Agreement entered into by the Bank and John Deere dated the 5th day of July, A.D., 1985, in all respects.

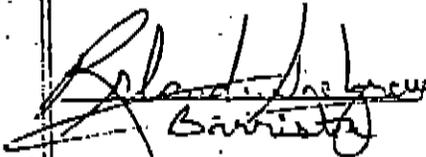
4. The Company hereby declares, covenants and agrees with the bank that (a) this Supplemental Debenture shall be supplementary to and form one instrument with the Debenture and the 1990 Supplemental Debenture, (b) the Debenture and the 1990 Supplemental Debenture by this reference shall be incorporated herein with the same effect as if set forth at length herein and shall for all purposes be deemed to form part hereof, and (c) unless there is something in the subject or context inconsistent herewith, expressions used in this Supplemental Debenture shall have the same meaning as ascribed to corresponding expressions in the Debenture and the 1990 Supplemental Debenture.

5. The Company hereby declares, covenants and agrees with the Bank that the Debenture, the 1990 Supplemental Debenture and all of the covenants, provisions, agreements and powers contained therein and supplemented or amended by this Supplemental Debenture and the lien and security created thereby are in all respects confirmed and preserved.

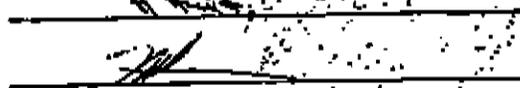
6. The Company hereby agrees that this Supplemental Debenture shall be binding upon it and its successors and assigns.

IN WITNESS WHEREOF the Parties hereto have caused their common seals to be duly affixed by their duly authorized officers in that behalf as of the the 17th day of April A.D., 1997

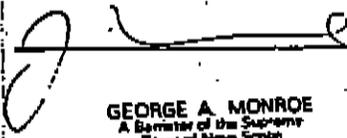
THE COMMON SEAL of the Company was hereto affixed in the presence of:


Roland Helgren
Barista

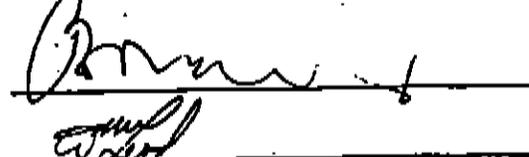
HICKMAN EQUIPMENT (1989) LIMITED



THE COMMON SEAL of the Bank was hereto affixed in the presence of:


GEORGE A. MONROE
A Barrister of the Supreme
Court of Nova Scotia

CANADIAN IMPERIAL BANK OF COMMERCE



4 1 5 2 1 1 4 4 0

SCHEDULE "A"

ALL THAT piece or parcel of land situate and being at Grand Falls, in the Provincial Electoral District of Grand Falls, abutted and bounded as follows, that is to say: Beginning at a point which measures Two Hundred Sixty decimal One One metres on a bearing of South Eighty-Four degrees Fifteen minutes Thirty seconds East from Control Station 76G2070; Thence along the most southerly limit of Hardy Avenue, South Eighty-Nine degrees Forty minutes East for Eighty-Four decimal Six Zero metres; thence running South Zero degrees Twenty minutes West for Seventy-Eight decimal Two Six metres; thence running South Forty-One degrees Thirty-Five minutes West for One Hundred Thirty-Seven decimal Seven Nine metres; thence along property of Roy Whalen from N.L.H.C. North Forty-Eight degrees Twenty-Five minutes West for Ninety-One decimal Four Four metres; thence along the most South East limit of Bayley Street, North Forty-One degrees Thirty-Five minutes East for Eighty decimal Three Four metres; thence along the most Easterly limit of Bayley Street to a point which bears North Twenty-Five degrees Thirty minutes East for a straight line distance of Forty-Four decimal Five Eight metres; thence along the most Easterly limit of Bayley Street, North Eight degrees Forty-Two minutes East for Twenty-One decimal Zero Three metres to point of beginning and containing in all 1.654 hectares. All bearings are referred to Grid North. & *RR* *Red*

TO WHOM IT MAY CONCERN:

Hickman Equipment (1985) Limited hereby confirms that the property situate and being at Bayley Street, in the City of Grand Falls, in the Province of Newfoundland, presently being mortgaged to Canadian Imperial Bank of Commerce has not been insulated with Urea Formaldehyde Foam Insulation and hereby warrants that the property does not contain Urea Formaldehyde Foam Insulation, and this warranty shall survive the closing of this transaction.

DATED at St. John's, in the Province of Newfoundland this 17th
day of April A.D., 1997

HICKMAN EQUIPMENT (1985)
LIMITED

Per: [Signature]

[Signature]
WITNESS [Signature]

CANADA
PROVINCE OF NEWFOUNDLAND
ST. JOHN'S
TO WIT:

AFFIDAVIT

I, *Wanda Lee* of St. John's, in the
Province of Newfoundland, Canada, make oath and say as follows.

1. That I am a Director of Hickman Equipment (1985) Limited, the Company described in the within instrument and as such have full knowledge of the facts herein deposed to.
2. That the word "spouse" as hereinafter used means a spouse as defined by Section 2(1)(e) of The Family Law Act, R.S.N., 1990, Chapter F-2
3. That the property described in the within instrument is not occupied by me or any other director, officer or shareholder of Hickman Equipment (1985) Limited as a matrimonial home and the ownership of a share or an interest in a share of the capital stock of Hickman Equipment (1985) Limited does not entitle the shareholder thereof or his or her spouse to the occupation of the property described in the within instrument.
4. That the property described in the within instrument does not constitute a matrimonial home as defined by the Act and that the said property is not held for the benefit of any

officer, director or shareholder of Hickman Equipment (1985) Limited, and no spouse of an officer, director or shareholder of Hickman Equipment (1985) Limited has a right to possession of the said property by reason of Section 6 or Section 13 of the Act, a separation Agreement or Marriage Contract.

5. That I know of no other person having a claim to or an interest in the property more particularly described in the said Instrument pursuant to The Family Law Act.

6. That Hickman Equipment (1985) Limited is a body corporate duly incorporated under the laws of the Province of Newfoundland and is therefore not a non-resident under the intent and meaning of the Income Tax Act, Canada, 1972, as amended.

SWORN TO at St. John's, in the
Province of Newfoundland, this
17th day of April, A.D.,
1997, before me:

Roland Badger
Notary Public

[Signature]

This is exhibit F referred to in
the affidavit of Jennifer Lee sworn
or affirmed before me this 19th day
December, 2002

[Handwritten Signature]

HICKMAN EQUIPMENT (1985) LIMITED

SUPPLEMENTAL DEBENTURE

WHEREAS:

1. By a Demand Debenture (hereinafter called the "Debenture") dated the 7th day of January, A.D., 1985 and registered in the Registry of Deeds for Newfoundland in Roll 77, Frame 70 and made between Hickman Equipment (1985) Limited (in the Demand Debenture and herein called the "Company") of the one part and the Canadian Imperial Bank of Commerce (in the Demand Debenture and herein called the "Bank") of the other part, the Company charged unto the Bank as and by way of a first floating charge ALL undertakings, property and assets both present and future, of the Company as security for the repayment of the sum of Three million (3,000,000.00) dollars (the "Principal Sum") with interest thereon as stipulated therein;

2. By a Demand Debenture (hereinafter called the "John Deere Debenture") dated the 11th day of March, A.D., 1985 and registered in the Registry of Deeds for Newfoundland in Roll 87, Frame 2215 and made between the Company of the one part and John Deere Limited (in the John Deere Debenture and herein called "John Deere") of the other part, the Company charged unto John Deere as and by way of a fixed and floating charge certain property and assets more particularly described in Schedule "A" attached thereto as security for the repayment of the sum of Five hundred thousand (\$500,000.00) with interest thereon as stipulated therein;

3. By a Supplemental Debenture (hereinafter called the "1990 Supplemental Debenture") dated the 19th day of February, A.D.,

CIBC
Aug. 1997
R1564/F2095

1990 and registered in Roll 732, Frame 839 of the Registry of Deeds for Newfoundland and made between the Company of the one part and the Bank of the other part, the Company charged unto the Bank as and by way of a first fixed and specific charge ALL THAT piece or parcel of land situate and being at Bayley Street, Grand Falls, in the Province of Newfoundland and being more particularly described in Schedule "A" attached thereto as further security for the repayment of the Principal Sum and interest and other moneys, if any, from time to time owing on the Debenture;

4. By a further Supplemental Debenture (Hereinafter called the "1997 Supplemental Debenture") dated the 17th day of April, A.D., 1997 and registered in Roll 1521, Frame 1435 of the Registry of Deeds for Newfoundland and made between the Company of the one part and the Bank of the other part, the Principal Sum secured by the aforesaid Debenture was increased to Five Million dollars (\$5,000,000.00) together with interest thereon as stipulated therein;

5. The Company has requested and the Bank has agreed to advance a further sum of Five million (\$5,000,000.00) dollars in addition to the Principal Sum secured by the Debenture, the 1990 and the 1997 Supplemental Debentures;

NOW THIS SUPPLEMENTAL DEBENTURE WITNESSETH that in pursuance of the Agreement hereinbefore recited and in consideration of the additional sum of Five million dollars (\$5,000,000.00) of lawful money of Canada now paid by the Bank to the Company (the receipt whereof is hereby acknowledged) the Company as beneficial owner hereby covenants, agrees and undertakes as follows:

1. That as of the the date hereof, the first paragraph of the Debenture shall be amended to read as follows:

"Principal Sum: Ten million dollars (\$10,000,000.00)

Interest Rate: A nominal rate per year equal to One (1) percentage point above the variable reference interest rate per year declared by the Bank from time to time to be its prime rate for Canadian dollar loans made by the Bank in Canada (the "Prime Rate"); provided that the interest rate under the Debenture, as amended, will vary automatically from time to time without notice on the date the Prime Rate is varied by the Bank. The applicable interest rate on the date hereof is Five point seven five (5.75) per cent per annum."

2. That as of the date hereof, Paragraph 2.1 of the Debenture shall be amended to read as follows:

"Security:

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

- a) grants, assigns, conveys, mortgages and charges as and by way of a fixed and specific mortgage and charge to and in favour of the Bank, its successors and assigns, ALL lands and premises 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 appurtenances, buildings and fixtures now owned or hereafter acquired by the Company TO HAVE AND TO HOLD the same unto the Bank, its successors and assigns, forever; and
- b) 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 wheresoever 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 franchise and uncalled capital.

If the Bank gives value for the purpose of enabling the Company to acquire rights in or to any of the Charged Property, the Company grants the Bank a purchase money security interest in such Charged Property to the extent that the value is applied to acquire such rights. In this Debenture the mortgages and charges hereby constituted are called the "Security" and the subject matter of the Security is called the "Charged Property".

3. The Company and the Bank covenant and agree that the Debenture, as amended, shall be subject to the terms of the Priority Agreement entered into by the Bank and John Deere dated the 5th day of July, A.D., 1985, in all respects.

4. The Company hereby declares, covenants and agrees with the bank that (a) this Supplemental Debenture shall be supplemental to and form one instrument with the Debenture, the 199 Supplemental Debenture and the 1997 Supplemental Debenture, (b) the Debenture, 1990 Supplemental Debenture and the 199 Supplemental Debenture by this reference shall be incorporated herein with the same effect as if set forth at length herein and shall for all purposes be deemed to form part hereof, and (c) unless there is something in the subject or context inconsistent herewith, expressions used in this Supplemental Debenture shall have the same meaning as ascribed to corresponding expressions in the Debenture, the 1990 Supplemental Debenture and the 199

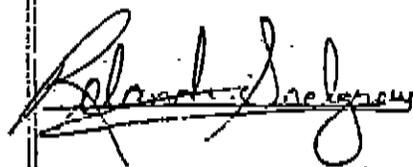
Supplemental Debenture.

5. The Company hereby declares, covenants and agrees with the Bank that the Debenture, the 1990 Supplemental Debenture, the 1997 Supplemental Debenture and all of the covenants, provisions, agreements and powers contained therein and supplemented or amended by this Supplemental Debenture and the lien and security created thereby are in all respects confirmed and preserved.

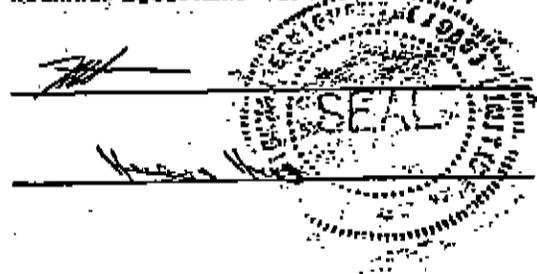
6. The Company hereby agrees that this Supplemental Debenture shall be binding upon it and its successors and assigns.

IN WITNESS WHEREOF the Parties hereto have caused their common seals to be duly affixed by their duly authorized officers in that behalf as of the the 6th day of August A.D., 1997

THE COMMON SEAL of the Company was hereunto affixed in the presence of:

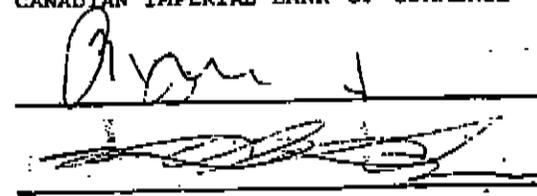


HICKMAN EQUIPMENT (1985) LIMITED



THE COMMON SEAL of the Bank was hereunto affixed in the presence of:

CANADIAN IMPERIAL BANK OF COMMERCE




K. SARA FILFREE

SCHEDULE "A"

ALL THAT piece or parcel of land situate and being at Grand Falls, in the Provincial Electoral District of Grand Falls, abutted and bounded as follows, that is to say: Beginning at a point which measures Two Hundred Sixty decimal One One metres on a bearing of South Eighty-Four degrees Fifteen minutes Thirty seconds East from Control Station 76Q2070; Thence along the most Southerly limit of Hardy Avenue, South Eighty-Nine degrees Forty minutes East for Eighty-Four decimal Six Zero metres; thence running South Zero degrees Twenty minutes West for Seventy-Eight decimal Two Six metres; thence running South Forty-One degrees Thirty-Five minutes West for One Hundred Thirty-Seven decimal Seven Nine metres; thence along property of Roy Whalen from N.L.H.C. North Forty-Eight degrees Twenty-Five minutes West for Ninety-One decimal Four Four metres; thence along the most South East limit of Bayley Street, North Forty-One degrees Thirty-Five minutes East for Eighty decimal Three Four metres; thence along the most Easterly limit of Bayley Street to a point which bears North Twenty-Five degrees Thirty minutes East for a straight line distance of Forty-Four decimal Five Eight metres; thence along the most Easterly limit of Bayley Street, North Eight degrees Forty-Two minutes East for Twenty-One decimal Zero Three metres to point of beginning and containing in all 1.654 hectares. All bearings are referred to Grid North.

W
X
K

TO WHOM IT MAY CONCERN:

Hickman Equipment (1985) Limited of hereby confirms that the properties being more particularly described in the Schedule "A" attached to the within Supplemental Debenture situate and being at Bayley Street, in the city of Grand Falls, in the Province of Newfoundland presently being mortgaged to Canadian Imperial Bank of Commerce have not been insulated with Urea Formaldehyde Foam Insulation and hereby warrants that the properties do not contain Urea Formaldehyde Foam Insulation and this warranty shall survive the closing of this transaction.

DATED at St. John's, in the Province of Newfoundland this
6th day of August, A.D., 1997.

HICKMAN EQUIPMENT (1985) LIMITED

Per: _____

Robert J. Selgrave
WITNESS *Barrister*



CANADA

PROVINCE OF NEWFOUNDLAND

ST. JOHN'S

TO WIT:

AFFIDAVIT

I, Hubert Hunt, of St. John's, , in the Province of Newfoundland, Canada, make oath and say as follows:-

1. That I am a Director of Hickman Equipment (1985) Limited, the Company described in the within instrument and as such have full knowledge of the facts herein deposed to.
2. That the word "spouse" as hereinafter used means a spouse as defined by Section 2(1)(e) of The Family Law Act, R.S.N., 1990, Chapter F-2
3. That the property described in the within instrument is not occupied by me or any other director, officer or shareholder of Hickman Equipment (1985) Limited as a matrimonial home and the ownership of a share or an interest in a share of the capital stock of Hickman Equipment (1985) Limited does not entitle the shareholder thereof or his or her spouse to the occupation of the property described in the within Instrument.
4. That the property described in the within Instrument does not constitute a matrimonial home as defined by the Act and that the said

officer, director or shareholder of Hickman Equipment (1985) Limited, and no spouse of an officer, director or shareholder of Hickman Equipment (1985) Limited has a right to possession of the said property by reason of Section 6 or Section 13 of the Act, a separation Agreement or Marriage Contract.

5. That I know of no other person having a claim to or an interest in the property more particularly described in the said Instrument pursuant to The Family Law Act.

6. That Hickman Equipment (1985) Limited is a body corporate duly incorporated under the laws of the Province of Newfoundland and is therefore not a non-resident under the intent and meaning of the Income Tax Act, Canada, 1972, as amended.

SWORN TO at St. John's, in the Province of Newfoundland, this 6th day of August, A.D., 1997, before me:

Robert Delaney
Roberts

Hubert Hunt
HUBERT HUNT

Registered 29 day August
A.D. 1997 at 9:30 o'clock 2 m
Roll 1564 Frame 2095
Fee Paid 5.00 Rec. No. 986500

R 1668
July 9, 1998

HICKMAN EQUIPMENT (1985) LIMITED
SUPPLEMENTAL DEBENTURE

This is exhibit G referred to in
the affidavit of Jennifer Lee sworn
affirmed before me this 19th day
of December 2002

Jennifer Lee

WHEREAS:

1. By a Demand Debenture (herein called the "Debenture") dated the 7th day of January, A.D., 1985, and registered in the Registry of Deeds for Newfoundland in Roll 77, Frame 70 and made between Hickman Equipment (1985) Limited (in the Demand Debenture and herein called the "Company") of the one part and the Canadian Imperial Bank of Commerce (in the Demand Debenture and herein called the "Bank") of the other part, the Company charged unto the Bank as and by way of a first floating charge ALL undertakings, property and assets both present and future, of the Company as security for the repayment of the sum of Three million dollars (\$3,000,000.00) (the "Principal Sum") with interest thereon as stipulated therein;
2. By a Demand Debenture (herein called the "John Deere Debenture") dated the 11th day of March, A.D., 1985, and registered in the Registry of Deeds for Newfoundland in Roll 87, Frame 2215 and made between the Company of the one part and John Deere Limited (in the John Deere Debenture and herein called "John Deere") of the other part, the Company charged unto John Deere as and by way of a fixed and floating charge certain property and assets more particularly described in Schedule "A" attached thereto as security for the repayment of the sum of Five hundred thousand dollars (\$500,000.00) with interest thereon as stipulated therein;
3. By a Supplemental Debenture (herein called the "1990 Supplemental Debenture") dated the 19th day of February, A.D., 1990, and registered in the Registry of Deeds for Newfoundland in Roll 732, Frame 839 and made between the Company of the one part and the Bank of the other part, the Company charged unto the Bank as and by way of a first fixed and specific charge ALL THAT piece or parcel of land situate and being a Bayley Street, Grand Falls, in the Province of Newfoundland and being more particularly described in Schedule "A" attached thereto as further security for the repayment of the Principal Sum and interest and other moneys, if any, from time owing on the Debenture;
4. By a further Supplemental Debenture (herein called the "1997 Supplemental Debenture") dated the 17th day of April, A.D., 1997, and registered in the Registry of Deeds for Newfoundland in Roll 1521, Frame 1435 and made between the Company of the one part and the Bank of the other part, the Principal Sum secured by the aforesaid Debenture was increased to Five million dollars (\$5,000,000.00) together with interest thereon as stipulated therein;
5. By a further Supplemental Debenture (herein called the "1997 Second Supplemental Debenture") dated the 6th day of August, A.D., 1997, and registered in the Registry of Deeds for Newfoundland in Roll 1564, Frame 2095 and made between the Company of the one part

and the Bank of the other part, the Principal Sum secured by the aforesaid Debenture was increased to Ten million dollars (\$10,000,000.00) together with interest thereon as stipulated therein;

6. The Company has requested and Bank has agreed to advance a further sum of Ten million dollars (\$10,000,000.00) in addition to the Principal Sum secured by the Debenture, the 1990 and the 1997 Supplemental Debentures and the 1997 Second Supplemental Debenture;

NOW THIS SUPPLEMENTAL DEBENTURE WITNESSETH that in pursuance of the Agreement hereinbefore recited and in consideration of the additional sum of Ten million dollars (\$10,000,000.00) of lawful money of Canada now paid by the Bank to the Company (the receipt whereof is hereby acknowledged) the Company as beneficial owner hereby covenants, agrees and undertakes as follows:

1. That as of the date hereof, the first paragraph of the Debenture shall be amended to read as follows:

"Principal Sum: Twenty million dollars (\$20,000,000.00).

"Interest Rate: At a variable nominal rate per annum of One (1) percentage point above the Bank's prime interest rate for Canadian dollar commercial loans in Canada as declared by the Bank from time to time (the "Prime Rate") with interest on overdue interest at the same rate; provided that the interest rate under the Debenture, as amended, shall vary automatically on the day the Prime Rate is varied by the Bank without notice by the Bank to any party hereto. The applicable interest rate on the date hereof is seven point five zero (7.50 %) per cent per annum."

2. The Company and the Bank covenant and agree that the Debenture, as amended, shall be subject to the terms of that Priority Agreement entered into by the Bank and John Deere dated the 5th day of July, A.D., 1985, in all respects.

3. The Company hereby declares, covenants and agrees with the Bank that (a) this Supplemental Debenture shall be supplementary to and form one instrument with the Debenture, the 1990 Supplemental Debenture, the 1997 Supplemental Debenture and the 1997 Second Supplemental Debenture, (b) the Debenture, the 1990 Supplemental Debenture, the 1997 Supplemental Debenture and the 1997 Second Supplemental Debenture by this reference shall be incorporated herein with the same effect as if set forth at length herein and shall for all purposes be deemed to form part hereof, and (c) unless there is something in the subject or context inconsistent herewith, expressions used in this supplemental Debenture shall have the

same meaning as ascribed to corresponding expressions in the Debenture, the 1990 Supplemental Debenture, the 1997 Supplemental Debenture and the 1997 Second Supplemental Debenture;

4. The Company hereby declares, covenants and agrees with the Bank that the Debenture, the 1990 Supplemental Debenture, the 1997 Supplemental Debenture and the 1997 Second Supplemental Debenture and all the covenants, provisions, agreements and power contained therein and supplemented or amended by this Supplemental Debenture and the lien and security created thereby are in all respects confirmed and preserved.

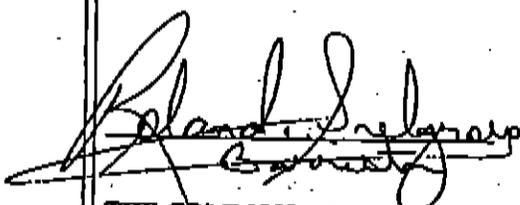
5. The Company hereby agrees that the Debenture and this Supplemental Debenture shall be binding upon it and its successors and assigns.

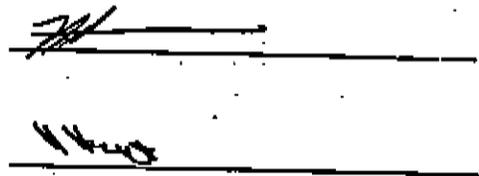
IN WITNESS WHEREOF

the Parties hereto have caused their common seal to be duly affixed by their duly authorized officers in that behalf as of the 9th day of July, A.D., 1998.

THE COMMON SEAL of the Company was hereunto affixed in the presence of:

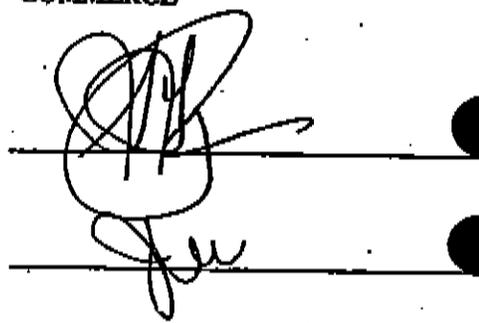
HICKMAN EQUIPMENT (1985) LIMITED

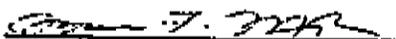




THE COMMON SEAL of the Bank was hereunto affixed in the presence of:

CANADIAN IMPERIAL BANK OF COMMERCE




NOTARY PUBLIC N.F.L.D.

CANADA

PROVINCE OF NEWFOUNDLAND

CITY OF ST. JOHN'S

TO WIT:

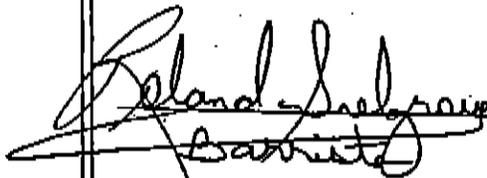
AFFIDAVIT

I, Hubert Hunt, of St. John's, in the Province of Newfoundland, make oath and say as follows:

1. That I am a Director of Hickman Equipment (1985) Limited, the Vendor described in the within instrument and as such have full knowledge of the facts herein deposed to.
2. That the word "spouse" as hereinafter used means a spouse as defined by Section 2(1)(e) of the *Family Law Act*, R.S.N. 1990, chapter F-2, as amended.
3. That the property described in the within instrument has never been occupied by me or any other director, officer or shareholder of Hickman Equipment (1985) Limited as a matrimonial home or by the spouse of any director, officer or shareholder of Hickman Equipment (1985) Limited, and the ownership of a share or an interest in a share of the capital stock of Hickman Equipment (1985) Limited does not entitle the shareholder thereof or his or her spouse to the occupation of the property described in the within instrument.
4. That the property described in the within instrument does not constitute a matrimonial home as defined by the Act and that the said property is not held for the benefit of any officer, director or shareholder of Hickman Equipment (1985) Limited, and no spouse of an officer, director or shareholder of Hickman Equipment (1985) Limited has a right to possession of the property by reason of Section 6 or Section 13 of the Act, a Separation Agreement or Marriage Contract.
5. That I know of no other person having a claim to or an interest in the property more particularly described in the said Instrument pursuant to the *Family Law Act*.

6. That Hickman Equipment (1985) Limited is a body corporate duly incorporated under the laws of the Province of Newfoundland and is therefore not a non-resident of Canada under the intent and meaning of *The Income Tax Act, Canada, 1972* and amendments thereto.

SWORN TO at St. John's, in the
Province of Newfoundland, this 9th
day of July, A.D., 1998,
before me:


Roland Selgrave


HUBERT HUNT

WARRANTY-UREA FORMALDEHYDE FOAM INSULATION

TO WHOM IT MAY CONCERN:

Hickman Equipment (1985) Limited hereby confirms that the properties more particularly described in the Schedule "A" attached to the within Supplemental Debenture situate and being at Bayley Street, in the City of Grand Falls, in the Province of Newfoundland presently being mortgaged to Canadian Imperial Bank of Commerce has not been insulated with Urea Formaldehyde Foam Insulation and hereby warrants that the properties do not contain Formaldehyde Foam Insulation and that this warranty shall survive the closing of this transaction.

DATED at St. John's, Newfoundland, this th 9 day of July, 1998

**HICKMAN EQUIPMENT (1985)
LIMITED**

Roland Snelgrove
Barclay

[Signature]

REGISTRATION STATEMENT (NEWFOUNDLAND)

REGISTRATION INFORMATION

Registration Number 8490	Registration Date 28 JAN 2000	Registration Time 3:45PM	Expiry Date 28 JAN 2005
Type of Registration SECURITY AGREEMENT	Life of Registration 5 Year		

SECURED PARTY INFORMATION

Transit: 61063 PPR Code:
Canadian Imperial Bank Of Commerce
P.O. Box 340
St. John's, NF Canada A1C 5J9

DEBTOR INFORMATION

Hickman Equipment (1985) Limited
P.O. Box 820
St. John's, NF Canada A1N 3C8

GENERAL COLLATERAL

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

Your Reference : 61063/HICKMAN Billed Amount : \$63.00
Billed Account : CUSTOMER - Hickman Equipment (1985) Limit 0010
00063 00-02801
INTERNAL ACCOUNT - 00063 00063 - St John's

This is exhibit H referred to in
the affidavit of Jennifer Lee sworn
or affirmed before me this 19th day
of December, 2002

Jennifer Lee



8100 88/12 Consumer Guarantees
For use in PPSA jurisdictions only

Atlantic Place
P.O. Box 340
St. John's, Newfoundland A1C 5J9

Branch

SECURITY AGREEMENT

For valuable consideration, the undersigned (the "Customer") agrees with Canadian Imperial Bank of Commerce ("CIBC") as follows:

- Grant of Security. The Customer mortgages, charges and assigns to CIBC, and grants to CIBC, and CIBC takes, a Security Interest in the property described in the following paragraph or paragraphs of this section (as applicable in accordance with the NOTE appearing at the end of this section), and in all property described in any schedules, documents or listings that the Customer may from time to time sign and provide to CIBC in connection with this Agreement, and in all present and future Accessions to, and all Proceeds of, any such property (collectively, the "Collateral") as a general and continuing collateral security for the due payment and performance of the Liabilities:
 - (a) Specific Personal Property: the Personal Property described in Schedule A.
 - (b) All Personal Property: all of the Customer's present and after-acquired undertaking and Personal Property (including any property that may be described in Schedule A).
 - (c) All Real Property: all of the Customer's present and after-acquired real property (including any property that may be described in Schedule A), together with all buildings placed, installed or erected on any such property, and all fixtures.

NOTE: Check appropriate box or boxes to indicate which of paragraphs (a), (b) or (c) are to apply. If no box is checked off, paragraph (b) will apply.

- Governing Law. This Agreement is governed by the laws of Newfoundland.

ADDITIONAL TERMS AND CONDITIONS, THE ADDITIONAL TERMS AND CONDITIONS (INCLUDING ANY SCHEDULES) ON THE FOLLOWING PAGES FORM PART OF THIS AGREEMENT.

The Customer has signed this Agreement on Jan 25 19 2000

Witness:

Sharon Bell Sharon Bell
Signature Name (Print)

Sharon Bell Sharon Bell
Signature Name (Print)

Hickman Equipment (1985) Limited
Customer's Name (Print)
[Signature]
Signature

[Signature]
Signature

P.O. Box 820
Customer's street address

St. John's, NF A1N 3C8
City/Town, Province and Postal Code

Note: If the Customer is a corporation, no witness is needed. The office (such as "President" or "Secretary") of the person signing should be noted below that person's signature.

FOR INDIVIDUALS ONLY, record the following information:			
First and second names in full; surname.	Birth Date*		Sex
	Month		M/F

For Alberta, Ontario, Saskatchewan and the Yukon, record: day/month/year.
For British Columbia, Manitoba, New Brunswick, and Nova Scotia record: year/month/day.

Signature: [Signature]
Date: 01/25/2000
I hereby acknowledge receipt of the within security agreement in hereby acknowledged

Schedule A

The following is a description of the property in the Collateral *(describe personal property by item or kind; if space is insufficient, use a separate sheet):*

Schedule B

The following are the Places of Business *(if space is insufficient, use a separate sheet):*

On or about the Company's Premises situated at 1269 Topsail Rd. Mount Pearl, Newfoundland or hereafter acquired or occupies in the conduct of its normal business.

ADDITIONAL TERMS AND CONDITIONS

3. **Places of Business.** The Customer represents and warrants that the locations of all existing Places of Business are specified in Schedule B. The Customer will promptly notify CIBC in writing of any additional Places of Business as soon as they are established. Subject to section 5, the Collateral will at all times be kept at the Places of Business, and will not be removed without CIBC's prior written consent.
4. **Collateral Free of Charges.** The Customer represents and warrants that the Collateral is, and agrees that the Collateral will at all times be, free of any Charge or trust except in favour of CIBC or incurred with CIBC's prior written consent. CIBC may, but will not have to, pay any amount or take any action required to remove or redeem any unauthorized Charge. The Customer will immediately reimburse CIBC for any amount so paid and will indemnify CIBC in respect of any action so taken.
5. **Use of Collateral.** The Customer will not, without CIBC's prior written consent, sell, lease or otherwise dispose of any of the Collateral (other than Inventory, which may be sold, leased or otherwise disposed of in the ordinary course of the Customer's business). All Proceeds of the Collateral (including among other things all amounts received in respect of Receivables), whether or not arising in the ordinary course of the Customer's business, will be received by the Customer as trustee for CIBC and will be immediately paid to CIBC.
6. **Insurance.** The Customer will keep the Collateral insured to its full insurable value against loss or damage by fire and such other risks as are customarily insured for property similar to the Collateral (and against such other risks as CIBC may reasonably require). At CIBC's request, all policies in respect of such insurance will contain a loss payable clause, and if the Collateral includes real property will contain a mortgage clause, in favour of CIBC and in any event the Customer assigns all proceeds of insurance on the Collateral to CIBC. The Customer will, from time to time at CIBC request, deliver such policies (or satisfactory evidence of such policies) to CIBC. If the Customer does not obtain or maintain such insurance, CIBC may, but will not have to, do so. The Customer will immediately reimburse CIBC for any amount so paid. The Customer will promptly give CIBC written notice of any loss or damage to all or any part of the Collateral.
7. **Information and Inspection.** The Customer will from time to time immediately give CIBC in writing all information requested by CIBC relating to the Collateral, the Places of Business, and the Customer's financial or business affairs. The Customer will promptly advise CIBC of the Serial Number, model year, make and model of each Serial Number Good at any time included in the Collateral that is held as Equipment, including in circumstances where the Customer ceases holding such Serial Number Good as Inventory and begins holding it as Equipment. CIBC may from time to time inspect any Books and Records and any Collateral, wherever located. For that purpose CIBC may, without charge, have access to each Place of Business and to all mechanical or electronic equipment, devices and processes where any of them may be stored or from which any of them may be retrieved. The Customer authorizes any Person holding any Books and Records to make them available to CIBC, in a readable form, upon request by CIBC.
8. **Receivables.** If the Collateral includes Receivables, CIBC may advise any Person who is liable to make any payment to the Customer of the existence of this Agreement. CIBC may from time to time confirm with such Persons the existence and the amount of the Receivables. Upon Default, CIBC may collect and otherwise deal with the Receivables in such manner and upon such terms as CIBC considers appropriate.
9. **Receipts Prior to Default.** Until Default, all amounts received by CIBC as Proceeds of the Collateral will be applied on account of the Liabilities in such manner and at such times as CIBC may consider appropriate or, at CIBC's option, may be held unappropriated in a collateral account or released to the Customer.
10. **Default.**
 - (1) **Events of Default.** The occurrence of any of the following events or conditions will be a Default:
 - (a) the Customer does not pay any of the Liabilities when due;
 - (b) the Customer does not observe or perform any of the Customer's obligations under this Agreement or any other agreement or document existing at any time between the Customer and CIBC;
 - (c) any representation, warranty or statement made by or on behalf of the Customer to CIBC is untrue in any material respect at the time when or as of which it was made;
 - (d) the Customer ceases or threatens to cease to carry on in the normal course the Customer's business or any material part thereof;
 - (e) if the Customer is a corporation, there is, in CIBC's reasonable opinion, a change in effective control of the Customer, or if the Customer is a partnership, there is a dissolution or change in the membership of the partnership;
 - (f) the Customer becomes insolvent or bankrupt or makes a proposal or files an assignment for the benefit of creditors under the Bankruptcy Act (Canada) or similar legislation in Canada or any other jurisdiction; a

petition in bankruptcy is filed against the Customer; or, if the Customer is a corporation, steps are taken under any legislation by or against the Customer seeking its liquidation, winding-up, dissolution or reorganization or any arrangement or composition of its debts;

- (g) a Receiver, trustee, custodian or other similar official is appointed in respect of the Customer or any of the Customer's property;
- (h) the holder of a Charge takes possession of all or any part of the Customer's property, or a distress, execution or other similar process is levied against all or any part of such property; or
- (i) CIBC, in good faith and upon commercially reasonable grounds, believes that the prospect of payment or performance is or is about to be impaired or that the Collateral is or is about to be placed in jeopardy.

(2) **Rights upon Default.** Upon Default, CIBC and a Receiver, as applicable, will to the extent permitted by law have the following rights.

- (a) **Appointment of Receiver.** CIBC may by instrument in writing appoint any Person as a Receiver of all or any part of the Collateral. CIBC may from time to time remove or replace a Receiver, or make application to any court of competent jurisdiction for the appointment of a Receiver. Any Receiver appointed by CIBC will (for purposes relating to responsibility for the Receiver's acts or omissions) be considered to be the Customer's agent. CIBC may from time to time fix the Receiver's remuneration and the Customer will pay CIBC the amount of such remuneration. CIBC will not be liable to the Customer or any other Person in connection with appointing or not appointing a Receiver or in connection with the Receiver's actions or omissions.
- (b) **Dealings with the Collateral.** CIBC or a Receiver may take possession of all or any part of the Collateral and retain it for as long as CIBC or the Receiver considers appropriate, receive any rents and profits from the Collateral, carry on (or concur in carrying on) all or any part of the Customer's business or refrain from doing so, borrow on the security of the Collateral, repair the Collateral, process the Collateral, prepare the Collateral for sale, lease or other disposition, and sell or lease (or concur in selling or leasing) or otherwise dispose of the Collateral on such terms and conditions (including among other things by arrangement providing for deferred payment) as CIBC or the Receiver considers appropriate. CIBC or the Receiver may (without charge and to the exclusion of all other Persons including the Customer) enter upon any Place of Business.
- (c) **Realization.** CIBC or a Receiver may use, collect, sell, lease or otherwise dispose of, realize upon, release to the Customer or other Persons and otherwise deal with, the Collateral in such manner, upon such terms (including among other things by arrangement providing for deferred payment) and at such times as CIBC or the Receiver considers appropriate. CIBC or the Receiver may make any sale, lease or other disposition of the Collateral in the name of and on behalf of the Customer or otherwise.
- (d) **Application of Proceeds After Default.** All Proceeds of Collateral received by CIBC or a Receiver may be applied to discharge or satisfy any expenses (including among other things the Receiver's remuneration and other expenses of enforcing CIBC's rights under this Agreement), Charges, borrowings, taxes and other outgoings affecting the Collateral or which are considered advisable by CIBC or the Receiver to preserve, repair, process, maintain or enhance the Collateral or prepare it for sale, lease or other disposition, or to keep in good standing any Charges on the Collateral ranking in priority to any Charge created by this Agreement, or to sell, lease or otherwise dispose of the Collateral. The balance of such Proceeds will be applied to the Liabilities in such manner and at such times as CIBC considers appropriate and thereafter will be accounted for as required by law.

(3) **Other Legal Rights.** Before and after Default, CIBC will have, in addition to the rights specifically provided in this Agreement, the rights of a secured party under the PPSA, as well as the rights recognized at law and in equity. No right will be exclusive of or dependent upon or merge in any other right, and one or more of such rights may be exercised independently or in combination from time to time.

(4) **Deficiency.** The Customer will remain liable to CIBC for payment of any Liabilities that are outstanding following realization of all or any part of the Collateral.

11. **CIBC not Liable.** CIBC will not be liable to the Customer or any other Person for any failure or delay in exercising any of its rights under this Agreement (including among other things any failure to take possession of, collect, or sell, lease or otherwise dispose of, any Collateral). None of CIBC, a Receiver or any agent of CIBC (including, in Alberta, any sheriff) is required to take, or will have any liability for any failure to take or delay in taking, any steps necessary or advisable to preserve rights against other Persons under any Chattel Paper, Securities or Instrument in possession of CIBC, a Receiver or CIBC's agent.

12. **Charges and Expenses.** The Customer agrees to pay on demand all costs and expenses incurred (including among other things legal fees on a solicitor and client basis) and fees charged by CIBC in connection with obtaining or discharging

this Agreement or establishing or confirming the priority of the Charges created by this Agreement or by law, compliance with any demand by any Person under the PPSA to amend or discharge any registration relating to this Agreement, and by CIBC or any Receiver in exercising any remedy under this Agreement (including among other things preserving, repairing, processing, preparing for disposition and disposing of the Collateral by sale, lease or otherwise) and in carrying on the Customer's business. All such amounts will bear interest from time to time at the highest interest rate then applicable to any of the Liabilities, and the Customer will reimburse CIBC upon demand for any amount so paid.

13. **Further Assurances.** The Customer will from time to time immediately upon request by CIBC take such action (including among other things the signing and delivery of financing statements and financing change statements, other schedules, documents or listings describing property included in the Collateral, further assignments and other documents, and the registration of this Agreement or any other Charge against any of the Customer's real property) as CIBC may require in connection with the Collateral or as CIBC may consider necessary to give effect to this Agreement. If permitted by law, the Customer waives the right to sign or receive a copy of any financing statement or financing change statement, or any statement issued by any registry that confirms any registration of a financing statement or financing change statement, relating to this Agreement. The Customer irrevocably appoints the Manager or the Acting Manager from time to time of CIBC's branch specified on the first page of this Agreement as the Customer's attorney (with full powers of substitution and delegation) to sign, upon Default, all documents required to give effect to this section. Nothing in this section affects the right of CIBC as secured party, or any other Person on CIBC's behalf, to sign and file or deliver (as applicable) all such financing statements, financing change statements, notices, verification agreements and other documents relating to the Collateral and this Agreement as CIBC or such other Person considers appropriate.
14. **Dealings by CIBC.** CIBC may from time to time increase, reduce, discontinue or otherwise vary the Customer's credit facilities, grant extensions of time and other indulgences, take and give up any Charge, abstain from taking, perfecting or registering any Charge, accept compositions, grant releases and discharges and otherwise deal with the Customer, customers of the Customer, guarantors and others, and with the Collateral and any Charges held by CIBC, as CIBC considers appropriate without effecting the Customer's obligations to CIBC or CIBC's rights under this Agreement.
15. **Definitions.** In this Agreement:

"Accessions", "Account", "Chattel Paper", "Document of Title", "Equipment", "Goods", "Instrument", "Intangible", "Inventory", "Proceeds", "Purchase-Money Security Interest" and "Security Interest" have the respective meanings given to them in the PPSA.

"Books and Records" means all books, records, files, papers, disks, documents and other repositories of data recording, evidencing or relating to the Collateral to which the Customer (or any Person on the Customer's behalf) has access.

"Charge" means any mortgage, charge, pledge, hypothecation, lien (statutory or otherwise), assignment, financial lease, title retention agreement or arrangement, security interest or other encumbrance of any nature however arising, or any other security agreement or arrangement creating in favour of any creditor a right in respect of a particular property that is prior to the right of any other creditor in respect of such property.

"Consumer Goods" has the meaning given to it in the PPSA, except that, if this Agreement is governed by the laws of the Yukon, it does not include special consumer goods as that term is defined in the Yukon PPSA.

"Default" has the meaning set out in subsection 10(1).

"Liabilities" means all present and future indebtedness and liability of every kind, nature and description (whether direct or indirect, joint or several, absolute or contingent, matured or unmatured) of the Customer to CIBC, wherever and however incurred and any unpaid balance thereof.

"Money" has the meaning given to it in the PPSA or, if there is no such definition, means a medium of exchange authorized or adopted by the Parliament of Canada as part of the currency of Canada, or by a foreign government as part of its currency.

"Person" means any natural person or artificial body (including among others any firm, corporation or government).

"Personal Property" means personal property and includes among other things inventory, Equipment, Receivables, Books and Records, Chattel Paper, Goods, Documents of Title, Instruments, Intangibles (including intellectual property), Money, and Securities, and includes all Accessions to such property.

"Place of Business" means a location where the Customer carries on business or where any of the Collateral is located (including any location described in Schedule B).

"PPSA" means the legislation that applies in the province or territory noted in section 2 of this Agreement, as such legislation may be amended, renamed or replaced from time to time (and includes all regulations from time to time made under such legislation) as follows: in the case of Ontario, the Personal Property Security Act, 1989; in the case of Alberta, British Columbia, Manitoba, Prince Edward Island, Saskatchewan and the Yukon Territory, the Personal Property Security Act; and in the case of any other province or territory, such legislation as deals generally with Charges on personal property.

"Receivables" means all debts, claims and choses in action (including among other things Accounts and Chattel Paper) now or in the future due or owing to or owned by the Customer.

"Receiver" means a receiver or a receiver and manager.

"Securities" has the meaning given to it in the PPSA or, if there is no such definition and the PPSA defines "security" instead, it means the plural of that term.

"Serial Number" means the number that the Person who manufactured or constructed a Serial Number Good permanently marked or attached to it for identification purposes or, if applicable, such other number as the PPSA stipulates as the serial number or vehicle information number to be used for registration purposes of such Serial Number Good.

"Serial Number Good" means a motor vehicle, trailer, mobile home, aircraft airframe, aircraft engine or aircraft propeller, boat or an outboard motor for a boat.

16. General.

- (1) **Reservation of the Last Day of any Lease.** The Charges created by this Agreement do not extend to the last day of the term of any lease or agreement for lease; however, the Customer will hold such last day in trust for CIBC and, upon the exercise of CIBC of any of its rights under this Agreement following Default, will assign such last day as directed by CIBC.
- (2) **Attachment of Security Interest.** The Security Interests created by this Agreement are intended to attach (i) to existing Collateral when the Customer signs this Agreement, and (ii) to Collateral subsequently acquired by the Customer, immediately upon the Customer acquiring any rights in such Collateral. The parties do not intend to postpone the attachment of any Security Interest created by this Agreement.
- (3) **Purchase-Money Security Interest.** If CIBC gives value for the purpose of enabling the Customer to acquire rights in or to any of the Collateral, the Customer will in fact apply such value to acquire those rights (and will provide CIBC with such evidence in this regard as CIBC may require), and the Customer grants to CIBC, and CIBC takes, a Purchase-Money Security Interest in such Collateral to the extent that the value is applied to acquire such rights. A certificate or affidavit of any of CIBC's authorized representatives is admissible in evidence to establish the amount of any such value.
- (4) **Description of Collateral in Schedule A.** The fact that box (b) or box (c) of section 1 has been checked without there being any property described in Schedule A does not affect the nature or validity of CIBC's security in the Collateral.
- (5) **Entire Agreement.** CIBC has not made any representation or undertaken any obligation in connection with the subject matter of this Agreement other than as specifically set out in this Agreement, and in particular nothing contained in this Agreement will require CIBC to make, renew or extend the time for payment of any loan or other credit accommodation to the Customer or any other Person.
- (6) **Additional Security.** The Charges created by this Agreement are in addition and without prejudice to any other Charge now or later held by CIBC. No Charge held by CIBC will be exclusive of or dependant upon or merge in any other Charge, and CIBC may exercise its rights under such Charges independently or in combination.
- (7) **Joint and Several Liability.** If more than one Person signs this Agreement as the Customer, the obligations of such Persons will be joint and several.
- (8) **Severability; Headings.** Any provision of this Agreement that is void or unenforceable in any jurisdiction is, as to that jurisdiction, ineffective to that extent without invalidating the remaining provisions of this Agreement. The headings in this Agreement are for convenience only and do not limit or extend the provisions of this Agreement.
- (9) **Interpretation.** When the context so requires, the singular will be read as the plural, and vice versa.

(10) **Copy of Agreement.** The Customer acknowledges receipt of a copy of this Agreement.

(11) **Waivers.** If this Agreement is governed by the laws of Saskatchewan and the Customer is a corporation, the Customer agrees that The Limitation of Civil Rights Act, The Land Contracts (Actions) Act and Part IV (excepting only section 46) of The Saskatchewan Farm Security Act do not apply insofar as they relate to actions as defined in those Acts, or insofar as they relate to or affect this Agreement, the rights of CIBC under this Agreement or any instrument, Charge, security agreement or other document of any nature that renews, extends or is collateral to this Agreement.

(12) **Notice.** CIBC may send to the Customer, by prepaid regular mail addressed to the Customer at the Customer's address last known to CIBC, copies of any documents required by the PPSA to be delivered by CIBC to the Customer. Any document mailed in this manner will be deemed to have been received by the Customer upon the earlier of actual receipt by the Customer and the expiry of 10 days after the mailing date. A certificate or affidavit of any of CIBC's authorized representatives is admissible in evidence to establish the mailing date.

(13) **Enurement; Assignment.** This Agreement will enure to the benefit of and be binding upon (i) CIBC, its successors and assigns, and (ii) the Customer and the Customer's heirs, executors, administrators, successors and permitted assigns. The Customer will not assign this Agreement without CIBC's prior written consent.

This is exhibit I referred to in
the affidavit of Jennifer Lee sworn
or affirmed before me this 19th day
of December 2002

Jennifer Lee

To Whom It May Concern:

Hickman Equipment (1985) Limited
(NAME OF PERSON FIRM OR COMPANY)

P.O. Box 820
1269 Topsail Road
Mt. Pearl, NF A1N 3C8
(MAILING ADDRESS)

hereby gives notice that it is its intention to give security
under section 427 of the Bank Act, to
Canadian Imperial Bank of Commerce

Receipt of a copy of the within security is hereby acknowledged.

Dated at St. John's, Newfoundland this 19 day of Dec 2000.

Transit Number:

[Signature]
President

[Signature]
Vice-President

NOTICE RECEIVED / PRÉAVIS REÇU

10 / 26 / 00 / 05:50:26
mm - dd - yyyy - time

AM
PDT

CANADIAN SECURITIES REGISTRATION SYSTEMS

Authorized Section 427 Bank Act
Registrar for Bank of Canada

Bureau d'enregistrement autorisé de la
Banque du Canada conformément à
l'article 427 de la Loi sur les banques.

PROVINCE OF NEWFOUNDLAND

Pour / For Registrar

R. Conroy

Confirmation Letter / Lettre de confirmation

Canadian Securities Registration Systems/Systèmes d'Enregistrement des Garanties Canadiennes

#180-13571 Commerce Parkway, Richmond, BC V6V 2L1

Authorized Section 427 Bank Act Registrar / Bureau d'enregistrement autorisé conformément à l'article 427 de la Loi sur les banques.

Deloitte & Touche Inc.
Fort William Building
10 Factory Lane
St. John's, Newfoundland
A1C 6H5

2000/10/26 05:50:26 AM PDT

Ref / Objet: 00498230 CIBC/Benson Myles

Tel/Tél: 1-709-576-8480

Fax/Télécopie: 1-709-758-5238

Acct# 9009

Dear Sir / Madam

Monsieur / Madame

Re: Bank Act Security - Section 427

Objet: Garanties données en vertu de la Loi sur les banques - article 427

We have processed your request(s) and hereby confirm the following results: (*see below).

Nous avons donné suite à votre (vos) demande(s) et nous vous faisons part des résultats suivants: (* voir ci-dessous).

Type	Registration Name	Address	Date	Number	Bank
Type	Enregistrement au nom de	Adresse	Date	Numéro	Banque
(1)	Hickman Equipment (1985) Limited	P.O. Box 820 1269 Topsail Road Mount Pearl NF A1N3C8	2000/10/26 05:49 AM PDT	01074579	Canadian Imperial Bank Of Commerce

REFERENCE

(1) We have entered the above name(s) on our register of notices of intention to give security under the Bank Act in the province of Newfoundland.

REFERENCE

(1) Nous avons ajouté le(s) nom(s) ci-dessus à notre registre de préavis se rapportant aux garanties données en vertu de la Loi sur les banques dans la province de: Terre-Neuve.

R. Corconi

For Registrar / Pour le Régistrare

We acknowledge receipt of fees
as follows:

Nous accusons réception des droits prescrits
dont les montants s'établissent comme suit:

Type Type	Fee Tarif	GST TPS	Quantity Quantité	TOTAL TOTAL	Receipt No. Numéro du reçu
(1)	\$8.00	\$0.00	1	\$8.00	00498230 - S-R-RN- O
				\$8.00	

GST/TPS #: 125 614 362



a "US" one \$, applicable

1. REQUEST FOR LINE OF CREDIT. I request Canadian Imperial Bank of Commerce ("CIBC") to grant me a revolving line of credit in a maximum principal amount of \$ 13,500,000.00

and to make loans or advances (collectively, "Advances") to me on the security of all property (the "Property") of the kind(s) described in CIBC's Form 65 (entitled "Special Security in respect of specified property or classes of property described in section 427 of the Act") of which I am now or may later become the owner, and/or on the security of warehouse receipts and/or bills of lading covering the Property.

2. PROMISE TO GIVE SECURITY. I promise to give security for Advances by way of an assignment under section 427 of the Bank Act covering all the Property.

3. LOCATION OF PROPERTY. The Property is now or may later be located at the place(s) designated in CIBC's Form 65. I will promptly notify CIBC in writing of any additional places where the Property is to be located (the existing and additional places referred to collectively as the "Locations") as soon as they are established. I will keep the Property at all times at the Locations, and will not remove any Property from any such Location without CIBC's prior written consent.

4. WAREHOUSE RECEIPTS AND BILLS OF LADING. If any or all of the Property is now or may later be covered by warehouse receipts or bills of lading, I promise to give them to CIBC, from time to time and as often as CIBC requests, as security for Advances.

delete, if not applicable

5. OVERDRAFTS. CIBC may make Advances to me by way of overdraft. Any overdrafts will be made to my account No. 00-02801 (or to such other accounts as CIBC and I may agree).

6. PROMISSORY NOTES TO EVIDENCE ADVANCES. CIBC may from time to time require me to give CIBC promissory notes (in its usual form) to represent all or any part of the Advances, whether or not I obtain Advances by way of overdraft. Any notes that I give CIBC will not extinguish or pay any indebtedness for Advances, but will simply represent such indebtedness.

7. SECURITY AGREEMENT APPLIES. The provisions of CIBC's Form 103 (entitled "Contract relative to Special Security under the Bank Act") apply to all security that I give CIBC for any Advances. No security that I give CIBC will merge in any subsequent security or replace any security previously given.

8. CANCELLATION OF LINE OF CREDIT. Unless otherwise expressly agreed in writing, CIBC may cancel at any time, without notice to me, in whole or in part, the line of credit that CIBC grants to me as a result of this agreement.

9. JOINT AND SEVERAL LIABILITY. If two or more persons sign this agreement, each person's liability will be joint and several (which means that CIBC may require fulfilment of our obligations under this agreement from any one of us, or a portion from each of us), and references in this agreement to "I" and "me" should be interpreted accordingly.

10. COPY RECEIVED. I have received a copy of this agreement.

Dated Oct 18/1985

HICKMAN EQUIPMENT (1985) LIMITED Customer's Name in Full

[Signature] Signature

[Signature] Signature

For good and valuable consideration, the undersigned hereby assigns to Canadian Imperial Bank of Commerce ("CIBC"), as continuing security for the payment of all loans and advances that have been or may be made by CIBC to the undersigned or renewals of such loans and advances, or substitutions therefor, and interest on such loans and advances and on any such renewals or substitutions, all property and classes of property hereinafter described of which the undersigned is now or may hereafter become the owner, to wit: ¹¹

(1) Here give general description of the kind or kinds of property to be covered by the security, or if space insufficient insert after (1) "the property described on the attached schedule" and set out the description on a sheet attached to this form. If applicable, include number, name and port of registry of any registered or recorded vessels.

All assets, subject to Priority Agreement with John Deere Limited dated July 5, 1985.

and that is now or may hereafter be in the place or places hereinafter designated, to wit: ¹²

(2) Here designate the place or places where the property to be covered by the security is or may be located, or if space insufficient, insert after (2) "the place or places designated in the attached schedule" and set out the designation on a sheet attached to this form.

or, where the property consists in whole or in part of fishing vessels, fishing equipment and supplies or products of the sea, lakes and rivers, wherever such property may be.

This security is given under section 427 of the *Bank Act*.

The property now owned by the undersigned and hereby assigned is free from any mortgage, lien or charge thereon, other than previous assignments, if any, to CIBC, and the undersigned warrants that the property that may hereafter be acquired by the undersigned and is hereby assigned shall be free from any mortgage, lien or charge thereon, other than previous assignments to CIBC.

Dated at St. John's, Nfld the 18 day of Oct

HICKMAN EQUIPMENT (1985) LIMITED

[Signature]
PRISM-1
[Signature]
SIGNATURE



St. John's Commercial
Banking Centre

Atlantic Place
P.O. Box 340
St. John's, Nfld.
A1C 5J9

THIS IS EXHIBIT "J" TO THE
AFFIDAVIT OF JENNIFER LEE

March 17, 1997

Sworn before me
this 19th day of December, 2002

ATLANTIC PLACE
ST. JOHN'S
MAR 20 1997

PRIVATE & CONFIDENTIAL

Mr. Howard Hickman
Hickman Equipment (1985) Limited
P.O. Box 8340, Stn. A
St. John's, Nfld.
A1B 3N7

Dear Mr. Hickman;:

Credit Agreement

Canadian Imperial Bank of Commerce ("CIBC") is pleased to confirm that, subject to the acceptance of Hickman Equipment (1985) Limited (the "Customer"), CIBC has established in favour of the Customer various demand credit facilities (each a "Facility") as set out below. The provisions are as follows:

Facility A - Operating Facility

- | | |
|-----------------------------------|---|
| Credit Limit | CS\$4,300,000 Operating Facility. |
| Type & Availment | A demand credit facility under which the Customer may obtain on a revolving basis Canadian dollar overdrafts. |
| Interest Rate | Prime Rate plus 0.10%. |
| Purpose | For the Customer's business purposes. |
| Special Provisions/
Conditions | Operating Facility is available by way of current account overdraft and/or Bankers' Acceptances. Bankers Acceptances are subject to: <ul style="list-style-type: none"> (1) a minimum issue of \$1 Million in multiples of \$100,000 (2) a minimum maturity of 7 days and a maximum of 180 days. (3) a stamping fee of CAR + 0.35% (Commerce Acceptance Rate - currently 1%, and subject to change). |

Facility B - Revolving Rental Loan Facility

Credit Limit C\$2,200,000 Revolving Rental Loan Facility

Type & Availment A demand credit facility under which the Customer may obtain on a revolving basis Canadian dollar overdrafts.

Interest Rate Prime Rate plus 0.85% per year.

Purpose For the Customer's business purposes.

Facility C - Capital Loan

Credit Limit C\$236,500 Capital Facility.

Type & Availment A demand credit facility under which the customer may obtain on a non-revolving basis, a Canadian dollar loan.

Interest Rate Prime Rate plus 0.85% per year.

Purpose To confirm existing loan.

Scheduled Payments Subject to earlier payment on demand as set out below, the Customer will pay to CIBC in equal monthly principal payments of \$3,600.

Facility D - Letters of Credit

Credit Limit C\$40,000 Letter of Credit Facility.

Fee 1.3% per annum, subject to minimum fee of \$200 per issuance.

Purpose For Letter of Credit/Guarantee purposes.

Facility E - Capital Loan #2

Credit Limit C\$175,000 Capital Facility.

Type & Availment A demand credit facility under which the Customer may obtain on a non-revolving basis, a Canadian dollar loan.

Interest Rate Prime Rate plus 0.75% per year.

Purpose To confirm loans granted to purchase the assets of Universal Rent-Alls.

Scheduled Payments Subject to earlier payment on demand as set out below, the Customer will pay to CIBC equal monthly principal payments of \$25,000, plus interest. In addition, the Company will provide lump sum reductions from specific "Universal Rent-Alls" equipment sold.

Facility F - Capital Loan #3

Credit Limit C\$500,000 Capital Facility.

Type & Availment A demand credit facility under which the Customer may obtain on a non-revolving basis, a Canadian dollar loan.

Interest Rate Prime Rate plus 1.00% per year.

Purpose To purchase rental equipment to establish branches of Hickman's Rent-Alls at Come by Chance and Clarendville, Nfld.

Scheduled Payments Subject to earlier payment on demand as set out below, the Customer will pay to CIBC equal monthly principal payments of \$25,000, plus interest.

General Provisions

Repayment and Facility Cancellation CIBC may on demand require immediate payment of all amounts outstanding or accrued in connection with this Agreement. CIBC may, at any time, for any reason and without notice, cancel the undrawn portions of the Facilities.

Special Provisions Effective September 1, 1997 the Stamping Fee on Banker's Acceptances will increase by 0.35% and the interest rate on loans under Sections "A", "B" & "C" will increase by 0.10%.

Effective September 1, 1998 the Stamping Fee on Banker's Acceptances will increase by a further 0.30% and the interest rate on loans under Sections "A", "B" & "C" will increase a further 0.05%.

It is understood pricing will be reviewed with you prior to implementation of the September 1, 1998 increase.

It is also understood that the above pricing is based on the assumption that the mix of Banker's Acceptance and Loans/Overdrafts will be substantially as in 1995.

Security

All security CIBC may now and from time to time hold,
plus:

Registered general assignment of accounts receivable.

Registered demand debenture for \$5,000,000 providing a first floating charge over all assets and undertakings subject to priority of security agreement dated July 5, 1985 with John Deere Limited covering consigned, floor planned inventory, goods sold and included in inventory. (Debenture is presently held for \$3,000,000 and will be increased to \$5,000,000).

An addendum to the debenture security providing the Bank with a first fixed charge over the Grand Falls, Nfld. real estate.

Adequate fire insurance over inventories with loss payable to the Bank subject to outside encumbrances as described above.

Guarantee and Postponement of Claim signed by A.E. Hickman Company Limited for full liability, supported by:

- 1) Registered general assignment of accounts receivable.
- 2) Registered demand debenture for \$5 Million providing a first floating charge over inventory
- 3) Registered demand debenture for \$5 Million providing a first fixed charge over the Company's properties, subject to prior liens in favour of mortgage holders.

Guarantee and Postponement of Claim signed by Kenmount Capital Limited for full liability supported by:

- 1) Registered general assignment of accounts receivable
- 2) Hypothecation of 1,998 shares of Hickman Motors Limited.

Guarantee and Postponement of Claim for full liability signed by Trio Holdings Limited, supported by 8,597 common shares of Hickman Equipment (1985) Limited.

Postponement of claim signed by Hickman Motors Limited for \$1,000,000, provided the Company may repay Hickman Motors Limited the lesser of \$100,000 or 50% of Net Income in any one year.

Capital Loan Facility "E" will be specifically secured by a registered chattel mortgage over all equipment purchased, together with confirmation of adequate insurance coverage.

Margins

Operating Facility A, Rental Loan Facility, Capital Facility E and Capital Facility F, will not exceed the aggregate of:

- (1) 75% of assigned acceptable trade accounts receivable excluding doubtful, over 90 day accounts/inter-Company accounts and unremitted statutory deductions.
- (2) 65% of all assigned inventories at book value (net of all prior liens) up to a maximum of \$5,175,000, with the maximum lending value reducing as the loans outstanding under Capital Loan facilities "E" and "F" reduce.

Reporting Requirements

The Customer will provide to CIBC:

- (1) Within 90 days of each fiscal year-end, Financial Statements for that year-end on an audited basis.
- (2) Monthly declarations covering the Company's receivables/inventories, etc., in the established format as well as internal profit and loss statements and balance sheets will be provided to the Bank within 25 days of each month end (except for December).

Other Standard Provisions

The provisions in the attached Schedule - Standard Demand Credit Provisions - Form 6327 form part of this Agreement.

Next Scheduled Review Date

June 30, 1998.

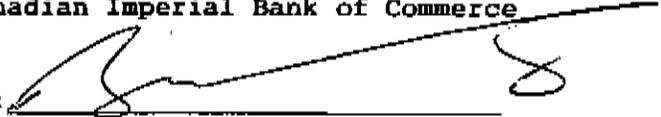
Please indicate acceptance by returning a signed copy of this agreement. If CIBC does not receive that signed copy by April 15, 1997, then this offer of financing will expire.

We take this opportunity to express our appreciation for your banking business, and should you require clarification of any aspect of the credit line or any other services, please feel free to contact the undersigned.

Upon acceptance, this Agreement restates the existing credit agreements dated September 6, 1996, between the Customer and the CIBC, with outstanding availments and security under that agreement considered to be continuing related availments and Security under this Agreement.

Yours truly,

Canadian Imperial Bank of Commerce

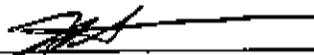
by: 
B.T. Chaulk, Account Manager
Authorized Officer

Acknowledgement. The undersigned acknowledges that the Customer has received a copy of this Credit Agreement (which includes the attached schedule(s).referred to above).

Accepted:

Hickman Equipment (1985) Limited

by:



Name: H. J. HICKMAN

Title: PRESIDENT

by:

Name: _____

Title: _____

SCHEDULE - STANDARD CREDIT PROVISIONS
[For Use with One or More Demand C\$ Facilities]

This Schedule is part of the Credit Agreement, dated **March 17** 1997, between Canadian Imperial Bank of

Commerce ("CIBC") and **Hickman Equipment (1985) Limited** (the "Customer").

Facility Use. The Customer will draw down or otherwise use each facility only for the applicable Purpose. The Customer will confine overdrafts (if allowed under a Facility) to one or more of the Customer's CIBC accounts acceptable to CIBC. The Customer will ensure that the Credit Usage of any Facility does not at any time exceed the relevant Credit Limit.

Interest Rate. The Customer will pay to CIBC interest at variable nominal rates per year equal to:

(a) in respect of loans and overdrafts under a Facility (other than overdue amounts) to the extent that the Credit Usage of that Facility does not exceed the relevant Credit Limit, the applicable Interest Rate; or

(b) (i) in respect of overdue amounts, and (ii) to the extent that the Credit Usage of a Facility exceeds the relevant Credit Limit, the Default Interest Rate.

~~Each such variable nominal rate will change automatically without notice whenever the Prime Rate or the Standard Overdraft Rate (as may be applicable) changes.~~

Interest Payment. The Customer will pay interest monthly in arrears in accordance with CIBC's then prevailing usual requirements, except that interest on overdue amounts will be payable immediately on demand. Interest will be calculated on the daily balance for the actual number of days elapsed and compounded monthly on overdue interest, both before and after demand, default and judgment.

Fee Payment. The Customer will pay:

(a) The Administration Fee, monthly in arrears in accordance with CIBC's then prevailing usual requirements.

(b) The Late Reporting Fee, immediately upon each failure to provide when due a document pursuant to the Reporting Requirements or otherwise under this Agreement (whether or not such failure is rectified after that date).

Pre-conditions. The Customer may draw down or otherwise use a facility only if:

(a) CIBC has received evidence of the Customer's authority to enter into and perform under this Agreement and the authority of each Security Provider to give and perform under the Security (if any), all in form and substance acceptable to CIBC.

(b) The Security (if any) has been provided and, if necessary, registered, all in form and substance acceptable to CIBC, and all as general and continuing security for the due payment and performance of all of the Customer's present and future debt and liability of every kind, nature and description to CIBC, wherever and however incurred.

(c) All Special Provisions/Conditions (if any) and other obligations of the Customer under this Agreement have been complied with to CIBC's reasonable satisfaction.

(d) The Customer has given CIBC such number of days prior notice of the Customer's requested drawdown as CIBC may require.

Other Information. In addition to the Customer's obligations set out under Reporting Requirements, the Customer will promptly provide CIBC such other information, approvals, opinions or documentation as CIBC may from time to time request.

Insurance. The Customer will keep all the property subject to the Security (if any) insured to its full insurable value against loss or damage by fire and such other risks as are customarily insured for assets similar to that property (and against such other risks as CIBC may reasonably require). At CIBC's request, all policies will contain a loss payable clause and, if that property includes real property, a mortgagee clause in CIBC's

such policies (or satisfactory evidence of such policies) to CIBC. If the Customer does not obtain or maintain that insurance, CIBC may (but is not obliged to) do so and require the Customer to reimburse it immediately on demand. The Customer will promptly give CIBC written notice of any loss or damage to that property.

8. Environmental Matters. The Customer will conduct its business and maintain all the property of the Customer in compliance with all federal, provincial and municipal environmental statutes, regulations and by-laws. The Customer will indemnify and hold harmless each of CIBC and its directors, officers, employees and agents in respect of any costs, losses, damages, expenses, judgments, suits, claims, awards, fines, sanctions and liabilities whatsoever (including any costs or expenses of defending or denying the same and including the costs or expenses of preparing any necessary environmental assessment report or other such reports) arising out of, or in respect of (i) any release, deposit, discharge or disposal of any hazardous or toxic materials, pollutants, contaminants, waste or other substances in connection with the Customer's property or business, and (ii) the remedial action (if any) taken by CIBC in respect of any such release, deposit, discharge or disposal. This indemnity will survive the repayment or cancellation of any Facility or any termination of this Agreement.

9. Charges and Payments. Unless proved otherwise and except for obvious error, CIBC's records concerning principal, interest, fees and other amounts outstanding, accrued or otherwise payable under this Agreement are conclusive evidence of the Customer's debt and liability under this Agreement. CIBC may debit any of the Customer's accounts with amounts of interest and other charges payable to CIBC. CIBC may apply any amounts from time to time paid by or credited in favour of the Customer to such parts of the Customer's debt or liability to CIBC as CIBC in its discretion determines. The Customer will make all payments to CIBC in immediately available funds in the applicable currency on the due date and in the manner that CIBC may direct from time to time. Whenever any payment under this Agreement is due on a day that is not a Business Day, that due date will be considered to be the immediately preceding Business Day.

10. Existing Agreements. Except as changed by this Agreement, the provisions of existing agreements (as revised from time to time) governing the operation of the Customer's accounts continue to apply. If there is any conflict, the provisions of this Agreement govern. The Customer will sign CIBC's standard form of current account authority in respect of each such account. Without limiting the generality of the foregoing, the Customer agrees it will be conclusively settled that (i) the amount of the balance shown in any statement of an account provided to the Customer is correct, and (ii) each amount shown in that statement as a charge to that account is properly chargeable to the Customer, unless the Customer has notified CIBC of errors, irregularities or omissions in or from that statement within 30 days of the date of mailing (as shown by CIBC's records) or delivery of such statement to the Customer.

11. Fixed Rate Provisions. The Customer may not voluntarily prepay any Fixed Rate Loan before the end of its scheduled term without CIBC's prior consent, which consent may be conditional upon the Customer paying CIBC an additional amount as CIBC may in its absolute discretion determine at the time of such prepayment. The Customer will compensate CIBC on demand for all costs and losses (including any loss of bargain or any loss or cost as a result of terminating, liquidating or reestablishing any hedge, trading or lending position) incurred by CIBC in connection with any repayment of all or part of any Fixed Rate Loan required as a result of demand having been made by CIBC after

Consent to Release of Information. The Customer consents to the receipt and exchange of credit or other information from time to time by CIBC, including such receipt from and exchange with any financial institution, credit bureau or credit reporting agency or any person, firm or corporation with which the Customer has or proposes to have financial relations. The Customer understands that this information may be used for the purposes of establishing and maintaining the Customer's relationship with CIBC and of offering and providing products and services as permitted by law.

3. Notices. Any notice or communication in respect of this Agreement may be given in any manner set forth below to the address or number set out in the letter portion of this Agreement and will be deemed effective as indicated:

(a) if in writing and delivered in person or by courier, on the date it is delivered;

(b) if sent by fax transmission, on the day that transmission is confirmed by telephone or in writing (other than a writing generated by fax machine) as received by the recipient; or

(c) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted;

Unless the date of that delivery or receipt, as applicable, is not a Business Day or that notice is delivered or received, as applicable, after the close of the CIBC Branch/Centre's normal banking hours on a Business Day, in which case that notice shall be deemed given and effective on the first following day that is a Business Day. CIBC may rely upon any such notice or communication purporting to be from the Customer as long as CIBC believed in good faith that it was given by an officer/representative of the Customer. Either the Customer or CIBC may by notice to the other change the address or number at which notices or communications are to be given to it.

4. Miscellaneous. (i) The Customer has received a signed copy of this Agreement. (ii) If more than one person, firm or corporation signs this Agreement as the Customer, CIBC may require payment of all amounts payable under this Agreement from any one of them, or a portion from each, but CIBC is released from any of its obligations by performing that obligation to any one of them. (iii) The Customer may not assign any of the Customer's rights or obligations in connection with this Agreement without CIBC's consent. (iv) The Customer will pay to CIBC all reasonable fees and out-of-pocket expenses of CIBC in respect of the registration and enforcement of this Agreement and the Security. (v) Accounting terms will (to the extent not defined in this Agreement) be interpreted in accordance with accounting principles established from time to time by the Canadian Institute of Chartered Accountants (or any successor), consistently applied, and all financial statements and information provided to CIBC will be prepared in accordance with those principles. (vi) This Agreement is governed by the law of the Province or Territory where the CIBC Branch/Centre is located.

15. Definitions. Each margin heading in the letter portion of this Agreement is a defined term having the meaning set out opposite that heading. All capitalized terms not defined in this Schedule have the respective meanings given to them elsewhere in this Agreement. Also, in this Agreement:

"Business Day" means any day (other than a Saturday or a Sunday) that the CIBC Branch/Centre is open for business.

"Business Plan/Forecast" means, for any fiscal year, a business plan and financial forecast in respect of the Customer for that fiscal year, in form reasonably acceptable to CIBC and certified by a senior officer/representative of the Customer.

"CIBC Branch/Centre" means the CIBC branch or banking centre noted on the letterhead of this Agreement, or such other branch or centre as may from time to time be agreed upon by CIBC and the Customer.

"Credit Usage" means, at any time in respect of a Facility, the total principal amount of availments then outstanding under that Facility (including, the extent established under that Facility, the maximum credit limit for any Corporate Visa line, the total face amount of any outstanding Letters of Credit and outstanding drafts accepted by CIBC in connection with Letters of Credit and a percentage (as CIBC may from time to time determine) of outstanding obligations of the Customer under foreign exchange contracts or other derivative product transactions).

"Financial Statements" means financial statements in respect of the Customer and, at CIBC's request, financial statements in respect of any Security Provider, in each case on an unconsolidated and/or consolidated basis (as CIBC may direct), such statements for any fiscal period to include a balance sheet as of the end of that fiscal period and a statement of income and retained earnings over that period, certified by the chief financial officer of the Customer and, where audited, certified in a manner acceptable to CIBC by an independent firm of chartered accountants acceptable to CIBC.

"Fixed Rate Loan" means any loan drawn down, converted or extended under a Facility at an interest rate which was fixed for a term, instead of referenced to a variable rate such as the Prime Rate, at the time of such drawdown, conversion or extension.

"Inventory Value" means, at any time of determination, the total value (based on the lower of cost or market) of the Customer's inventories that are subject to the Security (other than (i) those inventories supplied by trade creditors who at that time have not been fully paid therefor and would have a right to repossess all or part of such inventories if the Customer were then either bankrupt or in receivership, (ii) those inventories comprising work in process and (iii) those inventories CIBC may from time to time designate in its sole discretion) minus the total amount of any claims, liens or encumbrances on those inventories having or purporting to have priority over CIBC.

"Letter of Credit" means, unless specifically limited elsewhere in this Agreement, a documentary or stand-by letter of credit, letter of guarantee or similar instrument in form and substance satisfactory to CIBC.

"Prime Rate" means the variable reference interest rate per year declared by CIBC from time to time to be its prime rate for Canadian dollar loans made by CIBC in Canada.

"Receivable Value" means, at any time of determination, the total value of those of the Customer's trade accounts receivable that are subject to the Security (other than (i) those accounts then outstanding for 90 days, (ii) those accounts owing by persons, firms or corporations affiliated to the Customer and (iii) those accounts that CIBC may from time to time designate in its sole discretion) minus the total amount of any claims, liens or encumbrances on or claims of set-off against those accounts having or purporting to have priority over CIBC.

"Receivables/Inventory Summary" means a summary of the Customer's trade account receivables and inventories plus a list of such aged receivables, all in form reasonably acceptable to CIBC and certified by a senior officer/representative of the Customer.

"Security Provider" means a person, firm or corporation which is a party to or obliged under or has otherwise signed or provided any of the Security.

"Standard Overdraft Rate" for Canadian dollar overdrafts means the variable reference interest rate per year declared by CIBC from time to time to be its standard overdraft rate on overdrafts in Canadian dollar accounts maintained in Canada with CIBC.



SW

Atlantic Place
P.O. Box 340
St. John's, Nfld.
A1C 5J9

THIS IS EXHIBIT "K" TO THE
AFFIDAVIT OF JENNIFER LEE

July 18, 1997

Sworn before me
this 19th day of December, 2002

[Signature]

PRIVATE & CONFIDENTIAL

Mr. Howard Hickman
Hickman Equipment (1985) Limited
P.O. Box 8340, Stn. A
St. John's, Nfld.
A1B 3N7

Dear Mr. Hickman;:

Credit Agreement

Canadian Imperial Bank of Commerce ("CIBC") is pleased to confirm that, subject to the acceptance of Hickman Equipment (1985) Limited (the "Customer"), CIBC has established in favour of the Customer various demand credit facilities (each a "Facility") as set out below. The provisions are as follows:

Facility A - Operating Facility

Credit Limit	C\$4,300,000 Operating Facility.
Type & Availment	A demand credit facility under which the Customer may obtain on a revolving basis Canadian dollar overdrafts.
Interest Rate	Prime Rate plus 0.10%.
Purpose	For the Customer's business purposes.
Special Provisions/ Conditions	Operating Facility is available by way of current account overdraft and/or Bankers' Acceptances. Bankers Acceptances are subject to: <ul style="list-style-type: none"> (1) a minimum issue of \$1 Million in multiples of \$100,000 (2) a minimum maturity of 7 days and a maximum of 180 days. (3) a stamping fee of CAR + 0.35% (Commerce Acceptance Rate - currently 1%, and subject to change).

Facility A-1 - Temporary Bulge to Facility A

Credit Limit	C\$2,500,000 Operating Facility.
Type & Availment	A demand credit facility under which the Customer may obtain on a revolving basis Canadian dollar overdrafts.
Interest Rate	Prime Rate plus 0.10%.

Purpose To facilitate the shortterm purchases of John Deere equipment from other Dealers.

Expiry To be repaid from the sale of equipment purchased. All advances to be liquidated by December 31, 1997.

Facility B -Revolving Rental Loan Facility

Credit Limit C\$2,200,000 Revolving Rental Loan Facility

Type & Availment A demand credit facility under which the Customer may obtain on a revolving basis Canadian dollar overdrafts.

Interest Rate Prime Rate plus 0.85% per year.

Purpose For the Customer's business purposes.

Facility C - Capital Loan

Credit Limit C\$222,100 Capital Facility.

Type & Availment A demand credit facility under which the customer may obtain on a non-revolving basis, a Canadian dollar loan.

Interest Rate Prime Rate plus 0.85% per year.

Purpose To confirm existing loan.

Scheduled Payments Subject to earlier payment on demand as set out below, the Customer will pay to CIBC in equal monthly principal payments of \$3,600.

Facility D - Letters of Credit

Credit Limit C\$40,000 Letter of Credit Facility.

Fee 1.3% per annum, subject to minimum fee of \$200 per issuance.

Purpose For Letter of Credit/Guarantee purposes.

Facility E - Capital Loan #2

Credit Limit C\$75,000 Capital Facility.

Type & Availment A demand credit facility under which the Customer may obtain on a non-revolving basis, a Canadian dollar loan.

Interest Rate Prime Rate plus 0.75% per year.

Purpose To confirm loans granted to purchase the assets of Universal Rent-Alls.

Scheduled Payments Subject to earlier payment on demand as set out below, the Customer will pay to CIBC equal monthly principal payments of \$25,000, plus interest. In addition, the Company will provide lump sum reductions from specific "Universal Rent-Alls" equipment sold.

Facility F - Capital Loan #3

Credit Limit C\$475,000 Capital Facility.

Type & Availment A demand credit facility under which the Customer may obtain on a non-revolving basis, a Canadian dollar loan.

Interest Rate Prime Rate plus 1.00% per year.

Purpose To purchase rental equipment to establish branches of Hickman's Rent-Alls at Come by Chance and Clarendville, Nfld.

Scheduled Payments Subject to earlier payment on demand as set out below, the Customer will pay to CIBC equal monthly principal payments of \$25,000, plus interest.

General Provisions

Repayment and Facility Cancellation CIBC may on demand require immediate payment of all amounts outstanding or accrued in connection with this Agreement. CIBC may, at any time, for any reason and without notice, cancel the undrawn portions of the Facilities.

Special Provisions Effective September 1, 1997 the Stamping Fee on Banker's Acceptances will increase by 0.35% and the interest rate on loans under Sections "A", "A-1", "B" & "C" will increase by 0.10%.

Effective September 1, 1998 the Stamping Fee on Banker's Acceptances will increase by a further 0.30% and the interest rate on loans under Sections "A", "B" & "C" will increase a further 0.05%.

It is understood pricing will be reviewed with you prior to implementation of the September 1, 1998 increase.

It is also understood that the above pricing is based on the assumption that the mix of Banker's Acceptance and Loans/Overdrafts will be substantially as in 1995.

A set-up fee of \$2,500 is applicable for Facility A-1.

Security All security CIBC may now and from time to time hold, plus:

Registered general assignment of accounts receivable.

Registered demand debenture for \$10,000,000 providing a first floating charge over all assets and undertakings subject to priority of security agreement dated July 5, 1985 with John Deere Limited covering consigned, floor planned inventory, goods sold and included in inventory. (Debenture is presently held for \$5,000,000 and will be increased to \$10,000,000).

An addendum to the debenture security providing the Bank with a first fixed charge over the Grand Falls, Nfld. real estate.

Adequate fire insurance over inventories with loss payable to the Bank subject to outside encumbrances as described above.

Guarantee and Postponement of Claim signed by A.E. Hickman Company Limited for full liability, supported by:

- 1) Registered general assignment of accounts receivable.
- 2) Registered demand debenture for \$5 Million providing a first floating charge over inventory
- 3) Registered demand debenture for \$5 Million providing a first fixed charge over the Company's properties, subject to prior liens in favour of mortgage holders.

Guarantee and Postponement of Claim signed by Kenmount Capital Limited for full liability supported by:

- 1) Registered general assignment of accounts receivable
- 2) Hypothecation of 1,998 shares of Hickman Motors Limited.

Guarantee and Postponement of Claim for full liability signed by Trio Holdings Limited, supported by 8,597 common shares of Hickman Equipment (1985) Limited.

Postponement of claim signed by Hickman Motors Limited for \$1,000,000, provided the Company may repay Hickman Motors Limited the lesser of \$100,000 or 50% of Net Income in any one year.

Capital Loan Facility "E" will be specifically secured by a registered chattel mortgage over all equipment purchased, together with confirmation of adequate insurance coverage.

Margins

Operating Facility A, A-1, Rental Loan Facility, Capital Facility E and Capital Facility F, will not exceed the aggregate of:

- (1) 75% of assigned acceptable trade accounts receivable excluding doubtful, over 90 day accounts/inter-Company accounts and unremitted statutory deductions.
- (2) 65% of all assigned inventories at book value (net of all prior liens) up to a maximum of \$5,050,000, with the maximum lending value reducing as the loans outstanding under Capital Loan facilities "E" and "F" reduce.

Reporting Requirements

The Customer will provide to CIBC:

- (1) Within 90 days of each fiscal year-end, Financial Statements for that year-end on an audited basis.
- (2) Monthly declarations covering the Company's receivables/inventories, etc., in the established format as well as internal profit and loss statements and balance sheets will be provided to the Bank within 25 days of each month end (except for December).

Other Standard Provisions

The provisions in the attached Schedule - Standard Demand Credit Provisions - Form 6327 form part of this Agreement.

Next Scheduled Review Date

June 30, 1998.

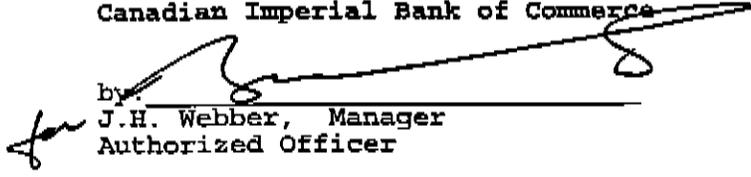
Please indicate acceptance by returning a signed copy of this agreement. If CIBC does not receive that signed copy by July 25, 1997, then this offer of financing will expire.

We take this opportunity to express our appreciation for your banking business, and should you require clarification of any aspect of the credit line or any other services, please feel free to contact the undersigned.

Upon acceptance, this Agreement restates the existing credit agreements dated March 17, 1997, between the Customer and the CIBC, with outstanding availments and security under that agreement considered to be continuing related availments and Security under this Agreement.

Yours truly,

Canadian Imperial Bank of Commerce

by 

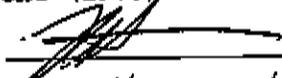
J.H. Webber, Manager
Authorized Officer

Acknowledgement. The undersigned acknowledges that the Customer has received a copy of this Credit Agreement (which includes the attached schedule(s) referred to above).

Accepted:

Hickman Equipment (1985) Limited

by:


Name: Howard Hickman

Title: PRESIDENT

by:

Name: _____

Title: _____

SCHEDULE - STANDARD DEMAND C\$ FACILITIES
[For Use with One or More Demand C\$ Facilities]

This Schedule is part of the Credit Agreement, dated July 18 1997, between Canadian Imperial Bank of

Commerce ("CIBC") and Hickman Equipment (1985) Limited (the "Customer").

Facility Use. The Customer will draw down or otherwise use each facility only for the applicable Purpose. The Customer will confine overdrafts (if allowed under a Facility) to one or more of the Customer's CIBC accounts acceptable to CIBC. The Customer will ensure that the Credit Usage of any Facility does not at any time exceed the relevant Credit Limit.

Interest Rate. The Customer will pay to CIBC interest at variable nominal rates per year equal to:

- (a) in respect of loans and overdrafts under a Facility (other than overdue amounts) to the extent that the Credit Usage of that Facility does not exceed the relevant Credit Limit, the applicable Interest Rate; or
 - (b) (i) in respect of overdue amounts, and (ii) to the extent that the Credit Usage of a Facility exceeds the relevant Credit Limit, the Default Interest Rate.
- Each such variable nominal rate will change automatically without notice whenever the Prime Rate or the Standard Overdraft Rate (as may be applicable) changes.

Interest Payment. The Customer will pay interest monthly in arrears in accordance with CIBC's then prevailing usual requirements, except that interest on overdue amounts will be payable immediately on demand. Interest will be calculated on the daily balance for the actual number of days elapsed and compounded monthly on overdue interest, both before and after demand, default and judgment.

Fee Payment. The Customer will pay:

- (a) The Administration Fee, monthly in arrears in accordance with CIBC's then prevailing usual requirements.
- (b) The Late Reporting Fee, immediately upon each failure to provide when due a document pursuant to the Reporting Requirements or otherwise under this Agreement (whether or not such failure is rectified after that date).

Pre-conditions. The Customer may draw down or otherwise use a facility only if:

- (a) CIBC has received evidence of the Customer's authority to enter into and perform under this Agreement and the authority of each Security Provider to give and perform under the Security (if any), all in form and substance acceptable to CIBC.
- (b) The Security (if any) has been provided and, if necessary, registered, all in form and substance acceptable to CIBC, and all as general and continuing security for the due payment and performance of all of the Customer's present and future debt and liability of every kind, nature and description to CIBC, wherever and however incurred.
- (c) All Special Provisions/Conditions (if any) and other obligations of the Customer under this Agreement have been complied with to CIBC's reasonable satisfaction.
- (d) The Customer has given CIBC such number of days prior notice of the Customer's requested drawdown as CIBC may require.

Other Information. In addition to the Customer's obligations set out under Reporting Requirements, the Customer will promptly provide CIBC such other information, approvals, opinions or documentation as CIBC may from time to time request.

Insurance. The Customer will keep all the property subject to the Security (if any) insured to its full insurable value against loss or damage by fire and such other risks as are customarily insured for assets similar to that property (and against such other risks as CIBC may reasonably require). At CIBC's request, all policies will contain a loss payable clause and, if that property includes real property, a mortgagee clause in CIBC's

such policies (or satisfactory evidence of such policies) to CIBC. If the Customer does not obtain or maintain that insurance, CIBC may (but is not obliged to) do so and require the Customer to reimburse it immediately on demand. The Customer will promptly give CIBC written notice of any loss or damage to that property.

8. Environmental Matters. The Customer will conduct its business and maintain all the property of the Customer in compliance with all federal, provincial and municipal environmental statutes, regulations and by-laws. The Customer will indemnify and hold harmless each of CIBC and its directors, officers, employees and agents in respect of any costs, losses, damages, expenses, judgments, suits, claims, awards, fines, sanctions and liabilities whatsoever (including any costs or expenses of defending or denying the same and including the costs or expenses of preparing any necessary environmental assessment report or other such reports) arising out of, or in respect of (i) any release, deposit, discharge or disposal of any hazardous or toxic materials, pollutants, contaminants, waste or other substances in connection with the Customer's property or business, and (ii) the remedial action (if any) taken by CIBC in respect of any such release, deposit, discharge or disposal. This indemnity will survive the repayment or cancellation of any Facility or any termination of this Agreement.

9. Charges and Payments. Unless proved otherwise and except for obvious error, CIBC's records concerning principal, interest, fees and other amounts outstanding, accrued or otherwise payable under this Agreement are conclusive evidence of the Customer's debt and liability under this Agreement. CIBC may debit any of the Customer's accounts with amounts of interest and other charges payable to CIBC. CIBC may apply any amounts from time to time paid by or credited in favour of the Customer to such parts of the Customer's debt or liability to CIBC as CIBC in its discretion determines. The Customer will make all payments to CIBC in immediately available funds in the applicable currency on the due date and in the manner that CIBC may direct from time to time. Whenever any payment under this Agreement is due on a day that is not a Business Day, that due date will be considered to be the immediately preceding Business Day.

10. Existing Agreements. Except as changed by this Agreement, the provisions of existing agreements (as revised from time to time) governing the operation of the Customer's accounts continue to apply. If there is any conflict, the provisions of this Agreement govern. The Customer will sign CIBC's standard form of current account authority in respect of each such account. Without limiting the generality of the foregoing, the Customer agrees it will be conclusively settled that (i) the amount of the balance shown in any statement of an account provided to the Customer is correct, and (ii) each amount shown in that statement as a charge to that account is properly chargeable to the Customer, unless the Customer has notified CIBC of errors, irregularities or omissions in or from that statement within 30 days of the date of mailing (as shown by CIBC's records) or delivery of such statement to the Customer.

11. Fixed Rate Provisions. The Customer may not voluntarily prepay any Fixed Rate Loan before the end of its scheduled term without CIBC's prior consent, which consent may be conditional upon the Customer paying CIBC an additional amount as CIBC may in its absolute discretion determine at the time of such prepayment. The Customer will compensate CIBC on demand for all costs and losses (including any loss of bargain or any loss or cost as a result of terminating, liquidating or reestablishing any hedge, trading or lending position) incurred by CIBC in connection with any repayment of all or part of any Fixed Rate

Consent to Release of Information. The Customer consents to the receipt and exchange of credit or other information from time to time with CIBC, including such receipt from and exchange with any financial institution, credit bureau or credit reporting agency or any person, firm or corporation with which the Customer has or proposes to have financial relations. The Customer understands that this information may be used for the purposes of establishing and maintaining the Customer's relationship with CIBC and of offering and providing products and services as permitted by law.

Notices. Any notice or communication in respect of this Agreement shall be given in any manner set forth below to the address or number set out in the letter portion of this Agreement and will be deemed to have been given as indicated:

- (a) if in writing and delivered in person or by courier, on the date that it is delivered;
- (b) if sent by fax transmission, on the day that transmission is confirmed by telephone or in writing (other than a writing generated by fax machine) as received by the recipient; or
- (c) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted;

Notwithstanding the date of that delivery or receipt, as applicable, is not a Business Day or that notice is delivered or received, as applicable, after the close of the CIBC Branch/Centre's normal banking hours on a Business Day, in such case that notice shall be deemed given and effective on the first following day that is a Business Day. CIBC may rely upon any such notice or communication purporting to be from the Customer as long as CIBC is satisfied in good faith that it was given by an officer/representative of the Customer. Either the Customer or CIBC may by notice to the other party change the address or number at which notices or communications are to be given to it.

Miscellaneous. (i) The Customer has received a signed copy of this Agreement. (ii) If more than one person, firm or corporation signs this Agreement as the Customer, CIBC may require payment of all amounts payable under this Agreement from any one of them, or a portion from any one of them, but CIBC is released from any of its obligations by performing that obligation to any one of them. (iii) The Customer may not assign or otherwise transfer any of the Customer's rights or obligations in connection with this Agreement without CIBC's consent. (iv) The Customer will pay to CIBC reasonable fees and out-of-pocket expenses of CIBC in respect of registration and enforcement of this Agreement and the Security. Accounting terms will (to the extent not defined in this Agreement) be interpreted in accordance with accounting principles established from time to time by the Canadian Institute of Chartered Accountants (or its successor), consistently applied, and all financial statements and information provided to CIBC will be prepared in accordance with those principles. (v) This Agreement is governed by the law of the Province or Territory where the CIBC Branch/Centre is located.

Definitions. Each margin heading in the letter portion of this Agreement is a defined term having the meaning set out opposite that heading. All capitalized terms not defined in this Schedule have the respective meanings given to them elsewhere in this Agreement. Also, the following definitions apply to this Agreement:

"Business Day" means any day (other than a Saturday or a Sunday) on which the CIBC Branch/Centre is open for business.

"Business Plan/Forecast" means, for any fiscal year, a business plan and financial forecast in respect of the Customer for that fiscal year, in form and substance reasonably acceptable to CIBC and certified by a senior officer/representative of the Customer.

"CIBC Branch/Centre" means the CIBC branch or banking centre noted in the letterhead of this Agreement, or such other branch or centre as may from time to time be agreed upon by CIBC and the Customer.

"Credit Usage" means, at any time in respect of a Facility, the total principal amount of avancements then outstanding under that Facility (including, the extent established under that Facility, the maximum credit limit for any Corporate Visa line, the total face amount of any outstanding Letters of Credit and outstanding drafts accepted by CIBC in connection with Letters of Credit and a percentage (as CIBC may from time to time determine) of outstanding obligations of the Customer under foreign exchange contracts or other derivative product transactions).

"Financial Statements" means financial statements in respect of the Customer and, at CIBC's request, financial statements in respect of any Security Provider, in each case on an unconsolidated and/or consolidated basis (as CIBC may direct), such statements for any fiscal period to include a balance sheet as of the end of that fiscal period and a statement of income and retained earnings over that period, certified by the chief financial officer of the Customer and, where audited, certified in a manner acceptable to CIBC by an independent firm of chartered accountants acceptable to CIBC.

"Fixed Rate Loan" means any loan drawn down, converted or extended under a Facility at an interest rate which was fixed for a term, instead of referenced to a variable rate such as the Prime Rate, at the time of such drawdown, conversion or extension.

"Inventory Value" means, at any time of determination, the total value (based on the lower of cost or market) of the Customer's inventories that are subject to the Security (other than (i) those inventories supplied by trade creditors who at that time have not been fully paid therefor and would have a right to repossess all or part of such inventories if the Customer were then either bankrupt or in receivership, (ii) those inventories comprising work in process and (iii) those inventories which CIBC may from time to time designate in its sole discretion) minus the total amount of any claims, liens or encumbrances on those inventories having or purporting to have priority over CIBC.

"Letter of Credit" means, unless specifically limited elsewhere in this Agreement, a documentary or stand-by letter of credit, letter of guarantee or similar instrument in form and substance satisfactory to CIBC.

"Prime Rate" means the variable reference interest rate per year declared by CIBC from time to time to be its prime rate for Canadian dollar loans made by CIBC in Canada.

"Receivable Value" means, at any time of determination, the total value of those of the Customer's trade accounts receivable that are subject to the Security (other than (i) those accounts then outstanding for 90 days, (ii) those accounts owing by persons, firms or corporations affiliated to the Customer and (iii) those accounts that CIBC may from time to time designate in its sole discretion) minus the total amount of any claims, liens or encumbrances on or claims of set-off against those accounts having or purporting to have priority over CIBC.

"Receivables/Inventory Summary" means a summary of the Customer's trade account receivables and inventories plus a list of such aged receivables, all in form reasonably acceptable to CIBC and certified by a senior officer/representative of the Customer.

"Security Provider" means a person, firm or corporation which is a party to or obliged under or has otherwise signed or provided any of the Security.

"Standard Overdraft Rate" for Canadian dollar overdrafts means the variable reference interest rate per year declared by CIBC from time to time to be its standard overdraft rate on overdrafts in Canadian dollar accounts maintained in Canada with CIBC.



Commercial Banking, Newfoundland
and Labrador
P.O. Box 340
St. John's, NF A1C 5J9

Brian Henchey
Director

June 26th, 1998

PRIVATE & CONFIDENTIAL

THIS IS EXHIBIT "L" TO THE
AFFIDAVIT OF JENNIFER LEE

Mr. Howard Hickman
Hickman Equipment (1985) Limited
P.O. Box 8340, Str. A
St. John's, Nfld.
A1B 3N7

Sworn before me
this 19th day of December, 2002

[Signature]

Dear Mr. Hickman,

Credit Agreement

Canadian Imperial Bank of Commerce ("CIBC") is pleased to confirm that, subject to the acceptance of Hickman Equipment (1985) Limited (the "Customer"), CIBC has established in favour of the Customer various demand credit facilities (each a "Facility") as set out below. The provisions are as follows:

Facility A - Operating Facility

Credit Limit	\$6,500,000 Operating Facility.
Type & Availment	A demand credit facility under which the Customer may obtain on a revolving basis Canadian dollar overdrafts and/or demand instalment loans.
Interest Rate	Prime Rate plus 0.10%.
Purpose	For the Customer's business purposes.
Special Provisions/ Conditions	Operating Facility is available by way of current account overdraft and/or Bankers' Acceptances. Bankers' Acceptances are subject to: <ol style="list-style-type: none"> (1) a minimum issue of \$1 Million in multiples of \$100,000 (2) a minimum maturity of 7 days and a maximum of 180 days. (3) a stamping fee of CAR + 0.35% (Commerce Acceptance Rate - currently 1%, and subject to change).

Facility B - Revolving Rental Loan Facility

Up to \$7,000,000 Revolving Rental Loan Facility

Credit Limit

Tel: (709)576-8998
Fax: (709)576-8744

Type & Availment A demand credit facility under which the Customer may obtain on a revolving basis Canadian dollar overdrafts.

Interest Rate Prime Rate plus 0.85% per year.

Purpose For the Customer's business purposes.

Facility C - Demand Instalment Loan

Credit Limit \$182,500 Capital Facility.

Type & Availment A demand credit facility under which the customer may obtain on a non-revolving basis, a Canadian dollar loan.

Interest Rate Prime Rate plus 0.85% per year.

Purpose To confirm existing loan.

Scheduled Payments Subject to earlier payment on demand as set out below, the Customer will pay to CIBC in equal monthly principal payments of \$3,600.

Facility D - Demand Instalment Loan

Credit Limit \$175,000 Capital Facility.

Type & Availment A demand credit facility under which the Customer may obtain on a non-revolving basis, a Canadian dollar loan.

Interest Rate Prime Rate plus 1.00% per year.

Purpose To purchase rental equipment to establish branches of Hickman's Rent-Alls at Arnold's Cove and Clarendville, Nfld.

Scheduled Payments Subject to earlier payment on demand as set out below, the Customer will pay to CIBC equal monthly principal payments of \$25,000, plus interest.

Facility E - Letters of Credit

Credit Limit \$40,000 Letter of Credit Facility.

Fee 1.3% per annum, subject to minimum fee of \$200 per issuance.

Purpose For Letter of Credit/Guarantee purposes.

General Provisions

Repayment and Facility Cancellation CIBC may on demand require immediate payment of all amounts outstanding or accrued in connection with this Agreement. CIBC may, at any time, for any reason and without notice, cancel the undrawn portions of the Facilities.

Special Provisions

Effective September 1, 1998 the Stamping Fee on Banker's Acceptances will increase by a further 0.30% and the interest rate on loans under Sections "A", "B" & "C" will increase a further 0.05%.

It is understood pricing will be reviewed with you prior to implementation of the September 1, 1998 increase.

It is also understood that the above pricing is based on the assumption that the mix of Banker's Acceptance and Loans/Overdrafts will be substantially as in 1995.

Security

All security CIBC may now and from time to time hold, plus:

> Registered general assignment of accounts receivable. *USA*

Registered demand debenture for \$15,000,000 providing a first floating charge over all assets and undertakings subject to priority of security agreement dated July 5, 1985 with John Deere Limited covering consigned, floor planned inventory, goods sold and included in inventory. (Debenture is presently held for \$10,000,000 and will be increased to \$15,000,000). *20,000,000*

> An addendum to the debenture security providing the Bank with a first fixed charge over the Grand Falls, Nfld. real estate.

> Adequate fire insurance over inventories with loss payable to the Bank subject to outside encumbrances as described above.

> Postponement of claim signed by Hickman Motors Limited for \$1,000,000.

Repayment of the postponed monies due to Hickman Motors Limited may be permitted provided your Debt to Effective Equity Ratio does not at any time exceed 6:1.

Margins

The total of facilities A, B and D, will not exceed the lessor of \$13,500,000 and the aggregate of:

(1) 75% of assigned acceptable trade accounts receivable excluding doubtful, over 90 day accounts/inter-Company accounts and unremitted statutory deductions.

(2) 65% of all assigned inventories at book value (net of all prior liens) up to a maximum of \$7,500,000.

Reporting Requirements

The Customer will provide to CIBC:

(1) Within 90 days of each fiscal year-end, financial statements for that year-end on an audited basis.

(2) Monthly declarations covering the Company's receivables/inventories, etc., in the established format as well as internal profit and loss statements and balance sheets will be provided to the Bank within 25 days of each month end (except for December).

Other Standard Provisions

The provisions in the attached Schedule - Standard Demand Credit Provisions - Form 6327 form part of this Agreement.

Next Scheduled Review Date

June 30, 1999.

Please indicate acceptance by returning a signed copy of this agreement. If CIBC does not receive that signed copy by July 17, 1998, then this offer of financing will expire.

We take this opportunity to express our appreciation for your banking business, and should you require clarification of any aspect of the credit line or any other services, please feel free to contact the undersigned.

Upon acceptance, this Agreement restates the existing credit agreement dated July 18, 1997, between the Customer and the CIBC, with outstanding availments and security under that agreement considered to be continuing related availments and Security under this Agreement.

Yours truly,

Canadian Imperial Bank of Commerce

by: 

Brian Henchey, Director
Authorized Officer

Acknowledgement. The undersigned acknowledges that the Customer has received a copy of this Credit Agreement (which includes the attached schedule(s) referred to above).

Accepted:

Hickman Equipment (1985) Limited

by: 

Name: J. J. Hickman

Title: President

by: _____

Name: _____

Title: _____

SCHEDULE - STANDARD DEMAND C\$ FACILITIES
[For Use with One or More Demand C\$ Facilities]

This Schedule is part of the Credit Agreement, dated June 26th 1998, between Canadian Imperial Bank of

Commerce ("CIBC") and Hickman Equipment (1985) Limited _____ (the "Customer").

Facility Use. The Customer will draw down or otherwise use each Facility only for the applicable Purpose. The Customer will confine overdrafts (if allowed under a Facility) to one or more of the Customer's CIBC accounts acceptable to CIBC. The Customer will ensure that the Credit Usage of any Facility does not at any time exceed the relevant Credit Limit.

Interest Rate. The Customer will pay to CIBC interest at variable nominal rates per year equal to:

- (a) in respect of loans and overdrafts under a Facility (other than overdue amounts) to the extent that the Credit Usage of that Facility does not exceed the relevant Credit Limit, the applicable Interest Rate; or
- (b) (i) in respect of overdue amounts, and (ii) to the extent that the Credit Usage of a Facility exceeds the relevant Credit Limit, the Default Interest Rate.

Each such variable nominal rate will change automatically without notice whenever the Prime Rate or the Standard Overdraft Rate (as may be applicable) changes.

Interest Payment. The Customer will pay interest monthly in arrears in accordance with CIBC's then prevailing usual requirements, except that interest on overdue amounts will be payable immediately on demand. Interest will be calculated on the daily balance for the actual number of days elapsed and compounded monthly on overdue interest, both before and after demand, default and judgment.

Fee Payment. The Customer will pay:

- (a) The Administration Fee, monthly in arrears in accordance with CIBC's then prevailing usual requirements.
- (b) The Late Reporting Fee, immediately upon each failure to provide when due a document pursuant to the Reporting Requirements or otherwise under this Agreement (whether or not such failure is rectified after that date).

Pre-conditions. The Customer may draw down or otherwise use a Facility only if:

- (a) CIBC has received evidence of the Customer's authority to enter into and perform under this Agreement and the authority of each Security Provider to give and perform under the Security (if any), all in form and substance acceptable to CIBC.
- (b) The Security (if any) has been provided and, if necessary, registered, all in form and substance acceptable to CIBC, and all as general and continuing security for the due payment and performance of all of the Customer's present and future debt and liability of every kind, nature and description to CIBC, wherever and however incurred.
- (c) All Special Provisions/Conditions (if any) and other obligations of the Customer under this Agreement have been complied with to CIBC's reasonable satisfaction.
- (d) The Customer has given CIBC such number of days prior notice of the Customer's requested drawdown as CIBC may require.

Other Information. In addition to the Customer's obligations set out under Reporting Requirements, the Customer will promptly provide CIBC such other information, approvals, opinions or documentation as CIBC may from time to time request.

Insurance. The Customer will keep all the property subject to the Security (if any) insured to its full insurable value against loss or damage by fire and such other risks as are customarily insured for assets similar to that property (and against such other risks as CIBC may reasonably require). At CIBC's request, all policies will contain a loss payable clause and, if that property includes real property, a mortgagee clause in CIBC's

such policies (or satisfactory evidence of such policies) to CIBC. If the Customer does not obtain or maintain that insurance, CIBC may (but is not obliged to) do so and require the Customer to reimburse it immediately on demand. The Customer will promptly give CIBC written notice of any loss or damage to that property.

8. Environmental Matters. The Customer will conduct its business and maintain all the property of the Customer in compliance with all federal, provincial and municipal environmental statutes, regulations and by-laws. The Customer will indemnify and hold harmless each of CIBC and its directors, officers, employees and agents in respect of any costs, losses, damages, expenses, judgments, suits, claims, awards, fines, sanctions and liabilities whatsoever (including any costs or expenses of defending or denying the same and including the costs or expenses of preparing any necessary environmental assessment report or other such reports) arising out of, or in respect of (i) any release, deposit, discharge or disposal of any hazardous or toxic materials, pollutants, contaminants, waste or other substances in connection with the Customer's property or business, and (ii) the remedial action (if any) taken by CIBC in respect of any such release, deposit, discharge or disposal. This indemnity will survive the repayment or cancellation of any Facility or any termination of this Agreement.

9. Charges and Payments. Unless proved otherwise and except for obvious error, CIBC's records concerning principal, interest, fees and other amounts outstanding, accrued or otherwise payable under this Agreement are conclusive evidence of the Customer's debt and liability under this Agreement. CIBC may debit any of the Customer's accounts with amounts of interest and other charges payable to CIBC. CIBC may apply any amounts from time to time paid by or credited in favour of the Customer to such parts of the Customer's debt or liability to CIBC as CIBC in its discretion determines. The Customer will make all payments to CIBC in immediately available funds in the applicable currency on the due date and in the manner that CIBC may direct from time to time. Whenever any payment under this Agreement is due on a day that is not a Business Day, that due date will be considered to be the immediately preceding Business Day.

10. Existing Agreements. Except as changed by this Agreement, the provisions of existing agreements (as revised from time to time) governing the operation of the Customer's accounts continue to apply. If there is any conflict, the provisions of this Agreement govern. The Customer will sign CIBC's standard form of current account authority in respect of each such account. Without limiting the generality of the foregoing, the Customer agrees it will be conclusively settled that (i) the amount of the balance shown in any statement of an account provided to the Customer is correct, and (ii) each amount shown in that statement as a charge to that account is properly chargeable to the Customer, unless the Customer has notified CIBC of errors, irregularities or omissions in or from that statement within 30 days of the date of mailing (as shown by CIBC's records) or delivery of such statement to the Customer.

11. Fixed Rate Provisions. The Customer may not voluntarily prepay any Fixed Rate Loan before the end of its scheduled term without CIBC's prior consent, which consent may be conditional upon the Customer paying CIBC an additional amount as CIBC may in its absolute discretion determine at the time of such prepayment. The Customer will compensate CIBC on demand for all costs and losses (including any loss of bargain or any loss or cost as a result of terminating, liquidating or reestablishing any hedge, trading or lending position) incurred by CIBC in connection with any repayment of all or part of any Fixed Rate Loan required as a result of demand having been made by CIBC after

Sworn before me
this 19th day of December, 2002

Handwritten signature



Canadian Imperial Bank of
Commerce

St. John's CBC
Box 340

St. John's, NF

CHANGES TO CREDIT	Y/N
NEW FUNDS	N
CHANGES TO SECURITY	Y
CHANGES TO MARGINS	Y
CHANGES TO COVENANTS	Y
CHANGES TO PRICING	Y
BUSINESS START DATE - mm/yy	
RELATIONSHIP START DATE - mm/dd/yy	
NO. OF FT & P/T EMPLOYEES	FT- FT-
ANNUAL SALES	
MOR/CD INT	

April 17, 2000

HICKMAN EQUIPMENT (1985) LIMITED
P.O. Box 8340, Station A
St. John's, NF
A1B 3N7
Attention: Mr. Howard Hickman

Dear Mr. Hickman,

We, Canadian Imperial Bank of Commerce ("CIBC"), are pleased to establish the following Credits for you, our customer.

Credit A: Operating Line

Credit Limit:

The lesser at any time of:

- (a) \$13,500,000; and
- (b) the total of
 - ▶ 75% of the Receivable Value, plus
 - ▶ 65% of the Inventory Value, except this amount cannot exceed 50% of the outstanding loan amount, minus
 - ▶ all Priority Claims

Description and Rate:

A revolving demand credit, for general business purposes, as follows:

- (1) Canadian dollar loans and overdrafts. The interest rate is as follows: Prime Rate plus 1.00%:
- (2) Canadian dollar or foreign currency L/Cs. The total amount of the L/Cs outstanding at any time may not exceed \$500,000. L/Cs may not have terms to expiry of more than 12 months. Fees are CIBC standard L/C fees, minimum \$250, plus out of pocket expenses. Our standard L/C documentation is also required.

If there is a drawing under any L/C, we will pay it by drawing on your Operating Account, unless you have made other arrangements with us.

Credit B: Demand Installment Loan

Loan Amount: \$103,300
Purpose: Renewal of existing facility.
Interest Rate: Prime Rate plus 0.85% per year.
Scheduled Payments: Unless we make demand, you will pay CIBC as follows:
Regular monthly payments of \$3,600 each, plus interest.

Security

Security: The following security is required:

Assignment of Receivables: General assignment of accounts receivable. FORM 6100

Bank Act Security: Security under Section 427 of the Bank Act. NOT HELD

Debenture: Floating charge debenture for \$20,000,000 giving CIBC a first charge over all assets subject to a Priority Agreement dated July 5, 1985, with John Deere Limited, plus acknowledged assignment of fire and other perils insurance, with loss payable to CIBC.

Guarantee: Guarantee and Postponement of Claim from Group Holdings Limited in an amount that is unlimited and supported by: *not held*

Debenture: Fixed charge debenture for \$3,000,000 giving CIBC a first charge over the following properties: *not held*

- 504 Water Street, St. John's, NF
- 6 Stratford Place, St. John's, NF
- "HBC Site", Placentia, NF
- 1 Grenfell Heights, Grand Falls, NF
- 15 Bayley Street, Grand Falls, NF
- 23-33 Tilley Road, Clarendville, NF
- 239 Main Street, Burin, NF
- 166 Bayview, Fortune, NF
- 162-164 Bayview, Fortune, NF
- 42 McCurdy, Gander, NF

and a floating charge over all your business assets, plus acknowledged assignment of fire and other perils insurance, with loss payable to CIBC as first mortgagee.

This fixed debenture is also held as security for the Credit Facilities of Group Holdings Ltd., Hickman Leasing Ltd., Hickman Motors Ltd., and 10067 Newfoundland Ltd.

Covenants

Covenants:

You will ensure that:

Minimum Equity: The customer will ensure, determined on an non-consolidated basis, of (A) its shareholders' equity less "Due from related companies", "Investments in related companies", and "Intangible assets" plus (B) such subordinated debt shareholders' equity is not at any time less than \$7,500,000.

Interest Coverage Ratio: Your Interest Coverage Ratio is not at any time less than 1.25:1.

Negative Pledge: There is no Lien on any of your present or future assets, and that you do not assign any right to any income, without our prior consent (which consent will not be unreasonable with held), except for the four exceptions below, namely:

- (a) a Purchase Money Lien
- (b) a Lien existing on an asset when it was acquired;
- (c) a renewal or replacement of a Purchase Money Lien or a Lien referred to in (b) above, so long as the principal amount secured by the Lien does not increase; or
- (d) a Normal Course Lien

Reporting Requirements

Reporting Requirements:

You will provide:

- (1) Within 30 days of each calendar month-end, a summary of Receivable Value and a summary of Inventory Value, together with an aged list of receivables and an aged list of accounts payable and a Monthly Statement of Available Credit Limit, as of that month-end. Detailed Account receivable listings to be provided as at June 30 each year.
- (2) Within 30 days of the end of each month, financial statements for that month.

- (3) Within 120 days of each fiscal year-end, financial statements for that fiscal year on an audited basis.
- (4) Within 120 days of each fiscal year-end, financial statements from the Guarantor for that fiscal year on an audited basis.
- (5) Within 120 days of each fiscal year-end, a business plan/forecast for the next fiscal year.

Fees

Standby: For the Credit A , 0.25% per year of the undrawn portion, payable monthly.

Set-up: Waived.

Review: A fee of \$5,000.

Amendment: If you require an amendment to this Agreement, there will be a fee of 0.25% of the amended amount requested, with a minimum of \$500.

Pricing Protection. The customer acknowledges that each fee, interest rate and other charge for all the Customer's banking arrangements with CIBC is priced dependent upon the others. If the Customer cancels any of those banking arrangements, the Customer agrees to be bound to any increased or added fees, interest rates, and charges (as CIBC may determine and notify the Customer), effective from the date of such cancellation.

Other Provisions

Calculations: When applicable, the calculations made under the "Covenants" and "Reporting Requirements" sections of this Agreement are to be done on an unconsolidated basis.

Interest Rate Applicable to Credit Limit Excesses: Prime Lending Rate plus 5% per year. If the Credit Limit of a Credit, or the Credit Limit of part of a Credit, or the Overall Credit Limit, is exceeded at any time, the Interest Rate Applicable to Credit Limit Excesses is calculated on that excess amount.

Next Scheduled Review Date: We will review the credit by July 31, 2000. At that time, we will review your financial statements, your forecast business and financial plans, and how well you have complied with the requirements of this Agreement. The terms of this Agreement will continue to apply until either a new Agreement or an Amendment to this one is settled.

Standard Credit Terms: The attached Schedule - Standard Credit Terms forms part of this Agreement.

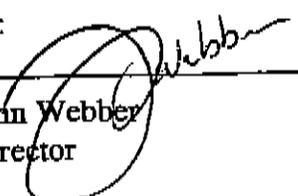
Please indicate your acceptance of these terms by returning a signed copy of this Agreement. If we do not receive a signed copy by May 1, 2000, then this offer will expire.

Upon acceptance, this Agreement replaces the existing credit agreement dated June 26, 1998, between you and CIBC. Outstanding amounts (and security) under that Agreement will be covered by this Agreement.

Yours truly,

Canadian Imperial Bank of Commerce

by:



John Webber
Director

Phone: 709 576-8996
Fax: 709 576-8744

by:



Susan Ewanick
Commercial Lending Specialist

Phone: 709 576-8789
Fax: 709 576-8744

Acknowledgment: The undersigned certifies that all information provided to CIBC is true, and acknowledges receipt of a copy of this Agreement (including any Schedules referred to above).

Accepted this 27 day of April, 2000.

HICKMAN EQUIPMENT (1985) LTD.

By: *[Signature]*
Name: *A. Hickman*
Title: *V. Pres*

By: _____
Name: _____
Title: _____

Guarantor

Group Holdings Ltd.

By: *[Signature]*
Name: _____
Title: *Pres.*

By: _____
Name: _____
Title: _____

Schedule - Standard Credit Terms

Article 1 - General

1.1 **Interest Rate.** You will pay interest on each Credit at nominal rates per year equal to:

(a) for amounts above the Credit Limit of a Credit or a part of a Credit or the Overall Credit Limit, as described in section 1.4, or for amounts that are not paid when due, the Interest Rate Applicable to Credit Limit Excesses, and

(b) for any other amounts, the rate specified in this Agreement.

1.2 **Variable interest.** Each variable interest rate provided for under this Agreement will change automatically, without notice, whenever the Prime Rate changes.

1.3 **Payment of Interest.** Interest is calculated on the daily balance of the Credit at the end of each day. Interest is due once a month, unless the Agreement states otherwise. Unless you have made other arrangements with us, we will automatically debit your Operating Account for interest amounts owing. If your Operating Account is in overdraft and you do not deposit to the account an amount equal to the monthly interest payment, the effect is that we will be charging interest on overdue interest (which is known as compounding). Unpaid interest continues to compound whether or not we have demanded payment from you or started a legal action, or get judgment, against you.

1.4 **Interest Rate Applicable to Credit Limit Excesses.** To determine whether the Interest Rate Applicable to Credit Limit Excesses is to be charged, the following rules apply:

(a) Interest Rate Applicable to Credit Limit Excesses will be charged on the amount that exceeds the Credit Limit of any particular Credit. This will happen even if the Overall Credit Limit has not been exceeded.

(b) If there are several parts of a Credit, Interest Rate Applicable to Credit Limit Excesses will be charged if the Credit Limit of a particular part is exceeded. For example, if Credit A's limit is \$250,000, and the limit of one part is \$100,000 and the limit of that part is exceeded by \$25,000, the Interest Rate Applicable to Credit Limit Excesses will be charged on that \$25,000 excess, even if the total amount outstanding under Credit A is less than \$250,000.

(c) To determine if the Overall Credit Limit has been exceeded, the outstanding principal amount of each Credit is totalled, and any amounts in foreign currency are converted to Canadian dollars. If that total exceeds the Overall Credit Limit, the Interest Rate Applicable to Credit Limit Excesses will be charged on that excess amount. For example, if there are three Credits, each with a Credit Limit of \$100,000 and an Overall Credit Limit of \$250,000, if each of those Credits is at \$90,000, they are each under their own Credit Limits, but the Overall Credit Limit has been exceeded by \$20,000, and the Interest Rate Applicable to Credit Limit Excesses will be charged on that excess amount.

1.5 **Fees.** You will pay CIBC's fees for each Credit as out lined in the Letter. You will also reimburse us for all reasonable fees (including legal fees) and out-of-pocket expenses incurred in registering any security, and in enforcing our rights under this Agreement or any security. We will automatically debit your Operating Account for fee amounts owing.

1.6 **Our rights re demand Credits.** At CIBC, we believe that the banker-customer relationship is based on mutual trust and respect. It is important for us to know all the relevant information (whether good or bad) about your business. CIBC is itself a business. Managing risks and monitoring our customers' ability to repay is critical to us. We can only continue to lend when we feel that we are likely to be repaid. As a result, if you do something that jeopardizes that relationship, or if we no longer feel that you are likely to repay all amounts borrowed, we may have to act. We may decide to act, for example, because of something you have done, information we receive about your business, or changes to the economy that affect your business. Some of the actions that we may decide to take include requiring you to give us more financial information, negotiating a change in the interest rate or fees, or asking you to get further accounting assistance, put more cash into the business, provide more security, or produce a satisfactory business plan. It is important to us that your business succeeds. We may, however, at our discretion, demand immediate repayment of any outstanding amounts under any demand Credit. We may also, at any time and for any cause, cancel the unused portion of any demand Credit. Under normal circumstances, however, we will give you 30 days' notice of any of these actions.

1.7 **Payments.** If any payment is due on a day other than a Business Day, then the payment is due on the next Business Day.

1.8 **Applying money received.** If you have not made payments as required by this Agreement, or if you have failed to satisfy any term of this Agreement (or any other agreement you have that relates to this Agreement), or at any time before default but after we have given you appropriate notice, we may decide how to apply any money that we receive. This means that we may choose which Credit to apply the money against, or what mix of principal, interest, fees and overdue amounts within any Credit will be paid.

1.9 **Information requirements.** We may from time to time reasonably require you to provide further information about your business. We may require information from you to be in a form acceptable to us.

1.10 **Insurance.** You will keep all your business assets and property insured (to the full insurable value) against loss or damage by fire and all other risks usual for property such as yours (plus for any other risks we may reasonably require). If we request, these policies will include a loss payee clause (and if you are giving us mortgage security, a mortgagee clause). As further security, you assign all insurance proceeds to us. If we ask, you will give us either the policies themselves or adequate evidence of their existence. If your insurance coverage for any reason stops, we may (but do not have to) insure the property. We will automatically debit your Operating Account for these amounts. Finally, you will notify us immediately of any loss or damage to the property.

1.11 **Environmental.** You will carry on your business, and maintain your assets and property, in accordance with all applicable environmental laws and regulations. If (a) there is any release, deposit, discharge or disposal of pollutants of any sort (collectively, a "Discharge") in connection with either your business or your property, and we pay any fines or for any clean-up, or (b) we suffer any loss or damage as a result of any Discharge, you will reimburse CIBC, its directors, officers, employees and agents for any and all losses, damages, fines, costs and other amounts (including amounts spent preparing any necessary environmental assessment or other reports, or defending any lawsuits) that result. If we ask, you will defend any lawsuits, investigations or prosecutions brought against CIBC or any of its directors, officers, employees and agents in connection with any Discharge. Your obligation to us under this section continues even after all Credits have been repaid and this Agreement has terminated.

1.12 **Consent to release information.** We may from time to time give any credit or other information about you to, or receive such information from, (a) any financial institution, credit reporting agency, rating agency or credit bureau, (b) any person, firm or corporation with whom you may have or propose to have financial dealings, and (c) any person, firm or corporation in connection with any dealings you have or propose to have with us. * You agree that we may use that information to establish and maintain your relationship with us and to offer any services as permitted by law, including services and products offered by our subsidiaries when it is considered that this may be suitable to you. * with the person *comes at the client. R*

1.13 **Our pricing policy.** Fees, interest rates and other charges for your banking arrangements are dependent upon each other. If you decide to cancel any of these arrangements, you will have to pay us any increased or added fees, interest rates and charges we determine and notify you of. These increased or added amounts are effective from the date of the changes that you make.

1.14 **Proof of debt.** This Agreement provides the proof, between CIBC and you, of the credit made available to you. There may be times when the type of Credit you have requires you to sign additional documents. Throughout the time that we provide you credit under this Agreement, our loan accounting records will provide complete proof of all terms and conditions of your credit (such as principal loan balances, interest calculations, and payment dates).

1.15 **Renewals of this Agreement.** This Agreement will remain in effect for your Credits for as long as they remain unchanged. We have shown a Next Scheduled Review Date in the Letter. If there are no changes to the Credits this Agreement will continue to apply, and you will not need to sign anything further. If there are any changes, we will provide you with either an amending agreement, or a new replacement Letter, for you to sign.

1.16 **Confidentiality:** The terms of this Agreement are confidential between you and CIBC. You therefore agree not to disclose the contents of this Agreement to anyone except your professional advisors.

1.17 **Pre-conditions.** You may use the Credits granted to you under this Agreement only if:

- (a) we have received properly signed copies of all documentation that we may require in connection with the operation of your accounts and your ability to borrow and give security;
- (b) all the required security has been received and registered to our satisfaction;
- (c) any special provisions or conditions set forth in the Letter have been complied with; and
- (d) if applicable, you have given us the required number of days notice for a drawing under a Credit.

1.18 **Notices.** We may give you any notice in person or by telephone, or by letter that is sent either by fax or by mail.

1.19 **Use of the Operating Line.** You will use your Operating Line only for your business operating cash needs. You are responsible for all debits from the Operating Account that you have either initiated (such as cheques, loan payments, pre-authorized debits, etc.) or authorized us to make. Payments are made by making deposits to the Operating Account. You may not at any time exceed the Credit Limit. We may, without notice to you, return any debit from the Operating Account that, if paid, would result in the Credit Limit being exceeded, unless you have made prior arrangements with us. If we pay any of these debits, you must repay us immediately the amount by which the Credit Limit is exceeded.

1.20 **Margin Requirements.** If your Operating Line is margined against Inventory and/or Receivable Value, the available Credit Limit of that Credit is the lesser of the Credit Limit stated in the Letter and the amount calculated using the Monthly Statement of Available Credit Limit.

1.21 **Instalment Loans.** The following terms apply to each Instalment Loan.

(a) **Non-revolving loans.** Unless otherwise stated in the Letter, any Instalment Loan is non-revolving. This means that any principal payment made permanently reduces the available Loan Amount. Any payment we receive is applied first to overdue interest, then to current interest owing, then to overdue principal, then to any fees and charges owing, and finally to current principal.

(b) **Floating Rate Instalment Loans.** Floating Rate Instalment Loans may have either (i) blended payments or (ii) payments of fixed principal amounts, plus interest, as described below.

(i) **Blended payments.** If you have a Floating Rate Loan that has blended payments, the amount of your monthly payment is fixed for the term of the loan, but the interest rate varies with changes in the Prime or US Base Rate (as the case may be). If the Prime or US Base Rate during any month is lower than what the rate was at the outset, you may end up paying off the loan before the scheduled end date. If, however, the Prime or US Base Rate is higher than what it was at the outset, the amount of principal that is paid off is reduced. As a result, you may end up still owing principal at the end of the term because of these changes in the Prime or US Base Rate.

(ii) **Payments of principal plus interest.** If you have a Floating Rate Loan that has regular principal payments, plus interest, the principal payment amount of your Loan is due on each payment date specified in the Letter. The interest payment is also due on the same date, but it is debited from your Operating Account one or two banking days later. Although the principal payment amount is fixed, your interest payment will usually be different each month, for at least one and possibly more reasons, namely: the reducing principal balance of your loan, the number of days in the month, and changes to the Prime Rate or US Base Rate (as the case may be).

(c) **Prepayment.** Unless otherwise agreed, the following terms apply to prepayment of any Instalment Loan:

(i) **Floating Rate Instalment Loans.** You may prepay all or part of a Floating Rate Instalment Loan (whether it is a Demand or a Committed Loan) at any time without notice or penalty.

(ii) **Fixed Rate Instalment Loans.** You may prepay all (but not part) of a fixed Rate Instalment Loan, on the following condition. You must pay us, on the prepayment date, a prepayment fee equal to the greater of (A) three months' interest on the Loan, and (B) the interest rate differential for the remainder of the term of the Loan, determined in accordance with the standard formula used by CIBC in these situations.

(d) **Demand of Fixed Rate Demand Instalment Loans.** If you have a Fixed Rate Demand Instalment Loan and we make demand for payment, you will owe us (i) all outstanding principal, (ii) interest, (iii) any other amount due under this Agreement, and (iv) a prepayment fee. The prepayment fee is equal to the interest rate differential for the remainder of the term of the loan, in accordance with the standard formula used by CIBC in these situations.

Article 2 - Bankers' Acceptances

2.1 **Definitions.** In this Article, the following terms have the following meanings:

"**Bankers' Acceptance**" or "**B/A**" means a Canadian dollar Draft that we have accepted under this Agreement.

"**Commerce Acceptance Rate**" means the variable reference rate that we declare from time to time as our stamping or acceptance fee for Drafts accepted by us.

"Draft" means, at any time, either a depository bill within the meaning of the *Depository Bills and Notes Act* or a bill of exchange within the meaning of the *Bills of Exchange Act*, in blank, drawn by the Customer on us (in satisfactory form), but before we have accepted it.

2.2 **Availability.** B/As are available only with terms to maturity of between 30 and 180 days.

2.3 **Minimum issue amount.** You will present Drafts for acceptance in a minimum amount of \$1 million. We can change this minimum amount at any time by 30 days' prior written notice.

2.4 **Required Notice.** You may either obtain a new advance by issuing a B/A stamped by CIBC (including a rollover of an existing B/A) or you may convert an amount outstanding under another Credit to issuance of a B/A on the following terms. You must give us notice (in the form we require, including, when applicable, the date of acceptance, the amount and the maturity date). Notice must be given by 10:00 a.m. (local time where the CIBC Branch/Centre is located) on the Business Day prior to the requested date of issuance. You must also give us any other notice required by the Letter.

2.5 **Special Conditions.**

(a) **Draft Conditions.** You will deliver to us the Drafts that you want us to issue. Each Draft must (i) be in a whole multiple of C\$100,000, (ii) be dated the date of delivery (which will be the same date as the requested date you notified us); (iii) mature on a Business Day; and (iv) be presented to the CIBC Branch/Centre for acceptance by 12:00 noon on the date of delivery (unless you have made prior arrangements in writing with us).

(b) **Maturity Limitation.** The maturity date of a Draft submitted to us for acceptance may not (i) be after a scheduled or mandatory final maturity or termination date for that Credit or (ii) conflict, in our opinion, with any scheduled or mandatory repayment for that Credit.

(c) **Conversion-To-Loan Limitation.** You may only convert a B/A into a loan otherwise allowed under this Agreement if the total of "A" plus "B" is less than Prime Rate existing on that maturity date, where:

"A" is the annual discount rate quoted at 9:30 a.m. (Toronto time) by the Toronto office of Wood Gundy Inc. as the discount rate at which it would purchase a bankers' acceptance issued by CIBC having a term to maturity of 30 days, and

"B" is the annual stamping or acceptance rate applicable to a Draft accepted by us under this Agreement, as determined on the maturity date of that B/A.

In making these calculations, each of "A" and "B" is expressed as a percentage.

2.6 **Stamping Fee.** When we accept a Draft under this Agreement, you will pay us a stamping fee, on the date of acceptance, in the amount as set out in the Letter. The stamping fee will be calculated on the face amount of that Draft for the number of days to maturity based on a 365 day year.

2.7 **Reimbursement.** B/As are negotiable instruments that are purchased in financial markets at a discount. Market forces determine what the discount amount for B/As is at any particular time. At maturity, the holder of a B/A redeems it from CIBC. We then pay the holder the face amount. You will, therefore, reimburse us at the maturity date for the face amount of all B/As that we have accepted for you, unless you convert those amounts to another Credit (assuming all proper notice has been given). If you do not reimburse us or convert those amounts to another Credit, we may convert them to any type of loan (if available) under any Credit.

2.8 **Signatures and Safekeeping.** All Drafts must either be signed by a properly authorized signing officer or bear a mechanically reproduced facsimile signature of that officer (subject to any prior written arrangements with us). Each Draft and B/A bearing a facsimile signature of that officer will be as binding on you as if it had been manually signed by that officer. This applies even for individuals who may no longer be authorized or otherwise be an officer at any time. You will compensate us for any loss or expense relating to any Draft or B/A that we deal with under this Agreement. We need only exercise the same degree of care in safekeeping executed Drafts delivered to us for future acceptance as if they were CIBC's property and we were keeping them at the place at which they are to be held.

2.9 **Credit Cancellation.** If your B/A Credit is terminated for any reason, we may require you to pay us immediately on demand the appropriate reimbursement amount for each B/A then outstanding. We will calculate the reimbursement amount in accordance with standard practice in the banking industry in Canada. After making this payment, (a) you will have no further liability for that B/A, and (b) we will (i) become the sole party liable under the B/A, and (ii) compensate you if you have to pay anyone else under that B/A.

2.10 **Waiver.** You will not claim any days of grace for the payment of a B/A. You waive any defence to payment which might otherwise exist if for any reason a B/A is held by us in our own right at its maturity.

2.11 **Obligations Absolute.** Your obligations for Drafts and B/As are unconditional and irrevocable. You will perform your obligations strictly in accordance with the provisions of this Agreement including, among other things, (a) any lack of validity or enforceability of a Draft accepted by us as a B/A, and (b) the existence of a claim, set-off, defence or other right which you may have against the holder of a B/A, CIBC or another person.

Article 3 - Definitions

3.1 **Definitions.** In this Agreement, the following terms have the following meanings:

"**Business Day**" means any day (other than a Saturday or a Sunday) that the CIBC Branch/Centre is open for business.

"**CIBC Branch/Centre**" means the CIBC branch or banking centre noted on the first page of this Agreement, as changed from time to time by agreement between the parties.

"**Credit**" means any credit referred to in the Letter, and if there are two or more parts to a Credit, "Credit" includes reference to each part.

"**Credit Limit**" of any Credit means the amount specified in the Letter as its Credit Limit, and if there are two or more parts to a Credit, "Credit Limit" includes reference to each such part.

"**Current Assets**" are cash, accounts receivable, inventory and other assets that are likely to be converted into cash, sold, exchanged or expended in the normal course of business within one year or less, excluding amounts due from related parties.

"**Current Liabilities**" means debts that are or will become payable within one year or one operating cycle, whichever is longer. They usually include accounts payable, accrued expenses, deferred revenue and the current portion of long-term debt.

"**Current Ratio**" means the ratio of Current Assets to Current Liabilities.

"**Debt to Effective Equity Ratio**" means the ratio of X to Y, where

X is the total of all liabilities, less all Postponed Debt, and

Y is the total Shareholders' Equity, plus all Postponed Debt, less (i) amounts due from/investments in related parties and (ii) Intangibles.

"**Interest Rate Applicable to Credit Limit Excesses**", unless otherwise defined in the Letter, means the Standard Overdraft Rate.

"**Demand Instalment Loan**" means an Instalment Loan that is payable upon demand. Such a Loan may be either at a fixed or a floating rate of interest.

"**Fixed Rate Instalment Loan**" means an Instalment Loan that is also a Fixed Rate Loan.

"**Fixed Rate Loan**" means any loan drawn down, converted or extended under a Credit at an interest rate which was fixed for a term, instead of referenced to a variable rate such as the Prime Rate or US Base Rate, at the time of such drawdown, conversion or extension. For purposes of certainty, a Fixed Rate Loan includes a LIBOR Loan.

"**Floating Rate Instalment Loan**" means either an Instalment Loan that is either a Prime Rate Loan or a Base Rate Loan.

"**Instalment Loan**" means a loan that is repayable either in fixed instalments of principal, plus interest, or in blended instalments of both principal and interest. A Demand Instalment Loan is repayable on demand. A Committed Instalment Loan is repayable only upon the occurrence of an Event of Default.

"**Intangibles**" means assets of the business that have no value in themselves but represent value. They include such things as copyright, patents and trademarks; franchises; licences; leases; research and development costs; and deferred development costs.

"**Interest Coverage Ratio**" means the ratio of earnings before interest and taxes to interest expense.

"Inventory Value" means the total value (based on the lower of cost or market) of your inventories (other than (i) inventories supplied by trade creditors who at that time have not been fully paid and would have a right to repossess all or part of such inventories if you were then either bankrupt or in receivership, (ii) work in process, and (iii) those inventories we may from time to time designate.

"Letter" means the letter agreement between you and CIBC to which this Schedule and any other Schedules are attached.

"Letter of Credit" or "L/C" means a documentary or stand-by letter of credit, a letter of guarantee, or a similar instrument in form and substance satisfactory to us.

"L/C Acceptance" means a draft (as defined under the *Bills of Exchange Act (Canada)*) payable to the beneficiary of a documentary L/C which the L/C applicant or beneficiary, as the case may be, has presented to us for acceptance under the terms of the L/C.

"Monthly Statement of Available Credit Limit" means the CIBC form by that name, as it may from time to time be changed.

"Operating Account" means the account that you normally use for the day-to-day cash needs of your business, and may be either or both of a Canadian dollar and a US dollar account.

"Postponed Debt" means any debt owed by you that has been formally postponed to CIBC.

"Prime Rate" means the variable reference rate of interest per year declared by CIBC from time to time to be its prime rate for Canadian dollar loans made by CIBC in Canada.

"Prime Rate Loan" means a Canadian dollar loan on which interest is calculated by reference to Prime Rate.

"Priority Claims" means any amount owing to a creditor that ranks, or may rank, equal to or in priority to our security. These may include unremitted source deductions and taxes; other amounts owing to governments and governmental bodies; and amounts owing to creditors who may claim priority under the *Bankruptcy and Insolvency Act* or under a purchase money security interest in inventory or equipment.

"Receivable Value" means, at any time of determination, the total value of those of your trade accounts receivable, including accounts domiciled in the United States, that are subject to the security (other than those accounts: (i) outstanding for 90 days or more, (ii) owing by persons, firms or corporations affiliated to you, and (iii) that we may from time to time designate).

"Shareholders' Equity" means paid-in capital, retained earnings and attributed or contributed surplus.

"Standard Overdraft Rate" means the variable reference interest rate per year declared by CIBC from time to time to be its standard overdraft rate on overdrafts in Canadian or US dollar accounts maintained with CIBC in Canada.

ACKNOWLEDGEMENT OF TERMS LETTER RECEIVED

NAME OF COMPANY Hickman Equipment (1985) Limited

DATE RECEIVED: May 8, 2000

PLEASE ACKNOWLEDGE BY INITIALLING BELOW:

RISK ANALYST ES

REVENUE COLLECTION OFFICER _____

BUSINESS CONSULTANT CB

Sworn before me
this 19th day of December, 2002



Canadian Imperial Bank of
Commerce

St. John's CBC
Box 340
St. John's, NF
A1C 5J9

June 19, 2000

HICKMAN EQUIPMENT (1985) LIMITED
P.O. Box 8340, Station A
St. John's, NF
A1B 3N7
Attention: Mr. Howard Hickman
Mr. Garry Bishop

Dear Mr. Hickman and Mr. Bishop,

We, Canadian Imperial Bank of Commerce ("CIBC"), are pleased to establish the following Credits for you, our customer.

Credit A: Operating Line

Credit Limit:

The lesser at any time of:

(a) \$15,000,000; and

(b) the total of

- ▶ 75% of the Receivable Value, plus
- ▶ 65% of the Inventory Value, except this amount cannot exceed 50% of the outstandings, minus
- ▶ all Priority Claims

Description and Rate:

A revolving demand credit, for general business purposes, as follows:

- (1) **Canadian dollar loans and overdrafts.** The interest rate is as follows: Prime Rate plus 1.00%:
- (2) **Canadian dollar or foreign currency L/Cs.** The total amount of the L/Cs outstanding at any time may not exceed \$500,000. L/Cs may not have terms to expiry of more than 12 months. Fees are CIBC standard L/C fees, minimum \$250, plus out of pocket expenses. Our standard L/C documentation is also required.

If there is a drawing under any L/C, we will pay it by drawing on your Operating Account, unless you have made other arrangements with us.

Credit B: Demand Installment Loan

Loan Amount: \$96,100

Purpose: Renewal of existing facility.

Interest Rate: Prime Rate plus 0.85% per year.

Scheduled Payments: Unless we make demand, you will pay CIBC as follows:
Regular monthly payments of \$3,600 each, plus interest.

Security

Security: The following security is required:

Assignment of Receivables: General assignment of accounts receivable.

Bank Act Security: Security under Section 427 of the Bank Act.

Debenture: Floating charge debenture for \$20,000,000 giving CIBC a first charge over all assets subject to a Priority Agreement dated July 5, 1985, with John Deere Limited, plus acknowledged assignment of fire and other perils insurance, with loss payable to CIBC.

Guarantee: Guarantee and Postponement of Claim from Group Holdings Limited in an amount that is unlimited and supported by:

Debenture: Fixed charge debenture for \$3,000,000 giving CIBC a first charge over the following properties:

- 504 Water Street, St. John's, NF
- 6 Stratford Place, St. John's, NF
- "HBC Site", Placentia, NF
- 1 Grenfell Heights, Grand Falls, NF
- 15 Bayley Street, Grand Falls, NF
- 239 Main Street, Burin, NF
- 166 Bayview, Fortune, NF
- 162-164 Bayview, Fortune, NF

and a floating charge over all your business assets, plus acknowledged assignment of fire and other perils insurance, with loss payable to CIBC as first mortgagee.

This fixed debenture is also held as security for the Credit Facilities of Group Holdings Ltd., Hickman Leasing Ltd., Hickman Motors Ltd., and 10067 Newfoundland Ltd.

Postponement of claim signed by Hickman Motors Limited for \$1,000,000.

Covenants

Covenants:

You will ensure that:

Minimum Equity: The customer will ensure, determined on a non-consolidated basis, of (A) its shareholders' equity less "Due from related companies", "Investments in related companies", and "Intangible assets" plus (B) such subordinated debt shareholders' equity is not at any time less than \$7,500,000.

Interest Coverage Ratio: Your Interest Coverage Ratio is not at any time less than 1:75:1.

Negative Pledge: There is no Lien on any of your present or future assets, and that you do not assign any right to any income, without our prior consent (which consent will not be unreasonable with held), except for the four exceptions below, namely:

- (a) a Purchase Money Lien
- (b) a Lien existing on an asset when it was acquired;
- (c) a renewal or replacement of a Purchase Money Lien or a Lien referred to in (b) above, so long as the principal amount secured by the Lien does not increase; or
- (d) a Normal Course Lien

Reporting Requirements

Reporting Requirements:

You will provide:

- (1) Within 30 days of each calendar month-end, a summary of Receivable Value and a summary of Inventory Value, together with an aged list of receivables and an aged list of accounts payable and a Monthly Statement of Available Credit Limit, as of that month-end. Detailed Account receivable listings to be provided as at June 30 each year.
- (2) Within 30 days of the end of each month, financial statements for that month.

- (3) Within 120 days of each fiscal year-end, financial statements for that fiscal year on an audited basis.
- (4) Within 120 days of each fiscal year-end, financial statements from the Guarantor for that fiscal year on an audited basis.
- (5) Within 120 days of each fiscal year-end, a business plan/forecast for the next fiscal year.

Fees

- Standby:** For the Credit A, 0.25% per year of the undrawn portion, payable monthly.
- Set-up:** Waived.
- Review:** A fee of \$5,000.
- Amendment:** If you require an amendment to this Agreement, there will be a fee of 0.25% of the amended amount requested, with a minimum of \$500.

Pricing Protection. The customer acknowledges that each fee, interest rate and other charge for all the Customer's banking arrangements with CIBC is priced dependent upon the others. If the Customer cancels any of those banking arrangements, the Customer agrees to be bound to any increased or added fees, interest rates, and charges (as CIBC may determine and notify the Customer); effective from the date of such cancellation.

Other Provisions

- Calculations:** When applicable, the calculations made under the "Covenants" and "Reporting Requirements" sections of this Agreement are to be done on an unconsolidated basis.
- Interest Rate Applicable to Credit Limit Excesses:** Prime Lending Rate plus 5% per year. If the Credit Limit of a Credit, or the Credit Limit of part of a Credit, or the Overall Credit Limit, is exceeded at any time, the Interest Rate Applicable to Credit Limit Excesses is calculated on that excess amount.
- Next Scheduled Review Date:** We will review the credit by August 31, 2000. At that time, we will review your financial statements, your forecast business and financial plans, and how well you have complied with the requirements of this Agreement. The terms of this Agreement will continue to apply until either a new Agreement or an Amendment to this one is settled.

Standard Credit Terms: The attached Schedule - Standard Credit Terms forms part of this Agreement.

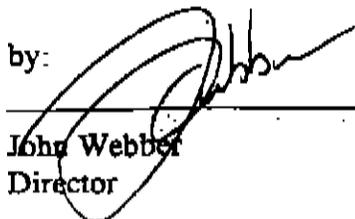
Please indicate your acceptance of these terms by returning a signed copy of this Agreement.

Upon acceptance, this Agreement replaces the existing credit agreement dated April 18, 2000, between you and CIBC. Outstanding amounts (and security) under that Agreement will be covered by this Agreement.

Yours truly,

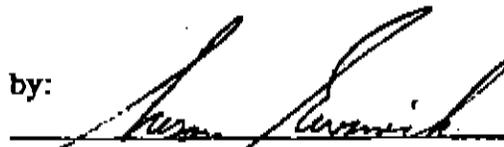
Canadian Imperial Bank of Commerce

by:


John Webber
Director

Phone: 709 576-8996
Fax: 709 576-8744

by:


Susan Ewanick
Commercial Lending Specialist

Phone: 709 576-8789
Fax: 709 576-8744

Acknowledgment: The undersigned certifies that all information provided to CIBC is true, and acknowledges receipt of a copy of this Agreement (including any Schedules referred to above).

Accepted this 6 day of July, 2000.

HICKMAN EQUIPMENT (1985) LTD.

By: [Signature]
Name: H. J. HICKMAN
Title: DIRECTOR

By: [Signature]
Name: HICKMAN
Title: DIRECTOR

Guarantor

Group Holdings Ltd.

By: [Signature]
Name: H. J. Hickman
Title: DIRECTOR

By: [Signature]
Name: HICKMAN
Title: DIRECTOR

STEWART MCKELVEY STIRLING SCALES

Sworn before me
this 19th day of December, 2002

Barristers
Solicitors

Stephen M. Stirling, C.M., O.C., LL.B. (1967 - 1968)
Gordon J. Dixon, O.C. (1996 - 1997)

Frederic A. Hall, O.C.
Edward M. Smith
Thomas G. Hines
Neil L. Jacobs
Margaret F. Hynes
Richard M. Thomas

Michael F. Cunningham, O.C.
Cedric J. J. Dixon
William H. Goodwin
Ian G. Wallace
David L. Campbell
Richard J. Dillon

David M. Andrews, O.C.
David M. Henry Andrews
John C. Hoch Seward
D. Wayne Bruce
Geoffrey T. Bradshaw
Stephen J. Penney

Augustine P. Laffr, O.C.
Kenneth A. Tremblay
Charles J. Flynn
David M. Hynes
Dorothy J. Prud'homme
Lawrence J. P. Kelly

Neil L. Jacobs
100 New Gower Street
St. John's, NL A1C 5V3

Correspondence
P.O. Box 5028
St. John's, NL A1C 5V3
Canada A1C 5V3
Telephone (709) 722-4270
Facsimiler (709) 722-4565
E-mail nlj@nlj.ca

September 2, 1998

* Master of the Supreme Court

VIA FACSIMILE
No. 576-8744

Mr. Barry Chaulk
Canadian Imperial Bank of Commerce
Atlantic Place, Water Street
St. John's, Newfoundland

Dear Mr. Chaulk:

**Re: Hickman Equipment (1985) Limited
Financing with Bombardier Capital Leasing Ltd.**

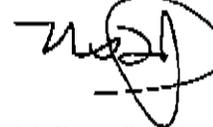
We write in relation to the captioned financing.

We enclose herewith a form of no interest letter respecting this financing which we request that you please have executed and returned to the undersigned at your earliest convenience.

We thank you in advance for your cooperation and look forward to hearing from you.

Yours very truly,

STEWART MCKELVEY STIRLING
SCALES



Neil L. Jacobs

NLJ/sea

Encl.

DATA\DATA\1998\September\Chaulk1.wpd
Page No. 2-34

SENT BY
BOMBARDIER CAPITAL LEASING LTD.

Sept 3, 1998

Re: **Hickman Equipment (1985) Limited**
P. O. Box 820, Topsail Road West
Mount Pearl, Newfoundland, A1N 3O8
(the "Debtor")

To Whom It May Concern:

We are the secured party under certain registrations made against the Debtor under the *Registration of Deeds Act* ("RDA"). We are advised that you propose to establish certain credit facilities in favour of the Debtor and that you have requested this letter as a condition to the establishment of such credit facilities.

In consideration of the establishment of your financing arrangements with the Debtor, we, our successors and assigns, confirm that we have no interest in the property charged by your Chattel Mortgage as more particularly described in Schedule "A".

This letter may be relied upon by you and your successors and assigns but not by any other party.

Very truly yours,



CANADIAN IMPERIAL BANK
OF COMMERCE

By BRIAN HENCHY

Title DIRECTOR

SCHEDULE A

This schedule A is part of the Lease Equipment Schedule No.2 dated August 28, 1998 and of the Master Lease Agreement between Hickman Equipment (1985) Limited and Bombardier Capital Leasing Ltd. number 1998062601.

EQUIPMENT DESCRIPTION

MODEL	DESCRIPTION	SERIAL NUMBER
450LC	EXCAVATOR	FF0450X090093
370XX	EXCAVATOR	FF0370X080106
230LC	EXCAVATOR	FF0230X060319
160LC	EXCAVATOR	P00160X040411
120	EXCAVATOR	P00120X030899
200LC	EXCAVATOR	FF0200X500415
310E	BACKHOE	T0310EX650513

Total Purchase Price : \$ 1,566,430.99 plus HST

PLEASE INITIAL

STEWART MCKELVEY STIRLING SCALES

Barristers
Solicitors

Cabot Place
100 New Gower Street
St. John's, Nfld.

Correspondence:
P.O. Box 5038
St. John's, Nfld.
Canada A1C 5V3

Telephone: (709) 722-4270
Telecopier: (709) 722-4565

FACSIMILE TRANSMISSION

From	Mr. Barry Chaulk	Date:	November 10, 1998
To:		Fax No.:	576-8744
Of:	CIBC	Tel. No.:	
Place:	St. John's, NF	Time of Trans.	
TO Sender:	Neil L. Jacobs	Your Ref.	
Our Ref.		Pages Including Cover:	5
Re:	Hickman Equipment		

Message:

If you have any difficulties with this transmission, please contact SANDRA ADAMS at (709) 722-4270.

Please contact sender in the event of transmission difficulties. If you have received this transmission in error, please notify us immediately by telephone (collect) and return the original transmission to us by mail without making a copy or destroy it. This transmission may be subject to solicitor-client privilege and/or contain confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. Disclosure to any person other than the intended recipient shall not constitute waiver of privilege.

SCHEDULE "A"

Quantity	Description	Serial Number
1	160LC Excavator 700 mm Triple Semi-G Shoes Boom, 5.01m, 1 pc. Arm 3. In 10'2" assembly Vandal Protection, Cab Ether Starting Aid	P00160X040627
1	160LC Excavator	P00160X040561
1	160LC Excavator	P00160X040536

STEWART MCKELVEY STIRLING SCALESBarristers
SolicitorsCabot Place
100 New Gower Street
St. John's, Nfld.Correspondence:
P.O. Box 5038
St. John's, Nfld.
Canada A1C 5V3Telephone: (709) 722-4270
Telcopier: (709) 722-4565**FACSIMILE TRANSMISSION**

Barry

To: Mr. Barry Chauk **Date:** January 13, 1999

Of: Canadian Imperial Bank of Commerce **Fax No.:** 576-8744

Place: St. John's, NF **Tel. No.:**

TO **Sender:** Neil L. Jacobs **Sender's Direct Line:** 709-570-8888

Our Ref. **Your Ref.**

Re: Hickman Equipment (1985) Ltd. **Pages Including Cover:** 4

Message:

Hi Neil. Please address any
Correspondence to Brian Hendey
in future.

Thanks Brian

If you have any difficulties with this transmission, please contact SANDRA ADAMS at (709) 722-4270.

Please contact sender in the event of transmission difficulties. If you have received this transmission in error, please notify us immediately by telephone (collect) and return the original transmission to us by mail without making a copy or destroy it. This transmission may be subject to solicitor-client privilege and/or contain confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. Disclosure to any person other than the intended recipient shall not constitute waiver of privilege.

ABN AMRO Leasing, a Division of
ABN AMRO Bank Canada
5515 North Service Road
Burlington, Ontario
L7L 6G4

January 14th, 1999

Re: Hickman Equipment (1985) Limited
P. O. Box 820, Topsail Road West
Mount Pearl, Newfoundland, A1N 308
(Debtor)

To Whom It May Concern:

We are the secured party under certain registrations made against the Debtor under the *Registration of Deeds Act* ("RDA"). We are advised that you propose to establish certain credit facilities in favour of the Debtor and that you have requested this letter as a condition to the establishment of such credit facilities.

In consideration of the establishment of your financing arrangements with the Debtor, we, our successors and assigns, confirm that we have no interest in the property charged by your Chatel Mortgage as more particularly described in Schedule "A".

This letter may be relied upon by you and your successors and assigns but not by any other party.

Very truly yours,



CANADIAN IMPERIAL BANK
OF COMMERCE

By BRIAN HENCHLEY

Title DIRECTOR

SCHEDULE "A"

Quantity	Description	Serial Number
1	450LC Base Excavator Cab w/Air & Heater Std. Mainframe, CWT & CWMD 900mm Track Shoes Standard Boom 3.9 Arm 450LC Vandal Protection Assembled at Dealer	FF0450X090288
1	450LC Base Excavator Cab w/Air & Heater Std Mainframe, CWT & CWMD 900 mm Track Shoes Standard Boom 3.9 Arm 450LC Vandal Protection Assembled at Dealer	FF0450X090093
1	450LC Base Excavator Cab w/Air & Heater Std Mainframe, CWT & CWMD 900 mm Track Shoes Standard Boom 3.9 arm 450LC Vandal Protection Assembled at Dealer	FF0450X090166

STEWART McKELVEY STIRLING SCALES

Barristers
Solicitors

Gordon M. Steing, C.M., O.C., LL. D. (1907 - 1989)
Francis J. Ryan, O.C. (1926 - 1997)

Ernest G. Reid, O.C.
Margit M. Smith
Susan C. Grant
Neil L. Jacobs
Monica E. Ryan
Richard M. Thomas

Michael F. Harrington, O.C.
Geoffrey E.J. Brown
William H. Chedridge
Ian C. Wallace
Paul J. Casworthy
Robert J. Dalton

David B. Andrews, O.C.
Janet M. Hurlay Andrews
Carmel St. Lynch Seavine
H. Wayne Bruce
Cecily Y. Seabrook
Stephen F. Proulx

Augustus G. Lally, O.C.
Kathleen A. Tompkins
Dennis J. Hyatt
Daniel M. Boone
Rudney J. Zwick
Jeremy L. Ellis Carroll

January 13, 1999

* Member of the Supreme Court

Cabot Place
100 New Gower Street
St. John's, NL1d

Correspondence
P.O. Box 503A
St. John's, NL1d
Canada A1C 5V3
Telephone (709) 722-4770
Telecopier (709) 722-4565
E-mail smss@nlst.net.ca

VIA FACSIMILE
No. 576-8744

Mr. Barry Chaulk
Canadian Imperial Bank of Commerce
Atlantic Place, Water Street
St. John's, Newfoundland

Dear Mr. Chaulk:

**Re: Hickman Equipment (1985) Limited
Financing with ABN AMRO Leasing**

We write in relation to the captioned financing.

We enclose herewith a no interest letter respecting a new financing by Hickman Equipment (1985) Ltd. which we request that you please have executed and returned to the undersigned at your earliest convenience.

We thank you in advance for your cooperation and look forward to hearing from you.

Yours very truly,

STEWART McKELVEY STIRLING
SCALES


Neil L. Jacobs

NLI/sea

Encl.

PL/ATA/DA/TA/1999/January/13/Finance/Equipment - CMC to legal
File No. N1900-16



CHARTER FINANCIAL

Barry what do I do.

Tel-709-722-1722
Fax-709-722-1771
Toll Free 1-800-563-0678

21 Mews Place
Corporate Office Centre
P.O.Box 13968 Stn 'A'
St.John's, NFLD.
A1B4G8

FAX

No. of Pages 2 (including cover sheet) DATE: JULY 18 1999

To: DARLENE RICHARDS

Company CIBC Fax # 576-8744

FROM: JOHN O'REILLY

MESSAGE: DARLENE, RE: HICKMAN EQUIPMENT

AS PER OUR CONVERSATION, THE TWO
PIECES OF EQUIPMENT WHICH WE ARE
FINANCING ARE AS FOLLOWS

(a) 1- 1999- JOHN DEERE - MODEL 370XX EXCAVATOR
SERIAL # FF0370X080344

(b) 1- 1999- JOHN DEERE - MODEL 330LC EXCAVATOR
SERIAL # FF0330X080519

ALSO ATTACHED IS A LETTER FROM BARRY
CHAULK REGARDING EQUIPMENT THAT WE FINANCED
IN 1998. THANK YOU.



Brian Henchey
Director

Commercial Banking
P.O. Box 340
St. John's, NF
A1C 5J9

July 9, 1999

Charter Financial
21 Mews Place
P.O. Box 13968, Stn. A
St. John's, NF
A1B 4G8

Dear John O'Reilly;

Re: Hickman Equipment (1985) Limited

We refer to our Client, whom we understand has arrange floor plan financing for the equipment listed below, and advise CIBC has no interest in the said equipment.

One 1999 John Deere – Model 370XX Excavator
Serial # FF0370X080344

One 1999 John Deere – Model 330LC Excavator
Serial # FF0330X080519

Trusting this is satisfactory

Yours truly,

for Brian Henchey

Tel: 576-8996
Fax: 576-8744



Commercial Banking Centre
Atlantic Place, P.O. Box 340
St John's, NF A1C 5J9

Barry Chaulk
Manager - Commercial Banking

May 14, 1998

Charter Financial

Dear Sirs;

Re: Hickman Equipment (1985) Limited

We refer to our above Client, whom we understand has arranged floor plan financing for the equipment listed below, and advise CIBC has no interest in the said equipment:

One (1) John Deere 200LC, S/N FF0200X500195

One (1) John Deere 410E, S/N T0410EX845746

One (1) John Deere 750C, S/N T0750CX845462

Trusting this is satisfactory.

Yours truly,

Barry Chaulk

Tel: (709) 576-8982
Fax: (709) 576-8744
Email:

STEWART MCKELVEY STIRLING SCALES

Facsimile Transmission

Cabot Place
100 New Gower Street
P.O. Box 5038
St. John's, Nfld.
Canada A1C 5V3

Telephone: 709.722.4270
Fax: 709.722.4565

Sender: Neil L. Jacobs
Direct Dial: 709.570.8888
E-mail: njacobs@smss.com

Date: October 29, 1999
File Number: NF8090-24

Total No. of Pages, including this cover page: 4

To	Of	Telephone Number	Fax Number
Brian Henchey	CIBC		576-8744

Message:

Contact sender in the event of transmission difficulties. If you have received this facsimile transmission in error, please notify us immediately by telephone (collect) and return the original transmission to us by mail without making a copy or destroying it. This transmission may be subject to solicitor-client privilege and/or contain confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. Disclosure to any person other than the intended recipient shall not constitute waiver of privilege.

STEWART MCKELVEY STIRLING SCALESBARRISTERS • SOLICITORS
TRADEMARK AGENTSCabor Place
Suite 1100
100 New Gower Street
St. John's, Nfld
Canada A1C 6K3Correspondence:
P.O. Box 5038
St. John's, Nfld
Canada A1C 5V3Telephone: 709.722.4270
Fax: 709.722.4565
st-johns@smss.com
www.smss.comNeil L. Jacobs
Direct Dial: 709.570.8888
njacobs@smss.com

October 29, 1999

VIA FACSIMILE
No. 576-8744

NF8090-24

Mr. Brian Henchey
Canadian Imperial Bank of Commerce
Atlantic Place, Water Street
St. John's, NF

Dear Sir:

Re: Hickman Equipment (1985) Limited
Financing with ABN AMRO Leasing

We write in relation to the captioned matter.

We enclose herewith a form of no interest letter respecting the captioned financing which we request that you please have executed and returned to the undersigned at your earliest convenience.

We thank you in advance for your cooperation and look forward to hearing from you.

Yours very truly,

STEWART MCKELVEY STIRLING SCALES
Neil L. JacobsNLJ/sea
Encl.

SCHEDULE "A"

Quantity	Description	Serial Number
1	Valmet 911C Harvester Tool Kit, 901 R/B 50370834 Kit, Rear Bumper Lights, 911C Group, Sun Curtains, Electric Sys. Engine Heater Op., Vacuum Pump Inst'l, Vacuum Pump, Electrical Kit, Radio Kit, AM/FM/Cassette, Eco Track Group 700/50 Tires Kit, Uptime, 965 Head Manual Pack, 911C/965/1400 Tire GP.28Lx26. 700/50x26.5 Base Components OP., 901C/911C, 911C Components OP Group, 965 Head, 911C Harvester Kit, 911C/1400 Kit, Spike Fdrl.250mm.Valmet	911C4048

ABN AMRO Leasing, a Division of
ABN AMRO Bank Canada
5515 North Service Road
Burlington, Ontario
L7L 6G4

Mar 1, 1998

Re: Hickman Equipment (1985) Limited
P. O. Box 820, Topsail Road West
Mount Pearl, Newfoundland, A1N 308
(Debtor)

To Whom It May Concern:

We are the secured party under certain registrations made against the Debtor under the *Registration of Deeds Act* ("RDA"). We are advised that you propose to establish certain credit facilities in favour of the Debtor and that you have requested this letter as a condition to the establishment of such credit facilities.

In consideration of the establishment of your financing arrangements with the Debtor, we, our successors and assigns, confirm that we have no interest in the property charged by your Chattel Mortgage as more particularly described in Schedule "A".

This letter may be relied upon by you and your successors and assigns but not by any other party.

Very truly yours,



CANADIAN IMPERIAL BANK
OF COMMERCE

By Brian Henchey
Title Director

STEWART MCKELVEY STIRLING SCALES

Facsimile Transmission

To
 Cabot Place
 100 New Gower Street
 P.O. Box 5038
 St. John's, Nfld.
 Canada A1C 5V3

Telephone: 709.722.4270
 Fax: 709.722.4565

Sender: **Neil L. Jacobs**
 Direct Dial: 709.570.8888
 E-mail: njacobs@smss.com

Date: January 13, 2000

File Number:

Total No. of Pages, including this cover page: 4

3 Pgs

<i>To</i>	<i>From</i>	<i>Of</i>	Telephone Number	Fax Number
	Brian Henchey	Canadian Imperial Bank of Commerce		576-8744

Message:

Contact sender in the event of transmission difficulties. If you have received this facsimile transmission in error, please notify us immediately by telephone (collect) and return the original transmission to us by mail without making a copy or destroying it. This transmission may be subject to solicitor-client privilege and/or contain confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. Disclosure to any person other than the intended recipient shall not constitute waiver of privilege.

STEWART MCKELVEY STIRLING SCALES

BARRISTERS • SOLICITORS
TRADEMARK AGENTS

Cahut Place
Suite 1100
100 New Gower Street
St. John's, Nfld
Canada A1C 6K3

Correspondence:
P.O. Box 5038
St. John's, Nfld
Canada A1C 5V3

Telephone: 709.722.4270
Fax: 709.722.4565
st-johns@smss.com
www.smss.com

Neil L. Jacobs
Direct Dial: 709.570.8888
njacobs@smss.com

January 13, 2000

VIA FACSIMILE
No. 576-8744

Mr. Brian Henchey
Canadian Imperial Bank of Commerce
Atlantic Place, Water Street
St. John's, NF

Dear Sir:

**Re: Hickman Equipment (1985) Limited
Financing with Bombardier Capital Leasing Ltd.**

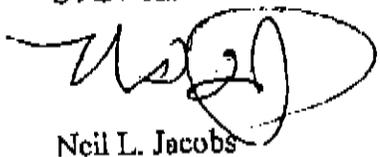
We write in relation to the captioned matter.

We enclose herewith a form of no interest letter respecting the captioned financing which we request that you please have executed and returned to the undersigned at your earliest convenience.

We thank you in advance for your cooperation and look forward to hearing from you.

Yours very truly,

STEWART MCKELVEY STIRLING SCALES


Neil L. Jacobs

NLJ/sea
Encl.

SCHEDULE "A"

Quantity	Description	Serial Number
1	New 2000 John Deere Hydraulic Excavator Model 450LC	FF0450X090460
1	New 2000 John Deere Excavator Model 450LC	FF0450X090444
1	New 2000 John Deere Loader Backhoe Model 310SE	T0310SE881906

February 7th, 2000

Canadian Imperial Bank of Commerce
Atlantic Place
P.O. Box 340
Mount Pearl, Nfld
A1C 5J9

Attention: Barry Chalk

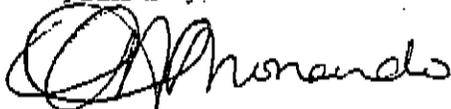
Dear Mr. Chalk:

Re: Security over Assets of Hickman Equipment (1985) Limited.

A recent search under the Personal Property Registry reveals that you may have a security interest in the assets of Hickman Equipment (1985) Limited. debis Financial Services, a division of Mercedes-Benz Credit of Canada Inc. ("debis") desires to finance the equipment described in Schedule "A" attached, so that Hickman Equipment (1985) Limited can operate or use this equipment in its business. debis will finance this transaction, however, only if debis can be assured that it has a first ranked security position over this equipment and the proceeds thereof.

In order to ensure our priority we desire to receive from you your agreement that your various present and future security interests in the assets of Hickman Equipment (1985) Limited, do not and will not operate as a perfected security interest as against debis in the equipment described at any particular time, and the proceeds thereof. To the extent that your security interests or agreements do nevertheless give you a security interest in these items, you agree that such interests and agreements are postponed to the security interest held by debis. Please acknowledge your agreement by signing below and on the attachment and returning a signed copy to us by fax and mail.

Yours truly,



Mary Monardo
Sales & Marketing Coordinator

Attachment

CANADIAN IMPERIAL BANK OF COMMERCE agrees with the foregoing.

Susan Ewanick CLS
Name Title

Feb 21, 2000
Date

lpmsi.doc

6701 Financial Drive, Suite 200
Mississauga, Ontario L5N 7J7

Phone (500) 903-3247
(905) 813-6997
Fax (500) 803-2373

A Division of
Mercedes-Benz Credit of Canada Inc.

SCHEDULE "A"

Attachment to a letter from debis Financial Services, a division of Mercedes-Benz Credit of Canada Inc. to Canadian Imperial Bank of Commerce dated February 7, 2000 describing the vehicle.

Unit	Make / Model	Description	Serial Number
1 One (1) New	John Deere 624H	4WD Loader	DW624HX574946
2 One (1) New	John Deere 200LC	Excavator	FF0200X501010
3 One (1) New	John Deere 270LC	Excavator	FF0270X070608
4 Two (2) New	John Deere 35	Compact Excavators	FF035ZX230108 & FF035ZX230109
5 Two (2) New	John Deere 27	Compact Excavators	FF027ZX220096 & FF027ZX220097

CANADIAN IMPERIAL BANK OF COMMERCE

Arun Prasad *CL5*
Name Title

Feb 27 2000
Date



Fax

Date: March 14, 2000

Number of pages including cover: 3

To: Name: Neil Jacobs
Location: Stewart McKelvey
Stirling Scales
Fax: 722-4565 Telephone: 722-4270

From: Name: Darlene Richards
Commercial Banking
Location: P.O. Box 340
St. John's, NF
A1C 5J9
Fax: 709-576-8744 Telephone: 709-576-8993

Remarks:

Please find attached the executed form of no interest.

Please have the name of your contact with CIBC changed to Susan Ewanick

Regards,

Darlene Richards

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INTENDED RECIPIENT. IT MAY CONTAIN INFORMATION THAT IS PRIVATE AND CONFIDENTIAL. If you are not the intended recipient, DO NOT READ, copy, distribute or use this information. If you have received this fax in error, please notify us immediately by telephone at the above number (collect calls accepted). Thank You.

CE MESSAGE EST DESTINÉ EXCLUSIVEMENT À LA PERSONNE À QUI IL EST ADRESSÉ. SON CONTENU POURRAIT ÊTRE CONFIDENTIEL. S'il ne vous est pas destiné, VOUS NE DEVEZ PAS LE LIRE, le copier, le distribuer ni l'utiliser. Si vous recevez le présent document par erreur, veuillez nous en aviser immédiatement par téléphone, au numéro indiqué ci-dessus (nous acceptons les appels à frais virés). Merci de votre collaboration.

SENT BY:
ABN AMRO Leasing, a Division of
ABN AMRO Bank Canada
5515 North Service Road
Burlington, Ontario
L7L 6G4

March 14., 2000

Re: **Hickman Equipment (1985) Limited**
P. O. Box 820, Topsail Road West
Mount Pearl, Newfoundland, A1N 308
(Debtor)

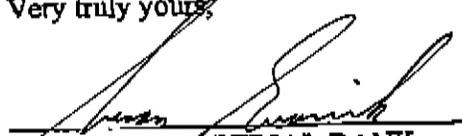
To Whom It May Concern:

We are the secured party under certain registrations made against the Debtor under the *Registration of Deeds Act* ("RDA"). We are advised that you propose to establish certain credit facilities in favour of the Debtor and that you have requested this letter as a condition to the establishment of such credit facilities.

In consideration of the establishment of your financing arrangements with the Debtor, we, our successors and assigns, confirm that we have no interest in the property charged by your Chattel Mortgage as more particularly described in Schedule "A".

This letter may be relied upon by you and your successors and assigns but not by any other party.

Very truly yours,



CANADIAN IMPERIAL BANK
OF COMMERCE

By Susan Ewanick

Title CLS

SCHEDULE "A"

Item, type or kind of Equipment	Number	Serial Number/MIN.
Poulin Portable Screener	1	2SAAQQ19810285884
Poulin Portable Stack Conveyor	1	2SAAQQ19705139895
John Deere 450 LC Excavator	1	FF0450X090409
John Deere 330 LC Excavator	1	FF0330X080543
John Deere 450 H Crawler Dozer	1	T0450HX874682
John Deere 744 H 4WD Loader	1	DW744HX569129
John Deere 850 C Crawler Dozer	1	T0850CX873998
John Deere 230 LC Excavator	1	FF0230X600204



Facsimile

207 Queens Quay West, Suite 700, Toronto, Ontario, M5J 1A7

From: ~~To~~ CANADIAN IMPERIAL BANK OF CANADA Fax: (709) 576-8744
 ATTN: Susan Evanick
 From: David Langford Fax: (905) 633-3306
 Tel: (416) 233-4073
 Date: July 10, 2000 Pages: ① M
 Subject: CANADIAN IMPERIAL BANK OF CANADA

Attached is a waiver letter for the equipment Newcourt Financial Ltd. will be financing to our mutual customer.

This letter has been sent because your organization shows up as a Secured Creditor against our mutual client. The collateral classification(s) that you have registered under, indicates that your organization could have a lien against the asset or assets that we are financing.

In order to perfect our security interest in the item(s) and ensure our entitlement to the asset(s) that we are financing, we are required to send out waiver letters to all Secured Creditors that may have an vested interest in the item(s) on the following Schedule A

Please sign the following waiver letter if your organization does not have an interest in the asset(s) that Newcourt Financial Ltd is financing and fax it back to 905-633-3306.

Thank you

David Langford per: (905) 633-3306
 David Langford
 Account Executive

**WAIVER**

NEWCOURT FINANCIAL LTD.
207 Queen's Quay West, Suite 700, Toronto, Ontario, M5J 1A7

VIA FAX**DATE: July 10, 2000****TO: CANADIAN IMPERIAL BANK OF CANADA****RE: Hickman Equipment (1985) Ltd.**

Newcourt Financial Ltd. ("Newcourt") has or will be entering into, or taking assignment of, a lease agreement, a conditional sales contract, or a security agreement (the "Contract") with the above mentioned Obligor, to lease to, or finance for the Obligor, the equipment described in Schedule "A" hereto, together with all attachments, accessions, replacements and/or additions thereto (the "Equipment").

Under the terms of the Contract, Newcourt has or will obtain title to and/or has or will obtain a security interest in or lien on the Equipment and the proceeds thereof (collectively, the "Collateral").

A search of the public records indicates that you may have security in the Collateral.

Please indicate, by signing below, that you acknowledge that you have not assigned your security interest and that you do not have and will not in future claim any right, interest, charge or security interest in the Collateral which ranks in priority to the right, title, interest, hypothec, charge and security interest now or hereafter held by Newcourt in the Collateral. For greater certainty, you are acknowledging and agreeing that, as against you, Newcourt shall have a first priority, right, title, interest, charge and security interest in the Collateral.

Sincerely,

David Langford
Account Executive

For valuable consideration, and recognizing that Newcourt is relying on this acknowledgment in entering into the Contract referred to herein, we hereby acknowledge and agree that we do not have and will not claim any right, interest, hypothec, charge or security interest in the Collateral which ranks prior to the right, title, interest, charge and security interest now or hereafter held by Newcourt in the Collateral, and we hereby postpone and subordinate to Newcourt for all purposes all rights, title, interests, charges and security interests that we may have at any time now or hereafter have or acquire in the Collateral to all the rights, title, interests, hypothec, charges and security interests that Newcourt may now have or hereafter acquire in the Collateral.

Dated this 11 day of July 2000.

Secured Creditor: **CANADIAN IMPERIAL BANK OF CANADA**

Per:

SCHEDULE "A"

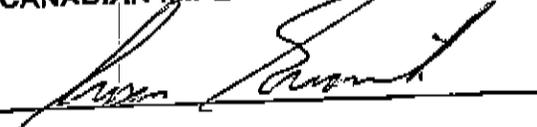
Equipment

Serial Number

SEE ATTACHED SCHEDULES 1,2,3,4.

Dated this 11 day of July 2000.

CANADIAN IMPERIAL BANK OF CANADA

Per: 

#1



NEWCOURT FINANCIAL LTD.
Newcourt Capital
207 Queens Quay West, Suite 700
Toronto, Ontario M5J 1A7

SCHEDULE A

Attached is and forming part of the Security Agreement dated July 20 00 between
as Borrower and Newcourt Financial Ltd. as Lender.

HICKMAN EQUIPMENT (1985) LIMITED

STK #	MODEL	DESCRIPTION	SERIAL#	LOCATION
R550R	XP825	I-R XP825WCU COMPRE	175545	ON RENT - ABITIBI (URI)
R635	ECM350	AIR TRACK	CB7381	ON RENT - ASPEN COVE
R652R	ECM350	AIR TRACK	BY7085	ON RENT - ABBOTT BROTHERS
R658	XP825	I-R XP825WCU COMPRE	184609	ON RENT - ASPEN COVE
R662	XP825	I-R XP825WCU COMPRE	178928	ON RENT - ABBOTT BROTHERS
N1089	ECM350	AIR TRACK	R10025	ON RENT - MARINE CONTRACTORS
R650	ECM350	AIR TRACK	CB7385	ON RENT - LABRADOR EQUIP. & MINING
R554	XP825	I-R XP825WCU COMPRE	183168	ON RENT - MARINE CONTRACTORS
R581R	XP825	I-R XP825WCU COMPRE	188847	ON RENT - MARINE CONTRACTORS
R618	ECM350	AIR TRACK	4184	ON RENT - RDN CONSTRUCTION
R623	ECM350	AIR TRACK	242657	ON RENT - RDN CONSTRUCTION
R627	ECM350	AIR TRACK	4260	IN STOCK - GRAND FALLS
R628	ECM350	AIR TRACK	4259	ON RENT - BUDGELL'S EQUIPMENT
R632	ECM360	AIR TRACK	CB7240	ON RENT - ACCESS DRILLING
R639	ECM350	AIR TRACK	R10082	ON RENT - H. WAREHAM & SON'S
R640	ECM350	AIR TRACK	R10083	ON RENT - B & R ENTERPRISES
R644	ECM350	AIR TRACK	CB7487	ON RENT - B & R ENTERPRISES
R648	XP825	I-R XP825WCU COMPRE	175544	ON RENT LABRADOR EQUIP. & MINING
R667	XP825	I-R XP825WCU COMPRE	184808	ON RENT - B & R ENTERPRISES
R680	XP825	I-R XP825WCU COMPRE	186848	IN STOCK - MOUNT PEARL
R688	XP825	I-R XP825WCU COMPRE	183210	ON RENT - B & R ENTERPRISES
R687R	XP825	I-R XP825WCU COMPRE	188179	IN STOCK - GRAND FALLS

LENDER: NEWCOURT FINANCIAL LTD.

Borrower: HICKMAN EQUIPMENT (1985) LIMITED

PER: _____

PER: _____

Name/Title: _____

Name/Title: _____

#2

NEWCOURT FINANCIAL LTD.
Newcourt Centre
207 Queens Quay West, Suite 700
Toronto, Ontario M5J 1A7



SCHEDULE A

Attached to and forming part of the Security Agreement dated July 20 00 between
as Borrower and Newcourt Financial Ltd. as Lender.

HICKMAN EQUIPMENT (1985) LIMITED

R634	ECM350	AIR TRACK	CB7242	ON RENT - BARKER'S CONSTRUCTION
R620	ECM350	AIR TRACK	4244	ON RENT LABRADOR EQUIP. & MINING
R622	ECM350	AIR TRACK	242648	ON RENT - RDN CONSTRUCTION
R625	ECM350	AIR TRACK	54257	ON RENT - ISLAND CONSTRUCTION
R628	ECM350	AIR TRACK	T38076	ON RENT - PENNEY CONSTRUCTION
R631	ECM350	AIR TRACK	CB7238	IN STOCK - MOUNT PEARL
R637	ECM350	AIR TRACK	CB7371	ON RENT - ROCK CONSTRUCTION (URI)
R638	ECM350	AIR TRACK	R10084	ON RENT - COUGAR ENGINEERING
R642	ECM350	AIR TRACK	R10081	ON RENT - COUGAR ENGINEERING
R643	ECM350	AIR TRACK	BY7073	ON RENT - ACCESS DRILLING
R651	ECM350	AIR TRACK	54201	ON RENT - PREMIER CONSTRUCTION
C000081	XP825	I-R XP825WCU COMPRE	183577	ON RENT - RDN CONSTRUCTION
C000084	XP825	I-R XP825WCU COMPRE	207880	ON RENT - RDN CONSTRUCTION
C000085	XP825	I-R XP825WCU COMPRE	207010	ON RENT - ACCESS DRILLING
C000097	XP825	I-R XP825WCU COMPRE	173645	ON RENT - COUGAR ENGINEERING
N1087	XP825	I-R XP825WCU COMPRE	V88497	ON RENT - COUGAR ENGINEERING
R548R	XP825	I-R XP825WCU COMPRE	152824	ON RENT - MELVILLE FOREST PRODUCTS
R551	XP825	I-R XP825WCU COMPRE	178925	ON RENT - RDN CONSTRUCTION
R553	XP825	I-R XP825WCU COMPRE	183169	ON RENT - PENNEY CONSTRUCTION
R558	XP825	I-R XP825WCU COMPRE	186186	ON RENT - PENNEY CONSTRUCTION
R583	XP825	I-R XP825WCU COMPRE	192568	IN TRANSIT - GRAND FALLS
R584	XP825	I-R XP825WCU COMPRE	182567	ON RENT - ROCK CONSTRUCTION (URI)
R585R	XP825	I-R XP825WCU COMPRE	181894	ON RENT - RDN CONSTRUCTION
R588	XP825	I-R XP825WCU COMPRE	189185	ON RENT - COUGAR ENGINEERING
R581	XP825	I-R XP825WCU COMPRE	173406	ON RENT - ISLAND CONSTRUCTION
R582	XP825	I-R XP825WCU COMPRE	173408	ON RENT - PREMIER CONSTRUCTION

LENDER: NEWCOURT FINANCIAL LTD.

Borrower: HICKMAN EQUIPMENT (1985) LIMITED

PER: _____

PER: _____

Name/Title: _____

Name/Title: _____

NEWCOURT FINANCIAL LTD.
 Newcourt Centre
 237 Queen Quay West, Suite 708
 Toronto, Ontario M5J 1A7



SCHEDULE A

Attached to and forming part of the Security Agreement, dated July 20 00 between
HICKMAN EQUIPMENT (1985) LIMITED as Borrower and Newcourt Financial Ltd. as Lender.

R649	ECM350	AIR TRACK	CB7389	ON RENT - B & R ENTERPRISES
R654	ECM350	AIR TRACK	BY7148	ON RENT - H. WAREHAM & SONS
R583	XP825	I-R XP825WCU COMPRE	173411	IN STOCK - MOUNT PEARL
C000088	XP825	I-R XP825WCU COMPRE	208742	ON RENT - BUDGELL'S EQUIPMENT
C000090	XP825	I-R XP825WCU COMPRE	192810	IN TRANSIT - MOUNT PEARL
C000092	XP825	I-R XP825WCU COMPRE	208642	IN STOCK - GRAND FALLS
C000093	XP825	I-R XP825WCU COMPRE	208842	ON RENT - H. WAREHAM & SONS
C000098	XP825	I-R XP825WCU COMPRE	209490	ON RENT - H. WAREHAM & SONS

LENDER: NEWCOURT FINANCIAL LTD.

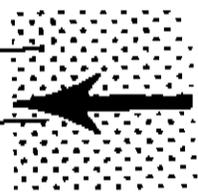
Borrower: HICKMAN EQUIPMENT (1985) LIMITED

PER: _____

PER: _____

Name/Title: _____

Name/Title: _____



AUG-10-2000 09:31 916033



CIT Equipment Financing
5045 South Service Road
Burlington, Ontario
L7R 3Y8

WAIVER

VIA FAX

DATE: August 9, 2000

TO: CANADIAN IMPERIAL BANK OF CANADA

RE: Hickman Equipment (1985) Ltd.

CIT Financial Ltd. ("CIT") has or will be entering into, or taking assignment of, a lease agreement, a conditional sales contract, or a security agreement (the "Contract") with the above mentioned Obligor, to lease to, or finance for the Obligor, the equipment described in Schedule "A" hereto, together with all attachments, accessions, replacements and/or additions thereto (the "Equipment").

Under the terms of the Contract, CIT has or will obtain title to and/or has or will obtain a security interest in or lien on the Equipment and the proceeds thereof (collectively, the "Collateral").

A search of the public records indicates that you may have security in the Collateral.

Please indicate, by signing below, that you acknowledge that you have not assigned your security interest and that you do not have and will not in future claim any right, interest, charge or security interest in the Collateral which ranks in priority to the right, title, interest, hypothec, charge and security interest now or hereafter held by CIT in the Collateral. For greater certainty, you are acknowledging and agreeing that, as against you, CIT shall have a first priority, right, title, interest, charge and security interest in the Collateral.

Sincerely,

Jill Conley
Sales Coordinator

For valuable consideration, and recognizing that CIT is relying on this acknowledgment in entering into the Contract referred to herein, we hereby acknowledge and agree that we do not have and will not claim any right, interest, hypothec, charge or security interest in the Collateral which ranks prior to the right, title, interest, charge and security interest now or hereafter held by CIT in the Collateral, and we hereby postpone and subordinate to CIT for all purposes all rights, title, interests, charges and security interests that we may have at any time now or hereafter have or acquire in the Collateral to all the rights, title, interests, hypothec, charges and security interests that CIT may now have or hereafter acquire in the Collateral.

Dated this 10 day of August 2000.

Secured Creditor: **CANADIAN IMPERIAL BANK OF CANADA**

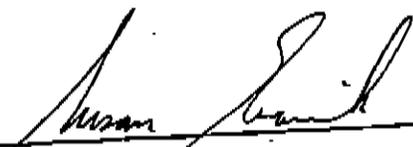
Per:

SCHEDULE "A"

JOHN DEERE 200LC EXCAVATOR, S/N FF0200X051249
JOHN DEERE 200LC EXCAVATOR, S/N FF0200X501479
JOHN DEERE 200LC EXCAVATOR, S/N FF0200X501455
JOHN DEERE 200LC EXCAVATOR, S/N FF0200X501390
JOHN DEERE 200LC EXCAVATOR, S/N FF0200X501453
JOHN DEERE 644H LOADER, S/N DW644HX577435
JOHN DEERE TC62H LOADER, S/N DWTC62H577315
JOHN DEERE 310SE BACKHOE LOADER, S/N T0310SE890549
JOHN DEERE 544H LOADER, S/N DW544HX577412
JOHN DEERE 318SE BACKHOE LOADER, S/N T0310SE890935
JOHN DEERE 330LC EXCAVATOR, S/N FF0330X080747
JOHN DEERE 330LC EXCAVATOR, S/N FF0330X080850
JOHN DEERE 330LC EXCAVATOR, S/N FF0330X080863
JOHN DEERE 330LC EXCAVATOR, S/N FF0330X080882
JOHN DEERE 330LC EXCAVATOR, S/N FF0330X080881
JOHN DEERE 450LC EXCAVATOR, S/N FF0450X090542
JOHN DEERE 644H LOADER, S/N DW644HX577290

Dated this 6 day of September 2000.

Per: _____





Date: August 28, 00

To: Canadian Imperial Bank Fax: 709-576-8744

Attn: Susan Evanick Phone: 709-576-8789

From: Jill Conley Fax: (905) 633-3306

Phone: (905) 633-3325

Pages (incl. this cover): 3

Attached is a waiver letter previously signed by your organization for the equipment CIT Financial Ltd. will be financing to our mutual customer.

This letter has been re-sent because the serial numbers were incorrect on the previous fax.

Please initial the schedule again if your organization does not have an interest in the asset(s) that CIT Financial Ltd is financing and fax it back to 905-633-3306.

Thank you

Jill Conley
Sales Coordinator



Date: August 9, 2000

To: Canadian Imperial Bank
Attn: Susan Evanick

Fax: (709) 576-8744

Phone: (709) 576-8789

From: Jill Conley

Fax: To: (905) 633-3306

(416)
233-2818

Phone: (905) 633-3325

Pages (incl. this cover): 3

Attached is a waiver letter for the equipment CIT Financial Ltd. will be financing to our mutual customer.

This letter has been sent because your organization shows up as a Secured Creditor against our mutual client. The collateral classification(s) that you have registered under, indicates that your organization could have a lien against the asset or assets that we are financing.

In order to perfect our security interest in the item(s) and ensure our entitlement to the asset(s) that we are financing, we are required to send out waiver letters to all Secured Creditors that may have an vested interest in the item(s) on the following Schedule A

Please sign the following waiver letter if your organization does not have an interest in the asset(s) that CIT Financial Ltd is financing and fax it back to 905-633-3306.

Thank you

Jill Conley
Sales Coordinator



CIT Equipment Financing
5045 South Service Road
Burlington, Ontario
L7R 3Y8

WAIVER

VIA FAX

DATE: August 9, 2000

TO: CANADIAN IMPERIAL BANK OF CANADA

RE: Hickman Equipment (1985) Ltd.

CIT Financial Ltd. ("CIT") has or will be entering into, or taking assignment of, a lease agreement, a conditional sales contract, or a security agreement (the "Contract") with the above mentioned Obligor, to lease to, or finance for the Obligor, the equipment described in Schedule "A" hereto, together with all attachments, accessions, replacements and/or additions thereto (the "Equipment").

Under the terms of the Contract, CIT has or will obtain title to and/or has or will obtain a security interest in or lien on the Equipment and the proceeds thereof (collectively, the "Collateral").

A search of the public records indicates that you may have security in the Collateral.

Please indicate, by signing below, that you acknowledge that you have not assigned your security interest and that you do not have and will not in future claim any right, interest, charge or security interest in the Collateral which ranks in priority to the right, title, interest, hypothec, charge and security interest now or hereafter held by CIT in the Collateral. For greater certainty, you are acknowledging and agreeing that, as against you, CIT shall have a first priority, right, title, interest, charge and security interest in the Collateral.

Sincerely,

Jill Conley
Sales Coordinator

For valuable consideration, and recognizing that CIT is relying on this acknowledgment in entering into the Contract referred to herein, we hereby acknowledge and agree that we do not have and will not claim any right, interest, hypothec, charge or security interest in the Collateral which ranks prior to the right, title, interest, charge and security interest now or hereafter held by CIT in the Collateral, and we hereby postpone and subordinate to CIT for all purposes all rights, title, interests, charges and security interests that we may have at any time now or hereafter have or acquire in the Collateral to all the rights, title, interests, hypothec, charges and security interests that CIT may now have or hereafter acquire in the Collateral.

Dated this 10 day of August 2000.

Secured Creditor: **CANADIAN IMPERIAL BANK OF CANADA**

Per:

08/08/00 10:41 AM 540110000

SCHEDULE "A"

Equipment

Serial #'s

5 JOHN DEERE 200LC EXCAVATORS

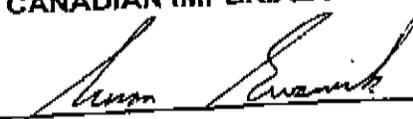
FF0200X051249
FF0200X501479
FF0200X501455
FF0200X501390
FF0200X501453
DW644HX677435
DWTC62H577315
T0310SE890549
DW544HX577412
T0310SE890935
FF0330X080747
FF0330X080950
FF0450X090542
FF0330X080883
FF0330X080882
FF0330X080881
DW644HX577290

1 JOHN DEERE 844H LOADER
1 JOHN DEERE TC82H LOADER
1 JOHN DEERE 310SE BACKHOE LOADER
1 JOHN DEERE 544H LOADER
1 JOHN DEERE 310SE BACKHOE LOADER
5 330LC EXCAVATOR

1 JOHN DEERE 644H LOADER

Dated this 10 day of August 2000.

CANADIAN IMPERIAL BANK OF CANADA

Per: 



7001 Champlain Avenue, Suite 401, Burlington, Ontario, L7L 5Z4

Ph: (905) 319-9100

August 17, 2000

Sent via facsimile 709-576-8188

Canadian Imperial Bank of Commerce
Atlantic Place, Water Street
St. John's, NF
A1C 5J9

Attention: Barry Chalk

RE: HICKMAN EQUIPMENT (1985) LIMITED

A review of the PPSA registrations against the above noted company indicates that certain security interest(s) have been granted in your favour with respect to said assets of said company.

We ask that you confirm that Canadian Imperial Bank of Commerce does not hold an interest in the equipment described below, all attachments to it and all proceeds derived from it, including rentals and sale proceeds, and that any interest it does so hold shall hereafter be postponed and subordinated to the interests of John Deere Credit Inc. in such equipment, attachments and proceeds.

One (1) 2000 Timberjack Forwarder Model 1410 S/N 17DD0279

Please return a copy of this letter via fax to 905-319-5870, and then forward the original by mail. Your prompt attention to this request will be greatly appreciated.

Yours very truly,
JOHN DEERE CREDIT INC.

Freda Blake
Documentation Administrator

Canadian Imperial Bank of Commerce confirms that it holds no interest in the equipment, attachments and proceeds described above and hereby agrees that any interest it does so hold is hereby postponed and subordinated to the interest of John Deere Credit Inc. in such equipment, attachments and proceeds.

Canadian Imperial Bank of Commerce

Date: August 17/00

Signed: [Handwritten Signature]
Title: CLS



31-Aug-00

CANADIAN IMPERIAL BANK OF COMMERCE
ATLANTIC PLACE
WATER STREET
ST. JOHNS, NFLD

Attn: Barry Chalk *Susan Ewanick*

RE: HICKMAN EQUIPMENT (1985) LIMITED

We are in the process of arranging lease financing for the above company. Our searches indicate that financing statements have been filed by or on behalf of **CANADIAN IMPERIAL BANK OF COMMERCE**, indicating that you have a security interest in certain assets or undertakings of the above company.

Please confirm by signing below and return by fax to my attention at 613-226-8091, indicating that you have no security interest, lien or encumbrance of any kind on the Equipment described as follows:

1	MODEL 6100 FORWARDER FULL 16' LOGWOOD DECK WITH SERCO LOADER	UNIT #C000773	S/N	993353
1	MODEL 1410 8 WHEEL FORWARDER	UNIT #C00762	S/N	17DD0279
1	160LC EXCAVATOR	UNIT #C000810		P00160X041475
1	160LC EXCAVATOR	UNIT #C000854		P00160X041476
1	160LC EXCAVATOR	UNIT #C000865		P00160X041477
1	450LC BASE EXCAVATOR	UNIT #C000862		FF0450X090545
1	310 SE BACKHOE LOADER	UNIT #C000856		T0310SEB91140
1	200LC EXCAVATOR	UNIT #C000861		FF0200X501521
1	270LC EXCAVATOR	UNIT #C000835		FF0270X070714
1	200LC EXCAVATOR	UNIT #C000854		FF0200X501500
1	744H LOADER	UNIT #C000860		DW744HX576952

Your prompt reply is greatly appreciated.

Yours truly,

Susan McAllister
Susan McAllister

CANADIAN IMPERIAL BANK OF COMMERCE

[Signature]
Signature

CLS
Title

September 6, 2000
Date

30 CONCOURSE GATE, SUITE 200, NEPEAN, ONTARIO K2E 7V7
TEL: 613-226-1065 FAX: 613-226-8091



31-Aug-00

CANADIAN IMPERIAL BANK OF COMMERCE
ATLANTIC PLACE
WATER STREET
ST. JOHNS, NFLD

Attn: Barry Chalk *Susan Ewanick*

RE: HICKMAN EQUIPMENT (1985) LIMITED

We are in the process of arranging lease financing for the above company. Our searches indicate that financing statements have been filed by or on behalf of **CANADIAN IMPERIAL BANK OF COMMERCE**, indicating that you have a security interest in certain assets or undertakings of the above company.

Please confirm by signing below and return by fax to my attention at 613-226-8091, indicating that you have no security interest, lien or encumbrance of any kind on the Equipment described as follows:

1	MODEL 6100 FORWARDER FULL 16' LOGWOOD DECK WITH SERCO LOADER	UNIT #C000773	S/N	60034057000
1	MODEL 1410 8 WHEEL FORWARDER	UNIT #C00762	S/N	17DD-279
1	160LC EXCAVATOR	UNIT #C000810		P00160X041475
1	160LC EXCAVATOR	UNIT #C000864		P00160X041476
1	160LC EXCAVATOR	UNIT #C000865		P00160X041477
1	450LC BASE EXCAVATOR	UNIT #C000862		FF0450X090545
1	310 SE BACKHOE LOADER	UNIT #C000856		T0310SE891140
1	200LC EXCAVATOR	UNIT #C000861		FF0200X501521
1	270LC EXCAVATOR	UNIT #C000835		FF0270X070714
1	200LC EXCAVATOR	UNIT #C000854		FF0200X501500
1	744H LOADER	UNIT #C000860		DW744HX675952

Your prompt reply is greatly appreciated.

Yours truly,

Susan McAllister
Susan McAllister

CANADIAN IMPERIAL BANK OF COMMERCE

[Signature]
Signature

CLS
Title

Sept. 6/00
Date

FAX COVER
SHEET



To: Mr. Barry Chalk *Susan*
Fax #: 709-576-8744
Subject:
Date: September 5, 2000
Pages: 2

Please note:

This transmission replaces the one sent to your attention on Friday, September 1.
Please sign and return this corrected copy (serial numbers for items 1,2 & 11 have been amended) as soon as possible.

Thank you.

From the desk of...
Susan McAllister
Administration
30 CONCOURSE GATE, SUITE 200
NEPEAN, ONTARIO K2E 7V7
Tel: 613-228-1065
Fax: 613-228-8091



Ritchie Bros. Auctioneers (Canada) Ltd.
9200 Bridgeport Road, Richmond, BC Canada V6X 1S1

TEL: 604-273-2137 FAX: 604-273-4223

VIA FAX

RETURN FAX: 604-273-4223

OCTOBER 27th, 2000

CANADIAN IMPERIAL BANK OF COMMERCE
P.O. BOX 340
ST. JOHNS, NF A1C 5J9

ATTENTION: SUSAN EWANICK

Dear Sir:

Please find following a One (1) page Schedule "A" of equipment to be sold on behalf of Hickman Equipment in our Truro, Nova Scotia auction sale being held November 9th, 2000.

We ask that you sign and return fax this letter, acknowledging that you have NO INTEREST in the items listed, nor in the proceeds from the sale thereof.

Should you find that you do hold an interest, please call or fax the writer with a payout figure, good through November 30th, 2000.

Thank you for you anticipated prompt attention and co-operation.

Sincerely,

RITCHIE BROS. AUCTIONEERS (CANADA) LTD.

Per: Bobbi Davis

CANADIAN IMPERIAL BANK OF COMMERCE

RENTAL DRUG MACHINES
Schedule A

HICKMAN EQUIPMENT (1985) LTD

- 1 Gzp: CTR
1991 KOMATSU D37P-2 CRAWLER TRACTOR
s/n A1845
c/w: 6 way dozer, canopy, W3C winch s/n AW3CP2A1S75K11

- 2 Gzp: TTT
1989 FREIGHTLINER T/A TRUCK TRACTOR
s/n 2FUYDDYB4KV32563
c/w: Cummins 400 hp, eng brake, 15 spd, A/R susp, sleeper

- 3 Gzp: TTR
1987 FORD 18000 T/A CONCRETE PUMP TRUCK
s/n 1FDYWB2A8HVA06936
c/w: 210 hp, 13 spd, Wihau 8P-K Herion 27/31 pump

W02-2000-10-10-10.45.19

** END OF REPORT **

HICKMAN EQUIPMENT

P.O. Box 820
Mount Pearl
Nfld. A1N 3C8
Tel. (709) 368-9660
Fax (709) 368-1146

P.O. Box 480
Grand Falls-Windsor
Nfld. A2A 2J9
Tel. (709) 489-2561
Fax (709) 489-7243

P.O. Box 1074
Corner Brook
Nfld. A2H 6G3
Tel. (709) 634-3161
Fax (709) 634-5889

P.O. Box 860, Stn C
Happy Valley-Goose Bay
Labrador A0P 1C0
Tel. (709) 896-8666
Fax (709) 896-8999

P.O. Box 219
Wabush
Labrador. A0R 1B0
Tel. (709) 282-3638
Fax (709) 282-3355

Send To:

Susan Ewanick

Fax #

576 8744

Fax Message

DATE:

Oct 30/00

CIBC

Page

1

of 3

DETAILS

Susan

Attached is a letter of no interest covering a couple units
being sold by us to Ritchie Brothers.

If you would be so kind as to sign this and fax
back to me I would appreciate it.

My fax # is 709 368 1146

To / Thanks
John King

**IF THIS FAX MESSAGE DOES NOT PERTAIN TO YOU OR YOUR
DEPARTMENT PLEASE FAX BACK REPLY TO SENDER**



Scott Ferguson
Commercial Lending Specialist

Commercial Banking Centre
15th Floor, 1805 Barrington Street
Halifax, NS
B3J 3A3

February 14, 2001

DELIVERED BY FAX
709-368-1146

Hickman Equipment (1985) Limited
P.O. Box 8340, Station A
St. John's, Newfoundland
A1B 3N7

Attention: Mr. John King

Dear Mr. King,

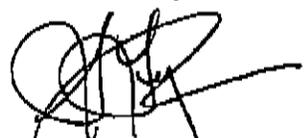
Re: Culease/CIBC/Hickman Equipment (1985) Limited - Priority Agreement

Further to my fax dated February 13, 2001, please find attached a copy of the Priority Agreement that has been executed by CIBC and Culease. Please review the document, and if it meets with your approval, complete and execute the document where indicated on Page 4.

Once signed, please fax the copy back to my attention and we will forward a fully executed fax copy to Culease. We will then forward three original copies to your attention for execution. Once the three parties have executed all three copies, we will send each party an executed copy for their file.

Please feel free to contact the undersigned if you have any questions on the above.

Yours truly,


Scott Ferguson



Commercial Banking Centre, St. John's Nfld.

PRIORITY AGREEMENT

This Agreement is entered into as of February 13, 2001 between Canadian Imperial Bank of Commerce ("CIBC"), Culease Financial Services (the "Creditor") and Hickman Equipment (1985) Limited (the "Customer").

Recitals:

CIBC and the Creditor (each a "Secured Party") conduct business with the Customer who has given or intends to give security to cash of them. The Secured Parties and the Customer have entered into this Agreement for the purpose, among other reasons, of establishing the priority of the Security of the Secured Parties.

Accordingly, for good and valuable consideration, the Secured Parties and the Customer agree to the following:

1. DEFINITIONS

- (a) "Asset" means any of the assets described in the Schedule to this Agreement. *(A)*
- (b) "Collateral" means all personal property, present and future, which the Customer owns or has an interest in.
- (c) "Proceeds" means identifiable or traceable property in any form derived directly or indirectly from any dealing with an Asset (including, among other things, any sale, lease, transfer or exchange of Assets, and any payment representing indemnity or compensation for loss of, damage to or destruction of an Asset or proceeds therefrom).
- (d) "Security" of a Secured Party means all security interests in the Collateral now or in the future held by that Secured Party for the payment of all or any part of the Customer's present or future indebtedness (whether matured or unmatured, direct or indirect, or absolute or contingent, however incurred) to that Secured Party.

2. PRIORITY OF SECURITY

- (a) **Priority of Security** *(see Schedule A)*
CIBC's Security has priority over all of the Creditor's Security except (i) as provided in paragraph 2(b) below, and (ii) that the Creditor's Security in an Asset and its Proceeds has priority over CIBC's Security in the Asset and its Proceeds to the extent of the unpaid principal amount of the value provided by the Creditor and used by the Customer to acquire rights in the Asset, plus interest and all reasonable expenses of repossession and realization of the Asset or its Proceeds.
- (b) **Bank Accounts with CIBC**
CIBC may operate and deal with any account or deposit of the Customer (including, among other things, applying any amount credited to those accounts or deposits against any of the Customer's

debt to CIBC from time to time) free of the Creditor's Security, until a CIBC branch where those accounts are maintained or those deposits are booked receives written notice from the Creditor stating that the Customer is in default in connection with the Creditor's Security. When the branch receives such a notice, CIBC need not pay any cheques drawn by the Customer on any of its accounts at that branch, and may prohibit the withdrawal or transfer of funds in such accounts or from such deposits, until CIBC is satisfied, on a reasonable basis, that it would not incur any liability or loss in doing so. In order to be effective, notice under this paragraph 2(b) must be addressed to the attention of the Manager of the Banking Office noted above. Notice under this paragraph 2(b) is effective on the date it is actually received, and only affects accounts and deposits of the Customer with the branch that receives the notice.

(c) **Application**

Except as provided in section 3, the priorities established under this Agreement apply despite the rules established under any personal property security legislation or other applicable law.

3. ENFORCEABILITY OF SECURITY

Each Secured Party represents and warrants to the other that its Security is enforceable, valid and perfected, and that it has not been, and will not be, subordinated or postponed to any other person, firm or corporation. If any of the foregoing is not true, now or in the future, this Agreement does not apply to the applicable portion of the Secured Party's Security, and any amounts paid to a Secured Party as a result of this Agreement in respect of that applicable portion will be held in trust for, and paid over to, the other Secured Party.

4. INFORMATION ABOUT THE COLLATERAL

Each Secured Party will, from time to time, upon reasonable request, provide the other in writing with any information requested by the other Secured Party that it has about the Collateral. The Customer consents to each of the Secured Parties providing the other Secured Party with such information.

5. RIGHT TO DEAL

A Secured Party may from time to time increase, reduce, discontinue or otherwise vary the Customer's credit facilities, grant extensions of time or other indulgences, take and give up security, accept compositions, grant releases and discharges and otherwise deal with the Customer and others as the Secured Party considers appropriate without affecting the rights and obligations of the other Secured Party or the Customer.

6. MISCELLANEOUS

(a) **Assignment of Security**

A Secured Party may not assign any of its Security unless the assignee consents in writing to be bound by this Agreement and agrees to provide the other Secured Party with a copy of that consent.

(b) **Termination**

A Secured Party may terminate this Agreement upon 10 days' prior written notice to the other Secured Party and the Customer. This Agreement does not govern transactions after that

NOTICE INFORMATION:

Commercial Banking Centre
Box 340, St John's NF A1C 5J9
Fax: 709-576-8744

NOTICE INFORMATION:

CULEASE FINANCIAL SERVICES
Box 3030, Regina, Sask. S4P 3G8
Fax (306) 566-7915

NOTICE INFORMATION:

HICKMAN EQUIPMENT (1985) LIMITED
P.O. Box 800, Regina, Sask. S4P 3G8
Fax (709) 668-1146

CANADIAN IMPERIAL BANK OF COMMERCE

By: [Signature]
Name: SAM FERREUSON
Title: CLS

By: [Signature]
Name: JOHN MACLEAN
Title: DIRECTOR

CULEASE FINANCIAL SERVICES

By: [Signature]
Name: S. BEANSON
Title: MANAGER, SPECIALTY Finance

By: [Signature]
Name: PATRICK T. HOFFERMAN
Title: MANAGER, OPERATIONS

HICKMAN EQUIPMENT (1985) LIMITED

By: [Signature]
Name: JOHN KINK
Title: REGIONAL SALES MANAGER

By: [Signature]
Name: HUBERT HUNT
Title: V.P.



Commercial Banking Centre, St. John's Nfld.

PRIORITY AGREEMENT

This Agreement is entered into as of February 16, 2001 between Canadian Imperial Bank of Commerce ("CIBC"), Contract Funding Group Inc (the "Creditor") and Hickman Equipment (1985) Limited (the "Customer").

Recitals:

CIBC and the Creditor (each a "Secured Party") conduct business with the Customer who has given or intends to give security to each of them. The Secured Parties and the Customer have entered into this Agreement for the purpose, among other reasons, of establishing the priority of the Security of the Secured Parties.

Accordingly, for good and valuable consideration, the Secured Parties and the Customer agree to the following:

1. DEFINITIONS

- (a) "Asset" means any of the assets described in the Schedule to this Agreement.
- (b) "Collateral" means all personal property, present and future, which the Customer owns or has an interest in.
- (c) "Proceeds" means identifiable or traceable property in any form derived directly or indirectly from any dealing with an Asset (including, among other things, any sale, lease, transfer or exchange of Assets, and any payment representing indemnity or compensation for loss of, damage to or destruction of an Asset or proceeds therefrom).
- (d) "Security" of a Secured Party means all security interests in the Collateral now or in the future held by that Secured Party for the payment of all or any part of the Customer's present or future indebtedness (whether matured or unmatured, direct or indirect, or absolute or contingent, however incurred) to that Secured Party.

2. PRIORITY OF SECURITY

(a) Priority of Security

CIBC's Security has priority over a) of the Creditor's Security except (i) as provided in paragraph 2(b) below, and (ii) that the Creditor's Security in an Asset and its Proceeds has priority over CIBC's Security in the Asset and its Proceeds to the extent of the unpaid principal amount of the value provided by the Creditor and used by the Customer to acquire rights in the Asset, plus interest and all reasonable expenses of repossession and realization of the Asset or its Proceeds.

(b) Bank Accounts with CIBC

CIBC may operate and deal with any account or deposit of the Customer (including, among other things, applying any amount credited to those accounts or deposits against any of the Customer's

debt to CIBC from time to time) free of the Creditor's Security, until a CIBC branch where those accounts are maintained or those deposits are booked receives written notice from the Creditor stating that the Customer is in default in connection with the Creditor's Security. When the branch receives such a notice, CIBC need not pay any cheques drawn by the Customer on any of its accounts at that branch, and may prohibit the withdrawal or transfer of funds in such accounts or from such deposits, until CIBC is satisfied, on a reasonable basis, that it would not incur any liability or loss in doing so. In order to be effective, notice under this paragraph 2(b) must be addressed to the attention of the Manager of the Banking Office noted above. Notice under this paragraph 2(b) is effective on the date it is actually received, and only affects accounts and deposits of the Customer with the branch that receives the notice.

(c) Application

Except as provided in section 3, the priorities established under this Agreement apply despite the rules established under any personal property security legislation or other applicable law.

3. ENFORCEABILITY OF SECURITY

Each Secured Party represents and warrants to the other that its Security is enforceable, valid and perfected, and that it has not been, and will not be, subordinated or postponed to any other person, firm or corporation. If any of the foregoing is not true, now or in the future, this Agreement does not apply to the applicable portion of the Secured Party's Security, and any amounts paid to a Secured Party as a result of this Agreement in respect of that applicable portion will be held in trust for, and paid over to, the other Secured Party.

4. INFORMATION ABOUT THE COLLATERAL

Each Secured Party will, from time to time, upon reasonable request, provide the other in writing with any information requested by the other Secured Party that it has about the Collateral. The Customer consents to each of the Secured Parties providing the other Secured Party with such information.

5. RIGHT TO DEAL

A Secured Party may from time to time increase, reduce, discontinue or otherwise vary the Customer's credit facilities, grant extensions of time or other indulgences, take and give up security, accept compositions, grant releases and discharges and otherwise deal with the Customer and others as the Secured Party considers appropriate without affecting the rights and obligations of the other Secured Party or the Customer.

6. MISCELLANEOUS

(a) Assignment of Security

A Secured Party may not assign any of its Security unless the assignee consents in writing to be bound by this Agreement and agrees to provide the other Secured Party with a copy of that consent.

(b) Termination

A Secured Party may terminate this Agreement upon 10 days' prior written notice to the other Secured Party and the Customer. This Agreement does not govern transactions after that

FEB 19 '01 15:34 FR CIBC HFX CBC
FEB 19 '01 15:34 FR HILSON, EQUITY LTD.

982 423 5847 TO 16132268091 P.04/11
982 423 5847 TO 17833681100 NJ.060 P.04/11

termination date, but continues to govern the parties' rights and obligations existing as of the date of termination.

(c) Notices

Except for a notice given under paragraph 2(b), any notice under this Agreement must be in writing and may be given by personal delivery or, except during any period when postal service is interrupted, by registered mail. Notice will be effective when delivered, or in the case of registered mail, four days following date of mailing, at the address opposite the recipient's name on the signature page of this Agreement, or addressed to such other address as the intended recipient previously specified by written notice in accordance with this paragraph.

(d) Further Assurances

Each party will sign all documents and perform all acts as may from time to time be reasonably necessary to give effect to this Agreement.

(e) Entire Agreement

This Agreement is the entire agreement between the parties. Except as set out in this Agreement, there are no representations, collateral agreements or conditions affecting the parties' rights and obligations. All amendments to or waivers of this Agreement must be in writing.

(f) Governing Law

This Agreement is governed by the law of Newfoundland.

This Agreement is effective as of the date recorded on the first page.

NOTICE INFORMATION:

Commercial Banking Centre
Box 340, St. John's NF A1C 5J9
Fax: 709-576-8744

CANADIAN IMPERIAL BANK OF COMMERCE

By: [Signature]
Name: SARA FERGUSON
Title: MANAGER - COMMERCIAL CREDIT

By: [Signature]
Name: JANICE FORAN
Title: BUSINESS CONSULTANT, FINANCE

NOTICE INFORMATION:

CONTRACT FUNDING GROUP
301-3 CHURCH ST. TORONTO, ON M5E 1M2
Fax: 416-364-9063

CONTRACT FUNDING GROUP INC.

By: [Signature]
Name: Nick Perron
Title: VP

By: _____
Name: _____
Title: _____

NOTICE INFORMATION:

HICKMAN EQUIPMENT (USA) LIMITED
P.O. Box 990, 5015 Road, 4th Flr, 300
Ford (704) 266-1146

HICKMAN EQUIPMENT (USA) LIMITED

By: [Signature]
Name: [Name]
Title: Regional Sales Manager

By: _____
Name: _____
Title: _____

FILE No. 469 02/20 '01 11:41 ID:CYBER LEASE

FAX:6132268091

02/19/01 MON 17:09 FAX 4163849817

+++ CYBER

PAGE 5 @008

FAX:6132268091

FILE No. 457 02/19 '01 15:14 ID:CYBER LEASE

FEB 19 '01 15:34 FR CIBC HFX CBC

902 423 5847 TO 16132268091 P.06/11
902 423 5847 TO 16132268091 P.06/11

Schedule

The following is the description of the Assets referred to in Section 1 of this Agreement:

1 John Deere 200 LC Excavator (Unit #C00107). SN: FF0200XS01668

UP



CREDIT FILE
(Credit Business)

Fax

Date: February 23, 2001

Number of pages including cover: 3

To: Name: Allison Mallette
Location: Cyberlease
Fax: 613-226-8091 Telephone: 613-226-1085

From: Name: Scott Ferguson
Manager, Commercial
Credit
Location: 15th Floor, 1809
Barrington Street
Halifax, NS
B3J 3A3
Fax: 902-423-5047 Telephone: 902-428-4585

Remarks:

Re: Hickman Equipment (1985) Limited

Please find attached, waivers for the excavator for Contract Funding Group Inc and the two backhoe loaders, base excavator and two loaders for Culease.

✓ cc. John King
Hickman Equipment
709-368-1146

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INTENDED RECIPIENT. IT MAY CONTAIN INFORMATION THAT IS PRIVATE AND CONFIDENTIAL. If you are not the intended recipient, DO NOT READ, copy, distribute or use this information. If you have received this fax in error, please notify us immediately by telephone at the above number (collect calls accepted). Thank You.

CE MESSAGE EST DESTINÉ EXCLUSIVEMENT À LA PERSONNE À QUI IL EST ADRESSÉ. SON CONTENU POURRAIT ÊTRE CONFIDENTIEL. S'il ne vous est pas destiné, VOUS NE DEVEZ PAS LE LIRE, le copier, le distribuer ni l'utiliser. Si vous recevez le présent document par erreur, veuillez nous en aviser immédiatement par téléphone, au numéro indiqué ci-dessus (nous acceptons les appels à frais virés). Merci de votre collaboration.

CONTRACT FUNDING GROUP INC.**WAIVER**

3 Church Street, Suite 305 Toronto, Ontario M5E 1M2

Date: February 15, 2001

To: CIBC
15th Floor, 1809 Barrington Street
Halifax, NS B3J 3A3**ATTENTION: SCOTT FERGUSON****RE: HICKMAN EQUIPMENT (1985) LIMITED ("Obligor")**

Contract Funding Group Inc. ("CFG") has or will be entering into, or taking assignment of, a lease agreement, a conditional sale contract, a security agreement and/or an hypothec (the "Contract") with the above-mentioned Obligor, to lease to, or finance for the Obligor, the equipment described hereto, together with all attachments, accessions, replacements thereto (the "Equipment").

Under the terms of the Contract, CFG has or will obtain title to and/or has or will obtain a security interest, charge and/or hypothec in or lien on the Equipment and the proceeds thereof (collectively, the "Collateral").

1 - 200 LC EXCAVATOR UNIT # C001071

S/N: FF0200X501668

A search of the public records indicates that you may have security interest, charge and/or hypothec in the Collateral.

Please indicate, by signing below, that you acknowledge that you have not assigned your security interest, charge and/or hypothec and that you do not have and will not in the future claim any right, title, interest, hypothec, charge or security in the Collateral which ranks in priority to the right, title, interest, hypothec, charge and security interest now or hereafter held by CFG in the Collateral. For greater certainty, you are acknowledging and agreeing that, as against you, CFG shall have a first priority right, title, interest, hypothec, charge and security interest in the Collateral.

Yours truly,

CONTRACT FUNDING GROUP INC.

For valuable consideration, and recognizing that CFG is relying on this acknowledgment in entering the Contract referred to herein, we hereby acknowledge and agree that we do not have and will not in the future claim any right, title, interest, hypothec, charge or security interest in the Collateral which ranks prior to the right, title, interest, hypothec, charge and security interest now or hereafter held by CFG in the Collateral, and we hereby postpone and subordinate to CFG for all purposes all rights, title, interests, hypothecs, charges and security interests that we may now have or hereafter acquire in the Collateral to all the rights, title, interests, hypothecs, charges and security interests that CFG may now have or hereafter acquire in the Collateral.

Dated this 23rd day of February 2001

CIBC (Secured Creditor)

Per: _____

Name:
Title:Manager - Commercial Credit

**CULEASE
FINANCIAL SERVICES**

2055 ALBERT STREET, P.O. BOX 3030
REGINA, SASKATCHEWAN S4P 3G8
TEL: 306-566-7910 FAX: 306-566-7915

John King / Gary Hilliard
709-368-1146 WAIVER

Date: February 8, 2001

To: Canadian Imperial Bank of Commerce
Water Street, Atlantic Place
St. John's, NFLD

Attn: Susan Ewanick
Tel: 709-576-8789
Fax: 709-576-8744

RE: HICKMAN EQUIPMENT (1985) LIMITED ("Obligor")

Culease Financial Services ("Culease") has or will be entering into, or taking assignment of, a lease agreement, a conditional sale contract, a security agreement and/or an hypothec (the "Contract") with the above-mentioned Obligor, to lease to, or finance for the Obligor, the equipment described hereto, together with all attachments, accessions, replacements and/or additions thereto (the "Equipment").

Under the terms of the Contract, Culease has or will obtain title to and/or has or will obtain a security interest, charge and/or hypothec in or lien on the Equipment and in all rentals and proceeds thereof (collectively, the "Collateral").

- 2 - New John Deere 3105G Backhoe Loaders
- 1 - New John Deere 450LC Base Excavator
- 1 - New 624H 4WD Loader
- 1 - New TCS4H T.C. Loader

S/N T0310SG895027, T0310SG895252,
S/N FF0450X090590
S/N DW624HX579048
S/N DWTC54HS79078

A search of the public records indicates that you may have security interest, charge and/or hypothec in the Collateral.

Please indicate, by signing below, that you acknowledge that you have not assigned your security interest, charge and/or hypothec and that you do not have and will not in the future claim any right, title, interest, hypothec, charge or security in the Collateral which ranks in priority to the right, title, interest, hypothec, charge and security interest now or hereafter held by Culease in the Collateral. For greater certainty, you are acknowledging and agreeing that, as against you, Culease shall have a first priority right, title, interest, hypothec, charge and security interest in the Collateral.

Yours truly,

[Signature]
Culease Financial Services

For valuable consideration, and recognizing that Culease is relying on this acknowledgment in entering the Contract referred to herein, we hereby acknowledge and agree that we do not have and will not in the future claim any right, title, interest, hypothec, charge or security interest in the Collateral which ranks prior to the right, title, interest, hypothec, charge and security interest now or hereafter held by Culease in the Collateral, and we hereby postpone and subordinate to Culease for all purposes all rights, title, interests, hypothecs, charges and security interests that we may now have or hereafter acquire in the Collateral to all the rights, title, interests, hypothecs, charges and security interests that Culease may now have or hereafter acquire in the Collateral.

Dated this 23rd day of February 2001.

CANADIAN IMPERIAL BANK OF COMMERCE

Per: *[Signature]*

Name: M.S. FERGUSON

Title:

[Signature]
MONTREAL - COMMERCIAL CREDIT

TOTAL P.02

TOTAL P.04



Fax

Date: February 23, 2001

Number of pages including cover: 3

To: Name: Allison Mallette
Location: Cyberlease
Fax: 613-226-8091 Telephone: 613-226-1085

From: Name: Scott Ferguson
Commercial Banking
Centre
Location: 15th Floor, 1809
Barrington Street
Halifax, NS
B3J 3A3
Fax: 902-423-5047 Telephone: 902-428-4585

Remarks:

Re: Hickman Equipment (1985) Limited

Please find attached, waivers for the excavator for MTC Leasing Inc and the two backhoe loaders and excavator for National Leasing Group.

✓ cc. John King
Hickman Equipment
709-368-1146

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INTENDED RECIPIENT. IT MAY CONTAIN INFORMATION THAT IS PRIVATE AND CONFIDENTIAL. If you are not the intended recipient, DO NOT READ, copy, distribute or use this information. If you have received this fax in error, please notify us immediately by telephone at the above number (collect calls accepted). Thank You.

CE MESSAGE EST DESTINÉ EXCLUSIVEMENT À LA PERSONNE À QUI IL EST ADRESSÉ. SON CONTENU POURRAIT ÊTRE CONFIDENTIEL. S'il ne vous est pas destiné, VOUS NE DEVEZ PAS LE LIRE, le copier, le distribuer ni l'utiliser. Si vous recevez le présent document par erreur, veuillez nous en aviser immédiatement par téléphone, au numéro indiqué ci-dessus (nous acceptons les appels à frais virés). Merci de votre collaboration.

MTC LEASING INC.

3310 SOUTH SERVICE ROAD, P.O. BOX 906, BURLINGTON, ONTARIO L7R

WAIVER

Date: February 15, 2001

To: CIBC
15TH Floor, 1809 Barrington Street
Halifax, NS B3J 3A3**ATTENTION: SCOTT FERGUSON**

RE: HICKMAN EQUIPMENT (1985) LIMITED ("Obligor")

MTC Leasing Inc. ("MTC") has or will be entering into, or taking assignment of, a lease agreement, a conditional sale contract, a security agreement and/or an hypothec (the "Contract") with the above-mentioned Obligor, to lease to, or finance for the Obligor, the equipment described hereto, together with all attachments, accessories, replacements thereto (the "Equipment").

Under the terms of the Contract, MTC has or will obtain title to and/or has or will obtain a security interest, charge and/or hypothec in or lien on the Equipment and the proceeds thereof (collectively, the "Collateral").

1 - 200LC EXCAVATOR S/N: FF0200X501664

A search of the public records indicates that you may have security interest, charge and/or hypothec in the Collateral.

Please indicate, by signing below, that you acknowledge that you have not assigned your security interest, charge and/or hypothec and that you do not have and will not in the future claim any right, title, interest, hypothec, charge or security in the Collateral which ranks in priority to the right, title, interest, hypothec, charge and security interest now or hereafter held by MTC in the Collateral. For greater certainty, you are acknowledging and agreeing that, as against you, MTC shall have a first priority right, title, interest, hypothec, charge and security interest in the Collateral.

Yours truly,

MTC LEASING INC.



For valuable consideration, and recognizing that MTC is relying on this acknowledgment in entering the Contract referred to herein, we hereby acknowledge and agree that we do not have and will not in the future claim any right, title, interest, hypothec, charge or security interest in the Collateral which ranks prior to the right, title, interest, hypothec, charge and security interest now or hereafter held by MTC in the Collateral, and we hereby postpone and subordinate to MTC for all purposes all rights, title, interests, hypothecs, charges and security interests that we may now have or hereafter acquire in the Collateral to all the rights, title, interests, hypothecs, charges and security interests that MTC may now have or hereafter acquire in the Collateral.

Dated this 23rd day of February 2001

CIBC (Secured Creditor)

Per:

Name
Title:

M/S. FERGUSON -

Manager - Commercial Credit

789 576 8744
PAGE 01
TOTAL P. 01

NATIONAL LEASING GROUP

WAIVER

1558 Wilson Place, Winnipeg, Manitoba R3T 0Y4

Date: February 21, 2001

To: **CTBC**
15th Floor, 1809 Barrington Street
Halifax, NS B3J 3A3

ATTENTION: SCOTT FERGUSON

RE: **HICKMAN EQUIPMENT (1985) LIMITED ("Obligor")**

National Leasing Group ("National") has or will be entering into, or taking assignment of, a lease agreement, a conditional sale contract, a security agreement and/or an hypothec (the "Contract") with the above-mentioned Obligor, to lease to, or finance for the Obligor, the equipment described hereto, together with all attachments, accessions, replacements thereto (the "Equipment").

Under the terms of the Contract, National has or will obtain title to and/or has or will obtain a security interest, charge and/or hypothec in or lien on the Equipment and the proceeds thereof (collectively, the "Collateral").

1 - NEW 2001 310SG BACKHOE LOADER	S/N: T0310SG894504
1 - NEW 2001 310SG BACKHOE LOADER	S/N: T0310SG695013
1 - NEW 2001 160LC EXCAVATOR	S/N: P00160X041613

A search of the public records indicates that you may have security interest, charge and/or hypothec in the Collateral.

Please indicate, by signing below, that you acknowledge that you have not assigned your security interest, charge and/or hypothec and that you do not have and will not in the future claim any right, title, interest, hypothec, charge or security in the Collateral which ranks in priority to the right, title, interest, hypothec, charge and security interest now or hereafter held by National in the Collateral. For greater certainty, you are acknowledging and agreeing that, as against you, National shall have a first priority right, title, interest, hypothec, charge and security interest in the Collateral.

Yours truly,


NATIONAL LEASING GROUP

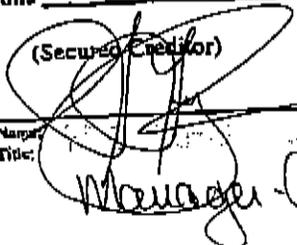
For valuable consideration, and recognizing that National is relying on this acknowledgment in entering the Contract referred to herein, we hereby acknowledge and agree that we do not have and will not in the future claim any right, title, interest, hypothec, charge or security interest in the Collateral which ranks prior to the right, title, interest, hypothec, charge and security interest now or hereafter held by National in the Collateral, and we hereby postpone and subordinate to National for all purposes all rights, title, interests, hypothecs, charges and security interests that we may now have or hereafter acquire in the Collateral to all the rights, title, interests, hypothecs, charges and security interests that National may now have or hereafter acquire in the Collateral.

Dated this 23rd day of February 2001

CTBC (Secured Creditor)

Per:

Name:
Title:


Manager - Commercial Credit

Scott

4pgs.

FAX COVER



CYBER LEASE

PARTNERS IN EQUIPMENT FINANCE

S H E E T

To: CIBC
Attn.: SCOTT FERGUSON
Fax: 902-423-5047
Subject: WAIVER LETTERS FOR HICKMAN EQUIPMENT
Date: February 15, 2001 (1:19pm)
Pages: 3 , including this cover sheet.

COMMENTS:

Please find attached two (2) waiver letters requiring your signature. Please fax back to my attention as soon as possible.

Thanks so much for your help.

Allison Mallette



From the desk of...

Allison Mallette
 Administration
 30 Concourse Gate, Suite 200
 Nepean, Ontario K2E 7V7

Tel: 613-226-1085
 Fax: 613-226-8091

STEWART MCKELVEY STIRLING SCALES

Brokers, Solicitors and Trademark Agents

Cabot Place
Suite 1100
100 New Gower Street
St. John's, Nfld
Canada A1C 6K3

Correspondence:
P.O. Box 5038
St. John's, Nfld
Canada A1C 5V3

Telephone: 709.722.4270
Fax: 709.722.4565
st-johns@smss.com
www.smss.com

Neil L. Jacobs
Direct Dial: 709.570.8888
njacobs@smss.com

CREDIT FILE

March 21, 2001

VIA FACSIMILE
NO. 576-8188

Canadian Imperial Bank of Commerce
Atlantic Place, P.O. Box 340
215 Water Street
St. John's, NF
A1C 5J9

Dear Sirs:

Re: **Hickman Equipment (1985) Limited**
Financing with CIBC Equipment Finance Limited

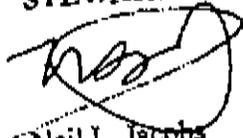
We write in relation to the captioned financing.

We enclose herewith a no interest letter respecting a financing by Hickman Equipment (1985) Limited which we request that you please have executed and returned to the undersigned at your earliest convenience.

We thank you in advance for your cooperation and look forward to hearing from you.

Yours very truly,

STEWART MCKELVEY STIRLING SCALES


Neil L. Jacobs

NLJ/sea
Encl.

March 27, 2001

CIBC Equipment Finance Ltd.
P.O. Box 1665
15th Floor, 1809 Barrington Street
Halifax, Nova Scotia
B3J 3A3

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

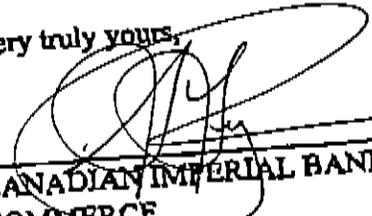
To Whom It May Concern:

We are the secured party under certain registrations made against the Debtor under the *Personal Property Security Act* ("PPSA"). We are advised that you propose to establish certain credit facilities in favour of the Debtor and that you have requested this letter as a condition to the establishment of such credit facilities.

In consideration of the establishment of your financing arrangements with the Debtor, we, our successors and assigns, confirm that we have no interest in the property charged by your Loan Agreement as more particularly described in Schedule "A" attached hereto.

This letter may be relied upon by you and your successors and assigns but not by any other party.

Very truly yours,


CANADIAN IMPERIAL BANK OF
COMMERCE

By M.S. FERGUSON

Title Manager - Commercial Credit



ROYAL BANK

Royal Bank of Canada
Corporate Banking - Leasing
9th floor, Royal Trust Tower
77 King Street West
Toronto, Ontario
M5W 1P8
Tel.: (877) 707-6925
Fax: (416) 364-9617

April 3, 2001

CANADIAN IMPERIAL BANK OF COMMERCE

PRIORITY AGREEMENT

HICKMAN EQUIPMENT (1985) LIMITED

The Royal Bank of Canada will be entering into a new Lease Agreement between ourselves as Lessor and the Lessee as Lessee, for the Equipment described as:

One John Deere 642H Loader s/n: DW644HDX579488, One 850C Dozer s/n: T0850CX896776, One 310G Backhoe s/n: T0310GX897091, One 310SG Backhoe s/n: T0310SG897091, Four 310SG Backhoe s/n: T0310SG897094, T0310SG897121, T0310SG897104, T0310SG896594 and One 310 backhoe s/n: T0310SG896618 (all John Deere Equipment)

Would you please confirm by signing and returning this letter by fax your agreement that:

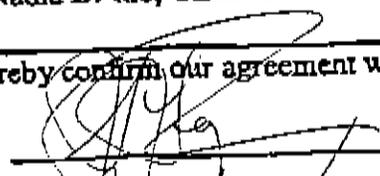
- (a) any security interest you may have, now or in the future, in the Equipment, including any proceeds (as defined in the Personal Property Security Act, 1989 of Ontario) of the Equipment, is hereby postponed and Subordinated in all respects to our interest in the Equipment and such proceeds; and
- (b) if you assign or transfer your security interest, you will have the Assignee or Transferee agree in writing to this postponement and subordination.

Yours truly,

ROYAL BANK OF CANADA

Per: 
Encl. Nadia Di Ilio, Client Services Ext 434

We hereby confirm our agreement with the provisions of this letter.

Per: 

Date: April 3/2001

2001-09-14
15:57

Atlantic PPSA
Search Results Report

/AAA003mJ
page 22

Province : Newfoundland and Labrador
Registration Type : PPSA Financing Statement
Registration Number : 522847
Registration Date/Time : 2000-09-06 / 11:06
Expiry Date : 2010-09-06
Your File Number : B-108

History of Registration Activity

Activity	Number	Date	Time	Expiry Date	Your File Number
Original	522847	2000-09-06	11:06	2010-09-06	B-108

Debtors ADDED DELETED
Debtor Type : Enterprise 522847
Richman Equipment (1985) Limited
P. O. Box 8340, Station "1"
St. John's NF Canada A1B 3N7

Secured Parties ADDED DELETED
Canadian Imperial Bank of Commerce 522847
Atlantic Place P. O. Box 340
215 Water Street
St. John's NF Canada A1C 5J9
Telephone : 709-576-8800
Fax : 709-576-8188

Tel: 576-8993 Kelly

General Description Collateral ADDED DELETED
All the debtors present and after acquired personal property as defined in the Personal Property Security Act, subject to a Priority Agreement with John Deere Limited dated July 5, 1985.

Washer

Registration Details

Province : Newfoundland and Labrador
Registration Type : PPSA Financing Statement
Registration Number : 517568
Registration Date/Time : 2000-09-01 / 18:13
Expiry Date : 2004-09-01
Your File Number : 31383-CS1

History of Registration Activity

Activity	Number	Date	Time	Expiry Date	Your File Number
----------	--------	------	------	-------------	------------------



ROYAL BANK

Royal Bank of Canada
Corporate Banking - Leasing
3 Church St # 305
Toronto, Ontario
M5E 1M2
Tel.: (877) 707-6925
Fax: (416) 364-9063

May 2nd 2001

ATTN: KELLY
CIBC

PRIORITY AGREEMENT

Re: HICKMAN EQUIPMENT (1985) LIMITED. ("Lessee")

The Royal Bank of Canada will be entering into a new Lease Agreement between ourselves as Lessor and the Lessee as Lessee, for the Equipment described as:

ALL EQUIPMENT, GOODS AND SERVICES AS FURTHER DETAILED ON INVOICE NO. LE0503 DATED MAY 1st, 2001 ISSUED BY HICKMAN EQUIPMENT (1985) LIMITED (SEE ATTACHED)

Would you please confirm by signing and returning this letter by fax your agreement that:

- (a) any security interest you may have, now or in the future, in the Equipment, including any proceeds (as defined in the Personal Property Security Act, 1989 of Ontario) of the Equipment, is hereby postponed and Subordinated in all respects to our interest in the Equipment and such proceeds; and
- (b) if you assign or transfer your security interest, you will have the Assignee or Transferee agree in writing to this postponement and subordination.

Yours truly,

ROYAL BANK OF CANADA

Per: Pamela Bunting

Encl. Pamela Bunting, Client Services Ext. 442

We hereby confirm our agreement with the provisions of this letter.

Per: _____
May 10/01

FAX TRANSMISSION**Royal Bank Lease Administration Group**

3 Church Street
Suite 305
Toronto, Ontario
M5E 1M2

Toll Free: (877) 707-6925
Extension: 442
Fax No.: (416) 364-9063

DATE: May 2nd 2001
FROM: Pamela Bunting

URGENT**PLEASE DELIVER THESE 3 PAGES TO:**

NAME: Kelly
COMPANY: CIBC
FAX NO.: 709 576 8188
MESSAGE: PRIORITY AGREEMENT REQUEST
RE: HICKMAN EQUIPMENT (1985) LIMITED

The Royal Bank of Canada has recently entered into a new Lease Agreement HICKMAN EQUIPMENT (1985) LIMITED. A PPSA Search in Ontario has indicated that you have a Security Interest in this Client.

Please review, sign and return the attached PRIORITY AGREEMENT REQUEST [via fax 416-364-9063] at your very earliest convenience. Feel free to call me directly at 1-877-707-6925 ext. 442 with any questions or concerns. Thanking you in advance for your assistance in this matter.

Yours very truly,

Pamela Bunting

ORIGINAL: By Fax Only To Follow By Mail To Follow By Courier

Notice of Confidentiality: The information in this facsimile may contain confidential information intended only for the person(s) named above. If you have received this fax in error, please notify us immediately by a collect telephone call to the above number and return this transmission to us by mail. We will reimburse you for postage. Please DO NOT disclose the contents to anyone by either dissemination, distribution or the copying of this communication.



ROYAL BANK

Royal Bank of Canada
Corporate Banking - Leasing
3 Church St # 305
Toronto, Ontario
M5E 1M2
Tel: (877) 707-6925
Fax: (416) 364-9063

May 2nd 2001

ATTN: KELLY

PRIORITY AGREEMENT

Re: HICKMAN EQUIPMENT (1985) LIMITED. ("Lessee")

The Royal Bank of Canada will be entering into a new Lease Agreement between ourselves as Lessor and the Lessee as Lessee, for the Equipment described as:

ALL EQUIPMENT, GOODS AND SERVICES AS FURTHER DETAILED ON INVOICE NO. LE0503 DATED MAY 1st, 2001 ISSUED BY HICKMAN EQUIPMENT (1985) LIMITED (SEE ATTACHED)

Would you please confirm by signing and returning this letter by fax your agreement that:

- (a) any security interest you may have, now or in the future, in the Equipment, including any proceeds (as defined in the Personal Property Security Act, 1989 of Ontario) of the Equipment, is hereby postponed and Subordinated in all respects to our interest in the Equipment and such proceeds; and
- (b) if you assign or transfer your security interest, you will have the Assignee or Transferee agree in writing to this postponement and subordination.

Yours truly,

ROYAL BANK OF CANADA

Per: Pamela Bunting

Encl. Pamela Bunting, Client Services Ext. 442

We hereby confirm our agreement with the provisions of this letter.

Per: _____

Date: _____

[Handwritten Signature]
May 3 / 01

HICKMAN
EQUIPMENT
HICKMAN EQUIPMENT (1985) LIMITED
P.O. BOX 100 RT. 2000, WINDY HILL, ONT.
TELEPHONE: (705) 262-2000 FAX: (705) 262-1100

TELEPHONE: (705) 262-2000
P.O. BOX 100, WINDY HILL, ONT. L0R 2G0
TELEPHONE: (705) 262-2000 FAX: (705) 262-1100
P.O. BOX 200, RT. 2000, WINDY HILL, ONT. L0R 2G0
TELEPHONE: (705) 262-2000 FAX: (705) 262-1100
P.O. BOX 310, WINDY HILL, ONT. L0R 2G0
TELEPHONE: (705) 262-2000 FAX: (705) 262-1100

A
M
C
E
S

SAME AS BELOW

ROYAL BANK OF CANADA
226 WATER STREET
ST. JOHN'S, NF A1C 1A9

DATE		PAGE	
05/01/2001		1	
ORDER NO.	PHONE NO.	INVOICE NO.	
		LE0503	
SHIP VIA	PURCHASE ORDER		
BUYER'S ADDRESS	PURCHASE DESCRIPTION		
	EQUIPMENT		
	WEP		

DESCRIPTION	AMOUNT
Stock #: C001274 ONE ONLY JOHN DEERE TC62H LOADER Serial #: DWTC62H579824 DWTC62H579824	203,324.34
Stock #: C001331 ONE ONLY JOHN DEERE 330LC EXCAVATOR Serial #: FFQ330X081150 FFQ330X081150	325,206.74
Stock #: C001329 ONE ONLY JOHN DEERE 200LC EXCAVATOR Serial #: FFQ200X501603 FFQ200X501803	205,710.36
Stock #: C001327 ONE ONLY JOHN DEERE 160LC Serial #: P00160X041653	166,210.49
Stock #: C001328 ONE ONLY JOHN DEERE 160LC Serial #: P00160X041684	166,210.49
Stock #: C001312 ONE ONLY JOHN DEERE 450 Serial #: FF0450X090027	41,790.62
Stock #: C001311 ONE ONLY JOHN DEERE 750 Serial #: FF0750X970041	819,406.81
Stock #: C001336 ONE ONLY JOHN DEERE 644H Serial #: DW644HX580105	245,536.75
Stock #: C001335 ONE ONLY JOHN DEERE 644H LOADER Serial #: DW644HX580090	245,536.75
Stock #: C001245 ONE ONLY JOHN DEERE 644H LOADER Serial #: DW644HX579886 DW644HX579886	245,928.63
Subtotal	3,064,860.78
H.S.T.	459,729.17
Total	3,524,589.95



G.S.T./H.S.T. REGISTRATION NO. R1021-45708

GOODS RECEIVED BY _____

DISCLAIMER OF WARRANTIES
Any reliance on the product and hereby are made solely by the purchaser. The seller hereby expressly disclaims all warranties, other than those of implied, including the implied warranty of merchantability or fitness for a particular purpose, and the seller hereby assumes no liability for any other person or entity for any liability in connection with the sale of the said products. Any transaction completed herein does not apply where prohibited by law. This is goods delivered sample in Vendor's name and not sold.



Fax

Date: May 9, 2001

Number of pages including cover: 7

To: Name: Ritchie Bros.
Auctioneers
Fax: 1-604-273-4223
Cc: Gary Hillyard
Fax: 368-1146

From: Name: Jennifer L. Lee
Commercial Banking
Location: 215 Water St., Atlantic
Place, 8th Floor
St. John's, NF
A1C 5J9
Fax: 709-576-8744 Telephone: 709-576-8789

Remarks:
As requested.

Regards,

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INTENDED RECIPIENT. IT MAY CONTAIN INFORMATION THAT IS PRIVATE AND CONFIDENTIAL. If you are not the intended recipient, DO NOT READ, copy, distribute or use this information. If you have received this fax in error, please notify us immediately by telephone at the above number (collect calls accepted). Thank You.

CE MESSAGE EST DESTINÉ EXCLUSIVEMENT À LA PERSONNE À QUI IL EST ADRESSÉ. SON CONTENU POURRAIT ÊTRE CONFIDENTIEL. S'il ne vous est pas destiné, VOUS NE DEVEZ PAS LE LIRE, le copier, le distribuer ni l'utiliser. Si vous recevez le présent document par erreur, veuillez nous en aviser immédiatement par téléphone, au numéro indiqué ci-dessus (nous acceptons les appels à frais virés). Merci de votre collaboration.



Ritchie Bros. Auctioneers (Canada) Ltd.
6200 Bridgeport Road, Richmond, BC Canada V6X 1S1

TEL: 604-273-2137 FAX: 604-273-4223

VIA FAX

RETURN FAX: 604-273-4223

May 1st, 2001.

CANADIAN IMPERIAL BANK OF COMMERCE
P.O. BOX 340
ST. JOHNS, NF A1C 5J9

ATTENTION: SUSAN EWANICK

Dear Sir:-

Please find following a Five (5) page Schedule "A" of equipment to be sold on behalf of Hickman Equipment in our Bolton, Ontario auction sale being held May 8th, 2001.

We ask that you sign and return fax this letter, acknowledging that you have NO INTEREST in the items listed, nor in the proceeds from the sale thereof.

Should you find that you do hold an interest, please call or fax the writer with a payout figure, good through May 29th, 2001.

Thank you for you anticipated prompt attention and co-operation.

Sincerely,

RITCHIE BROS. AUCTIONEERS (CANADA) LTD.

A handwritten signature in black ink, appearing to read 'B. Davis'.

Per: Bobbi Davis

CANADIAN IMPERIAL BANK OF COMMERCE

A handwritten signature in black ink, appearing to read 'Susan Ewanick', written over a horizontal line.

Sale Information:

Belton, Ontario
2001/05/08
2001136

Owner's Detail Report

T02

Print Date: 2001/05/08
Print Time: 07:51

Owner T02 HICKMAN EQUIPMENT (1985) LTD
PO BOX 820 STN MOUNT PEARL
MOUNT PEARL NF, CAN A1N 3C8

WILLIAM PARSONS
Phone: 709 3689660
Fax: 709 3680403
BRAD PEEVER

Lot	Sed	Description	S/N
361	49	Cat 968B Wheel Loader	57H00345
392	35	John Deere 310C 4x4 Loader Backhoe	T0310CF767728
401	34	John Deere 410B Loader Backhoe	T04109B725984
473	5	Terex 2366 6x6 Articulated Dump Truck	A21598
474	4	Terex 2366 6x6 Articulated Dump Truck	HA21154
521	33	John Deere 450C Crawler Loader	237594
560	50	1994 Cat 330L Hydraulic Excavator	8FK00848
567	23	John Deere 992D LC Hydraulic Excavator	FF992DL005210
568	26	1997 John Deere 892E LC Hydraulic Excavator	FF892EX012211
569	58	1997 John Deere 892E LC Hydraulic Excavator	FF892EX012179
570	25	1996 John Deere 892E LC Hydraulic Excavator	FF892EX011651
571	24	1995 John Deere 892E LC Hydraulic Excavator	FF892EX011483
572	27	1992 John Deere 892D Hydraulic Excavator	FF892DL008437
575	37	1991 Hitachi EX270LC Hydraulic Excavator	1586412
576	28	1993 John Deere 790E LC Hydraulic Excavator	FF790EL010459
577	29	1993 John Deere 790E LC Hydraulic Excavator	FF790EL010209
578	30	John Deere 780D LC Hydraulic Excavator	FF790DL008386

All amounts stated in CAD

Page: 1



Print Date: 2001/05/09
Print Time: 07:51

Owner's Detail Report

T02

Sale Information:

Bolton, Ontario

2001/05/08

2001136

Lot	Sed	Description	S/N
583	31	1992 John Deere 680E LC Hydraulic Excavator	DW690EL536426
631	40	Cedarapids 2436 Jaw Crusher	31777
636	78	Symons 4 1/4 Standard Cone Crusher	4584
638	79	Telesmith 48S Cone Crusher	505M2204
639	42	Cedarapids Roll Crusher	
640	83	Universal 2036 Jaw Crusher	115X90
641	49	Cedarapids Jaw Crusher	128X56
642	87	Cedarapids 1248 Jaw Crusher	
643	20	Lippman Jaw Crusher	550261
644	21	Kue-Ken 17 x 42 In. Skid Mounted Jaw Crusher	107S611767
645	88	Jaw Crusher	
646	84	Universal Jaw Crusher	111X17
647	86	Cedarapids 2436 Jaw Crusher	23941
648	52	Barmac Rotopactor MKII Impact Crusher	6710384
649	51	Barmac 9600 Duopactor Skid Mounted Impact Crusher	
650	53	Barmac Rotopactor MKII Impact Crusher	747385
651	69	Barmac 8000 Duopactor Skid Mounted Impact Crusher	2241458
652	82	Cedarapids 4033 Hammermill	25242
653	36	Jeffrey 45 Hammermill	12631

All amounts stated in CAD

Page: 2



Print Date: 2001/05/09
Print Time: 07:51

Owner's Detail Report

T02

Sale Information:

Bolton, Ontario

2001/05/08

2001136

Lot	Seq	Description	S/N
654	69	Koppers Hammermill Crusher	186
655	70	Hammermill Impact Crusher	46351
656	19	Symons/Nordberg 4 1/4 Short Head Cone Crusher	4321
657	11	Symons 4 Ft Short Head Cone Crusher	4583
658	68	Telesmith 48FC Cone Crusher	7358
659	10	Symons 3 Ft Short Head Cone Crusher	31014
660	9	Symons 3 Ft Short Head Cone Crusher	31193
661	12	Symons 3 Ft Short Head Cone Crusher	3730
662	89	Telesmith 36FC Cone Crusher	7608
663	7	Telesmith Cone Crusher	6422
664	66	Telesmith Cone Crusher	6290
665	6	Telesmith Cone Crusher	7466
666	14	Symons 20 In. Cone Crusher	
667	80	Symons Cone Crusher	
668	91	2 Oil Cooler Tanks For Cone Crusher	
		Plant	
677	90	Read RD60A 6 Ft 6 In. x 10 Ft 2 Deck Screening Plant	786389
678	76	Read 90 6 Ft 6 In. x 10 Ft 2 Deck Screening Plant	708388
679	2	Ty-Rock 6 x 20 Ft 3 Deck Screen	
680	74	Allis-Chalmers 7 x 16 Ft 3 Deck Screen	
681	16	Seco 6 x 16 Ft 3 Deck Screen	

All amounts stated in CAD

Page: 3

Sale Information:

**Bolton, Ontario
2001/05/08
2001136**



Owner's Detail Report

Print Date: 2001/05/09
Print Time: 07:51

T02

Lot	Sec	Description	S/N	Sold Price	Buyer
682	18	Nordberg 5 x 16 Ft 3 Deck Screen			759
685	55	Allis-Chalmers 5 x 12 3 Deck Vibratory Screen	052331		
686	72	Hewitt Robbins EM9 4 x 12 Ft 5 Deck Screen	EMS7626		
688	3	Ty-Rock F900 6 x 16 Ft 2 Deck Vibratory Screen	6551		
689	1	Ty-Rock F900 6 x 16 Ft 2 Deck Vibratory Screen	20788		
690	61	Cedarapids 5 x 14 Ft 2 Deck Screen			
691	44	Cedarapids 5 x 14 Ft 2 Deck Screen			
692	71	Cedarapids 5 x 14 Ft 2 Deck Screen	S82311		
693	73	Simplicity Engineering 4 x 12 Ft 2 Deck Screen	BH2455		
694	56	Armadillo 4 x 10 Ft 2 Deck Screen	41591		
695	22	Protec 2DGA366 3 x 6 ft Vibratory Screen	101366872DGA		
696	64	Para-Mount Vibratory Feeder			
699	67	Syntron XPMF200C Mechanical Feeder	657693790		
700	8	Syntron XPMF200C Mechanical Feeder	657695790		
701	65	Syntron F450A Vibratory Flow Feeder	413059275		
702	81	30 In. x 10 ft Plate Feeder			
711	77	Portable Stacking Conveyor	994877		
719	48	Cat SB47 545 KW Skid Mounted Generator Set	6FA06900		
720	46	Condec 275 KW Skid Mounted Generator Set	A85512BE		
728	62	Cat D553 Skid Mounted Power Unit	46B5628		

All amounts stated in CAD

Page: 4



Print Date: 2001/05/08
Print Time: 07:51

Owner's Detail Report

T02

Sale Information:

Bolton, Ontario
2001/05/08
2001136

Lot	Sed	Description	SN
730	85	Portable Power Unit	

Total for this Owner

Lots subject to do:

Proceeds of Lots
Proceeds of Lots

All amounts stated in CAD

Page: 5

HICKMAN EQUIPMENT

P.O. Box 820
Mount Pearl
Nfld. A1N 3C8
Tel. (709) 368-9660
Fax (709) 368-1146

P.O. Box 480
Grand Falls-Windsor
Nfld. A2A 2J9
Tel. (709) 489-2561
Fax (709) 489-7243

P.O. Box 1074
Corner Brook
Nfld. A2H 6G3
Tel. (709) 634-3161
Fax (709) 634-5889

P.O. Box 860, 5th C
Happy Valley-Goose Bay
Labrador A0P 1C0
Tel. (709) 896-8666
Fax (709) 896-8999

P.O. Box 219
Wabush
Labrador. A0R 1B0
Tel. (709) 282-3638
Fax (709) 282-3355

Send To:

JENNIFER LEE

Fax #

576-8744

CIBC

Page

1

Of

7

Fax Message

DATE:

5/09/01

DETAILS

JENNIFER

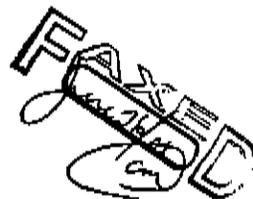
AS DISCUSSED.

THANKS

**IF THIS FAX MESSAGE DOES NOT PERTAIN TO YOU OR YOUR
DEPARTMENT PLEASE FAX BACK REPLY TO SENDER**



HICKMAN EQUIPMENT



P.O. Box 820
Mount Pearl
Nfld. A1N 3C8
Tel. (709) 368-9660
Fax (709) 368-1146

P.O. Box 480
Grand Falls-Windsor
Nfld. A2A 2J9
Tel. (709) 489-2561
Fax (709) 489-7243

P.O. Box 1074
Corner Brook
Nfld. A2H 6G3
Tel. (709) 634-3161
Fax (709) 634-5889

P.O. Box 860, Sm C
Happy Valley-Goose Bay
Labrador AOP 1C0
Tel. (709) 896-8666
Fax (709) 896-8999

P.O. Box 219
Wabush
Labrador. AOR 1B0
Tel. (709) 282-3638
Fax (709) 282-3355

Send To:

CANADIAN Imperial Bank of Commerce
Fax # 709-576-8744

Fax Message

Page 1 of 6

DATE: June 25/01

DETAILS

Please fax back to John King @ 368 1146

John King

IF THIS FAX MESSAGE DOES NOT PERTAIN TO YOU OR YOUR DEPARTMENT PLEASE FAX BACK REPLY TO SENDER



Ritchie Bros. Auctioneers (Canada) Ltd.
9200 Bridgeport Road, Richmond, BC Canada V6X 1S1

TEL: 604-273-2137 FAX: 604-273-4223

VIA FAX 709-576-8744

RETURN FAX: 604-273-4223

JUNE 12TH, 2001.

CANADIAN IMPERIAL BANK OF COMMERCE
P.O. BOX 340
ST. JOHNS, NF A1C 5J9

ATTENTION: JENNIFER L. LEE - COMMERCIAL BANKING

Dear Sir:

Please find following a FOUR (4) page Schedule "A" S of equipment to be sold on behalf of Hickman Equipment in our TRURO, NS - JUNE 12, 2001 and MONTREAL, PQ - JUNE 19, 2001 auction sales being held.

We ask that you sign and return fax this letter, acknowledging that you have NO INTEREST in the items listed, nor in the proceeds from the sale thereof.

Should you find that you do hold an interest, please call or fax the writer with a payout figure, good through July 10, 2001.

Thank you for you anticipated prompt attention and co-operation.

Sincerely,

RITCHIE BROS. AUCTIONEERS (CANADA) LTD.

A handwritten signature in black ink, appearing to read 'B. Davis'.

Per: Bobbi Davis

CANADIAN IMPERIAL BANK OF COMMERCE

A handwritten signature in black ink, appearing to read 'J Lee', written over a horizontal line.

HICKMAN EQUIPMENT (1985) LTD

- 1 Grp: WLR
1986 CATERPILLAR 966D WHEEL LOADER
s/n 94X05335
c/w: bkt, cab, 25.5x25
- 2 Grp: WLR
JOHN DEERE 644B WHEEL LOADER
s/n JD644B350269
c/w: bkt, cab
- 3 Grp: OCR
CEDARAPIDS COMMANDER 544 PORTABLE JAW/ROLL CRUSHER
s/n 33822
c/w: Cat 3406, 4 x 12 ft 2 deck screen, 8 x 5 ft fdr w/grizzly, 30 x 24
in. feed conv, 24 in. roll, 30 in x 15 ft close circuit conv, 30 in. x 24
ft disch conv
- 4 Grp: RCR
UNIVERSAL SENIOR 293Q PORTABLE TWIN ROLL CRUSHER
s/n 539X54
c/w: 100 hp, 30 in. rolls, (2) 36 in. x 6 ft side disch conv, fdr
- 5 Grp: CCR
SYMONS 3 FT PORTABLE CONE CRUSHER
c/w: 100 hp, 30 in. x 28 ft disch conv
- 6 Grp: CNV
30 IN. X 52 FT CONVEYOR
- 7 Grp: CNV
30 IN. X 52 FT CONVEYOR
- 8 Grp: CNV
30 IN. X 58 FT CONVEYOR
- 9 Grp: RTC
1970 GROVE RT58 ROUGH TERRAIN CRANE
s/n 3047
c/w: 6 cyl. hook block, 3 section beam, 17.5x25
- 10 Grp: SCF
ASSINCK 200 5 X 12 FT 2 DECK PORTABLE SCREENING PLANT
s/n 0014
c/w: Deutz 4 cyl, 9 x 9 ft bin fdr, 36 in. x 32 ft feed conv, 36 in. x 32
ft disch conv, 30 in. x 24 ft side conv, T/A mtd
- 11 Grp: JCR
PIONEER 2036 PORTABLE PRIMARY JAW CRUSHER
s/n XNW2231
c/w: 100 hp, 3 x 16 ft vib fdr, 36 in. x 30 ft disch conv, switchgear,
T/A chassis
- 12 Grp: RCR
CEDARAPIDS PORTABLE ROLL CRUSHER

JUN. 13. 2001

7:53AM RITCHIE BROS AUCTIONS
Schedule A

NO. 434
Page

P. 20/27
2

HICKMAN EQUIPMENT (1985) LTD

c/w: 13 ft 6 in. x 5 ft bin fdr, 30 in. x 16 ft under bin disch conv, 26
x 36 rolls, 30 in. x 14 ft disch conv, Tri/A chassis

13

Exp: CCR

SYMONS 4 1/4 FT STANDARD PORTABLE CONE CRUSHER

s/n 12T

c/w: 150 hp, 7 x 13 ft bin fdr, 36 in. x 14 ft feed conv, 36 in. x 15 ft
disch conv, T/A chassis

H01-2001-06-12-16.05.50

** END OF REPORT **

HICKMAN EQUIPMENT (1985) LTD

- 1 Grp: MGR
1969 WABCO 660 MOTOR GRADER
s/n P660BGMT21019
c/w: 12 ft MB, snow wing, 14.00x24
Hours: 9,884
UC-Rubber: 40%
Condition: fair
Repairs & Refurbishing: Clean, Seat, Glass,
R&R Estimate: 500.00
Location: Corner Brook
- 2 Grp: SKD
1998 TIMBERJACK 10108 4X4 FORWARDER
s/n 247052
c/w: dozer, Loglift 61F boom w/grapple, flotation tires
Hours: 2,930
UC-Rubber: 40%
Condition: good
Repairs & Refurbishing: Clean.
R&R Estimate: 1,000.00
Location: Port Aux Basque
- 3 Grp: SKD
1985 TREE FARMER C5D 4X4 FORWARDER
s/n C531-005
c/w: dozer, Cranab loader
Hours: 3,348
UC-Rubber: 20%
Condition: fair
Repairs & Refurbishing: Clean, Seat.
R&R Estimate: 400.00
Location: Grand Falls
- 4 Grp: DEL
1989 ROTINE RAPID 6X6 PROCESSOR
s/n R40506
c/w: head
Hours: 35,596
UC-Rubber: 30%
Condition: fair+
Repairs & Refurbishing: Clean.
R&R Estimate: 2,000.00
Location: Grand Falls
- 5 Grp: HEX
1988 CASE 125CKB HYDRAULIC EXCAVATOR
s/n 0125050274591
c/w: bkt, stick
Hours: 11,840
UC-Rubber: 40%
Condition: fair-good
Repairs & Refurbishing: Clean.
R&R Estimate: 150.00
Location: Corner Brook

HICKMAN EQUIPMENT (1985) LTD

- 6 Grp: DEL
1997 CATERPILLAR 320BL HARVESTER
s/n 6CR01654
c/w: Denharco SH600 head, *NOT USA EPA CERTIFIED*
Hours: 9,294
UC-Rubber: 40%
Condition: fair+
Repairs & Refurbishing: Clean.
R&R Estimate: 2,000.00
Location: Corner Brook

- 7 Grp: DEL
1993 CATERPILLAR 320L HARVESTER
s/n 9KK00163
c/w: Denharco 550 head
Hours: 9,771
UC-Rubber: 60%
Condition: good
Repairs & Refurbishing: Clean, Seat.
R&R Estimate: 500.00
Location: Corner Brook

- 8 Grp: HEM
1993 CATERPILLAR 320L HYDRAULIC EXCAVATOR
s/n 9KK00385
c/w: bkt, stick
Hours: 11,980
UC-Rubber: 10%, pads 60%
R&R Estimate: 1,000.00
Location: Corner Brook

- 9 Grp: GEN
NEWAGE 625 KW GENERATOR SET
s/n 202722
c/w: Detroit, mtd in van
Location: St John s

- 11 Grp: OCR
CEDARAPIDS 211 JAW/ROLL PLANT
s/n 12923
c/w: Detroit, 2 x 11 ft 2 deck screen, 24 in. conv, T/A mtd
Condition: Poor-fair

- 12 Grp: VNR
CAN-CAR S/A VAN TRAILER
s/n 16VA016721
c/w: switchgear

B01-2001-06-13-08.16.35

* END OF REPORT **

SENT SEPT 14
9:00 AM

FAXED

ABN-AMRO Leasing

5515 North Service Road
Burlington, ON
L7L 6G4
PH: (905) 331-2000 FX: (905) 331-2020

September 11, 2001

CANADIAN IMPERIAL BANK OF COMMERCE
P.O. BOX 340
ST. JOHN'S, NF
A1C 5J9

Sent Via Fax:

Attention:

Re: HICKMAN EQUIPMENT (1985) LIMITED

PPSA registrations against the above subject company indicates that you have security interest(s) with respect to the assets of the subject company. Please confirm that your security interest does not include the equipment described below, its attachments and its proceeds (including sale and rentals) derived from it and that any interest it may have in it shall be postponed hereafter and subordinated to ABN AMRO Leasing a Division of ABN AMRO Bank Canada ("ABN AMRO Leasing").

John Deere Excavator 330LC	FF0330X081257	John Deere Excavator 330LC	FF0330X081261
John Deere Excavator 270LC	FF0270X070912	John Deere Excavator 270LC	FF0270X070925
John Deere Excavator 270LC	FF0270X070918	John Deere Excavator 270LC	FF0270X07093
John Deere Excavator 270LC	FF0270X070942	John Deere Excavator 270LC	FF0270X070926

Please confirm by fax to (905) 331-2020. Thank you in advance.

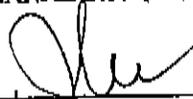
ABN AMRO Leasing

Lynn Beckett
Business Development Manager

The undersigned confirms that it does not have a security interest in the equipment described above, its attachments or proceeds and further confirms that any interest we may have is hereby postponed and subordinated to the interest of ABN AMRO Leasing in the equipment, attachments or proceeds.

CANADIAN IMPERIAL BANK OF COMMERCE

Signed:



Title:

Associate Commercial Credit

Date:

Sept 14 / 01

HICKMAN EQUIPMENT

P.O. Box 820
Mount Pearl
Nfld. A1N 3C8
Tel. (709) 368-9660
Fax (709) 368-1146

P.O. Box 480
Grand Falls-Windsor
Nfld. A2A 2J9
Tel. (709) 489-2561
Fax (709) 489-7243

P.O. Box 1074
Corner Brook
Nfld. A2H 6G3
Tel. (709) 634-3161
Fax (709) 634-5889

P.O. Box 860, 5th C
Happy Valley-Goose Bay
Labrador A0P 1C0
Tel. (709) 896-8666
Fax (709) 896-8999

P.O. Box 219
Wabush
Labrador. A0R 1B0
Tel. (709) 282-3638
Fax (709) 282-3355

Send To:

C.I.B.C.

Fax #

Att. Mr. John Webber

Page

1 Of *2*

Fax Message

DATE:

DETAILS

*Could you please confirm for AOR AORR, on the
attached letter that CIBC has no interest in the listed
equipment and return to me via fax (368-1146)*

*John King
748-2003*

**IF THIS FAX MESSAGE DOES NOT PERTAIN TO YOU OR YOUR
DEPARTMENT PLEASE FAX BACK REPLY TO SENDER**



CHARTER FINANCIAL

RECEIVED
JUL 22 2002

Tel-709-722-1722
Fax-709-722-1771
Toll Free 1-800-563-0678

21 Mews Place
Corporate Office Centre
P.O.Box 13968 Stn 'A'
St. John's, NFLD.
A1B4G8

FAX

No. of Pages 2 (including cover sheet) DATE: Sept/14/2001
To: JENNIFER Lee
Company: CIBC Fax # 576-8744
FROM: JOHN O'Reilly

MESSAGE: Ms. Lee
AS DISCUSSED WITH MR. WEBBER. WOULD
YOU PLEASE SIGN + DATE THE WAIVER
LETTER + FAX BACK TO ME AS SOON
AS POSSIBLE.
THANK YOU FOR YOUR CO-OPERATION.

John O'Reilly

CHARTER FINANCIAL

Charter Financial Company
505 Consumers Road, Suite 402
Toronto, Ontario M2J 4V8

TEL 416.498.6464
FAX 416.498.9240

Date: Sept. 14, 2001

Canadian Imperial Bank Of Commerce
Atlantic Place, 215 Water St., P.O.Box 340
St. John's, NF. A1C5J9

Attention: Jennifer Lee
Dear : Ms. Lee

Re: Hickman Equipment (1985) Ltd., (the "Debtor")
1269 Topsail Road
Mount Pearl, NF.
A1N3C8

Charter Financial Company ("Charter") is contemplating entering into or has entered into a transaction with the Debtor whereby Charter is providing or has provided financing to the Debtor in connection with

1 - 2001 John Deere 270LC Excavator, Serial # FF0270X070947

1 - 2001 John Deere 330LC Excavator, Serial # FF0330X081260

1 - 2001 John Deere 330LC Excavator, Serial # FF0330X081279 (together with all parts, accessories, replacements, additions, accessions and all proceeds therefrom are collectively referred to as the ("Equipment")). We understand that you may have a security interest in the Debtors assets. As a condition of the contemplated transaction, Charter requires that you sign and return the enclosed duplicate copy of this letter to the undersigned at your earliest convenience to state your agreement that:

1. You do not object to said transaction
2. Charter's interest in the Equipment has priority to any interest you may now or in the future have therein and that you will not assert or claim an interest in priority to Charter's interest in the Equipment.
3. Any security interest you have in the Equipment is subordinated to Charter's security interest therein.
4. You will execute any further documents Charter may reasonably require to register and/or better evidence such subordination, provided that the costs of such documentation and/or registration shall be at Charter's expense; and
5. This confirmation and agreement may be relied upon by Charter, its principals, successors and assigns

Thank you for your assistance

Yours truly,
John M. O'Reilly, on behalf of
Charter Financial Company

By: John M. O'Reilly
(Authorized signing officer)

Name/Title: _____

Agreed this 14 day of Sept 2001

Canadian Imperial Bank Of Commerce

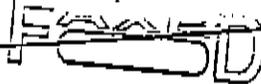
By: J Lee
(Authorized Signing Officer)

Name/Title: Associate Commercial Credit
Jennifer Lee



CHARTER FINANCIAL

Tel-709-722-1722
Fax-709-722-1771
Toll Free 1-800-563-0678



21 Mews Place
Corporate Office Centre
P.O.Box 13968 Stn 'A'
St. John's, NFLD.
A1B4G8

FAX

No. of Pages 2 (including cover sheet) DATE: Sept/14/2001

To: JENNIFER Lee

Company: CIBC Fax # 576-8744

FROM: JOHN O'Reilly

MESSAGE: Ms. Lee

AS DISCUSSED WITH MR. WEBBER. WOULD
YOU PLEASE SIGN + DATE THE WAIVER
LETTER + FAX BACK TO ME AS SOON
AS POSSIBLE.

THANK YOU FOR YOUR CO-OPERATION.

John O'Reilly



CHARTER FINANCIAL

Charter Financial Company
505 Consumers Road, Suite 402
Toronto, Ontario M2J 4V8

TEL 416.498.6464
FAX 416.498.9240

Date: Sept. 14, 2001

Canadian Imperial Bank Of Commerce
Atlantic Place, 215 Water St., P.O.Box 340
St. John's, NF. A1C5J9

Attention: Jennifer Lee
Dear : Ms. Lee

Re: Hickman Equipment (1985) Ltd., (the "Debtor")
1269 Topsall Road
Mount Pearl, NF.
A1N3C8

Charter Financial Company ("Charter") is contemplating entering into or has entered into a transaction with the Debtor whereby Charter is providing or has provided financing to the Debtor in connection with

- 1 - 2001 John Deere 270LC Excavator, Serial # FF0270X070947
- 1 - 2001 John Deere 330LC Excavator, Serial # FF0330X081260
- 1 - 2001 John Deere 330LC Excavator, Serial # FF0330X081279

(together with all parts, accessories, replacements, additions, accessions and all proceeds therefrom are collectively referred to as the ("Equipment"). We understand that you may have a security interest in the Debtors assets. As a condition of the contemplated transaction, Charter requires that you sign and return the enclosed duplicate copy of this letter to the undersigned at your earliest convenience to state your agreement that:

1. You do not object to said transaction
2. Charter's interest in the Equipment has priority to any interest you may now or in the future have therein and that you will not assert or claim an interest in priority to Charter's interest in the Equipment.
3. Any security interest you have in the Equipment is subordinated to Charter's security interest therein.
4. You will execute any further documents Charter may reasonably require to register and/or better evidence such subordination, provided that the costs of such documentation and/or registration shall be at Charter's expense: and
5. This confirmation and agreement may be relied upon by Charter, its principals, successors and assigns

Thank you for your assistance

Yours truly,
John M. O'Reilly, on behalf of
Charter Financial Company

By: John M. O'Reilly
(Authorized signing officer)

Name/Title: _____

Agreed this 14 day of Sept 2001

Canadian Imperial Bank Of Commerce

By: J Lee
(Authorized Signing Officer)

Name/Title: Associate Commercial Credit
Jennifer Lee

HICKMAN EQUIPMENT

Tel (709) 368-8660

Fax (709) 368-1146

P.O. Box 820
1269 Topsail Road
Mount Pearl, NF
A1N 3C8

1d2

25-Sep-01

Canadian Imperial Bank Of Commerce
P.O. Box 340
St. John's, Nfld
A1C 5J9

*Jennifer
forwarded Sept. 25/01*

Attention Mr. John Webber

I received an e-mail from ABN AMRO regarding a letter of no interest that you had signed for us earlier this month. Apparently they had made an error in one of the serial numbers on the letter and have asked that we get the corrected letter I have attached signed.

Sorry for any inconvenience this my cause.

Regards
[Signature]
John King



ABN-AMRO Leasing

5515 North Service Road
Burlington, ON
L7L 6G4
PH: (905) 331-2000 FX: (905) 331-2020

September 25, 2001

CANADIAN IMPERIAL BANK OF COMMERCE
P.O. BOX 340
ST. JOHN'S, NF
A1C 5J9

Sent Via Fax:

Attention:

Re: HICKMAN EQUIPMENT (1985) LIMITED

PPSA registrations against the above subject company indicates that you have security interest(s) with respect to the assets of the subject company. Please confirm that your security interest does not include the equipment described below, its attachments and its proceeds (including sale and rentals) derived from it and that any interest it may have in it shall be postponed hereafter and subordinated to ABN AMRO Leasing a Division of ABN AMRO Bank Canada ("ABN AMRO Leasing").

John Deere Excavator 330LC	FF0330X081257	John Deere Excavator 330LC	FF0330X081261
John Deere Excavator 270LC	FF0270X070912	John Deere Excavator 270LC	FF0270X070925
John Deere Excavator 270LC	FF0270X070918	John Deere Excavator 270LC	FF0270X070938
John Deere Excavator 270LC	FF0270X070942	John Deere Excavator 270LC	FF0270X070926

Please confirm by fax to (905) 331-2020. Thank you in advance.

ABN AMRO Leasing

Lynn Beckett
Business Development Manager

The undersigned confirms that it does not have a security interest in the equipment described above, its attachments or proceeds and further confirms that any interest we may have is hereby postponed and subordinated to the interest of ABN AMRO Leasing in the equipment, attachments or proceeds.

CANADIAN IMPERIAL BANK OF COMMERCE

Signed:

Jennifer Lee

Title:

Associate, Commercial Credit

Date:

Sept 25/01

HICKMAN EQUIPMENT

P.O. Box 820
Mount Pearl
Nfld. A1N 3C8
Tel. (709) 368-9660
Fax (709) 368-1146

P.O. Box 480
Grand Falls-Windsor
Nfld. A2A 2J9
Tel. (709) 489-2561
Fax (709) 489-7243

P.O. Box 1074
Corner Brook
Nfld. A2H 6G3
Tel. (709) 634-3161
Fax (709) 634-5889

P.O. Box 860, Stn C
Happy Valley-Goose Bay
Labrador A0P 1C0
Tel. (709) 896-8666
Fax (709) 896-8999

P.O. Box 219
Wabush
Labrador. A0R 1B0
Tel. (709) 282-3638
Fax (709) 282-3365

JAM
Send To:

Jennifer Lee

Fax # *576 8744*

Fax Message

CIBC

Page *1* of *3*

DATE: *Nov 5/01*

DETAILS

*Please sign the attached letter of NO Interest
and Refax to me @ 368-1146*

*To: Shakes
Shaun*

**IF THIS FAX MESSAGE DOES NOT PERTAIN TO YOU OR YOUR
DEPARTMENT PLEASE FAX BACK REPLY TO SENDER**

NOV. 5, 2001

2:15PM

HICKMAN EQUIP. LTD. RS

NOV 5 2001

P. 8/11

rb RITCHIE BROS.
Auctioneers

Ritchie Bros. Auctioneers (Canada) Ltd.
8500 River Road, Richmond, BC Canada V6X 4G5

TEL: 604-273-2137 FAX: 604-273-4223

VIA FAX 709-576-8744

RETURN FAX: 604-273-4223

NOVEMBER 5, 2001.

CANADIAN IMPERIAL BANK OF COMMERCE
P.O. BOX 340
ST. JOHNS, NF A1C 5J9

ATTENTION: JENNIFER L. LEE - COMMERCIAL BANKING

Dear Sir:

Please find following a ONE (1) page Schedule "A" of equipment to be sold on behalf of Hickman Equipment in our TRURO, NS - NOVEMBER 8, 2001 auction sale being held.

We ask that you sign and return fax this letter, acknowledging that you have NO INTEREST in the items listed, nor in the proceeds from the sale thereof.

Should you find that you do hold an interest, please call or fax the writer with a payout figure, good through NOVEMBER 29, 2001.

Thank you for you anticipated prompt attention and co-operation.

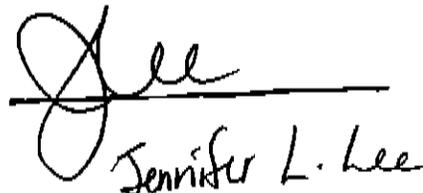
Sincerely,

RITCHIE BROS. AUCTIONEERS (CANADA) LTD.



Per: Bobbi Davis

CANADIAN IMPERIAL BANK OF COMMERCE



Jennifer L. Lee

Schedule A

HICKMAN EQUIPMENT (1985) LTD

- 1 Grp: HBK
1991 CATERPILLAR 214B RUBBERTIRE HYDRAULIC EXCAVATOR
s/n SMP00304
c/w: bkt, stick
- 2 Grp: FVR
1987 BARBER-GREENE BG245B ASPHALT PAVER
s/n 245B447
c/w: John Deere diesel, extendamat, 10 - 20 screed
- 3 Grp: FVR
1975 BARBER-GREENE SB140 ASPHALT PAVER
s/n SB140X276

X04-2001-11-05-09.14.18

Copyright. This document contains confidential proprietary information and is intended only for uses authorized by Ritchie Bros. Auctioneers. Any unauthorized use is strictly prohibited.

** END OF REPORT **

FILE NO. 916 01710 DE 10100 101000 101000

FAX COVER



CYBER LEASE

PARTNERS IN EQUIPMENT FINANCE

S H E E T

To: CANADIAN IMPERIAL BANK OF COMMERCE
Attn.: SCOTT FERGUSON
Fax: 902-423-5047
Subject: HICKMAN EQUIPMENT (1985) LIMITED
Date: January 10, 2002 (2:57pm)
Pages: 2, including this cover sheet.
COMMENTS:

Scott;

Please find enclosed a waiver letter regarding the above-mentioned client. Please review, sign and fax back to my attention as soon as possible.

Sincerely;

Allison Mallette
Branch Manager

To:
L →

From the desk of...

Allison Mallette
Branch Manager
30 Concourse Gate, Suite 200
Nepean, Ontario K2E 7V7

Tel: 613-226-1065
Fax: 613-226-8091



WAIVER

Date: January 10, 2002
 To: CANADIAN IMPERIAL BANK OF COMMERCE
 ATLANTIC PLACE, P.O. 340
 MOUNT PEARL, NEWFOUNDLAND
 A1C 5J9
 ATTENTION: SCOTT FERGUSON
 RE: HICKMAN EQUIPMENT (1985) LIMITED

CULEASE Financial Services ("CuLease") has or will be entering into, or taking assignment of, a lease agreement, a conditional sale contract, a security agreement and/or an hypothec (the "Contract") with the above-mentioned Obligor, to lease to, or finance for the Obligor, the equipment described hereto, together with all attachments, accessions, replacements thereto (the "Equipment").

Under the terms of the Contract, CuLease has or will obtain title to and/or has or will obtain a security interest, charge and/or hypothec in or lien on the Equipment and the proceeds thereof (collectively, the "Collateral").

- | | | |
|---|---------------------------------|--------------------|
| 1 | 2001 JOHN DEERE 160LC EXCAVATOR | S/N: P00160X041741 |
| 1 | 2001 JOHN DEERE 160LC EXCAVATOR | S/N: P00160X041792 |
| 1 | 2001 JOHN DEERE 160L EXCAVATOR | S/N: P00160X041793 |
| 1 | 2001 JOHN DEERE 200LC EXCAVATOR | S/N: FF0200X502017 |
| 1 | 2001 JOHN DEERE 550C DOZER | S/N: T0850CX900908 |
| 1 | 2000 JOHN DEERE 160LC EXCAVATOR | S/N: P00160X041361 |
| 1 | 2001 JOHN DEERE 1050C DOZER | S/N: LU1050C005288 |

A search of the public records indicates that you may have security interest, charge and/or hypothec in the Collateral.

Please indicate, by signing below, that you acknowledge that you have not assigned your security interest, charge and/or hypothec and that you do not have and will not in the future claim any right, title, interest, hypothec, charge or security in the Collateral which ranks in priority to the right, title, interest, hypothec, charge and security interest now or hereafter held by CuLease in the Collateral. For greater certainty, you are acknowledging and agreeing that, as against you, CuLease shall have a first priority right, title, interest, hypothec, charge and security interest in the Collateral.

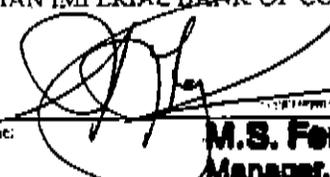
Yours truly,

CULEASE FINANCIAL SERVICES

For valuable consideration, and recognizing that CuLease is relying on this acknowledgment in entering the Contract referred to herein, we hereby acknowledge and agree that we do not have and will not in the future claim any right, title, interest, hypothec, charge or security interest in the Collateral which ranks prior to the right, title, interest, hypothec, charge and security interest now or hereafter held by CuLease in the Collateral, and we hereby postpone and subordinate to CuLease for all purposes all rights, title, interests, hypothecs, charges and security interests that we may now have or hereafter acquire in the Collateral to all the rights, title, interests, hypothecs, charges and security interests that CuLease may now have or hereafter acquire in the Collateral.

Dated this 11th day of January, 2002

CANADIAN IMPERIAL BANK OF COMMERCE (Secured Creditor)

Per: 
 Name: **M.S. Ferguson**
 Manager, Commercial Credit

FAX COVER



CYBER LEASE

PARTNERS IN EQUIPMENT FINANCE

S H E E T

To: CANADIAN IMPERIAL BANK OF COMMERCE
Attn.: SCOTT FERGUSON
Fax: 902-423-5047
Subject: HICKMAN EQUIPMENT (1985) LIMITED
Date: January 10, 2002 (2:57pm)
Pages: 2, including this cover sheet.
COMMENTS:

Scott;

Please find enclosed a waiver letter regarding the above-mentioned client. Please review, sign and fax back to my attention as soon as possible.

Sincerely;

Allison Mallette
Branch Manager

10:
L →

From the desk of...

Allison Mallette
Branch Manager
30 Concourse Gate, Suite 200
Nepean, Ontario K2E 7V7

Tel: 613-226-1065
Fax: 613-226-8091

Date: January 10, 2002

To: CANADIAN IMPERIAL BANK OF COMMERCE
ATLANTIC PLACE, P.O. 340
MOUNT PEARL, NEWFOUNDLAND
A1C 5J9

ATTENTION: SCOTT FERGUSON

RE: HICKMAN EQUIPMENT (1985) LIMITED

CULEASE Financial Services ("CuLeaser") has or will be entering into, or taking assignment of, a lease agreement, a conditional sale contract, a security agreement and/or an hypothec (the "Contract") with the above-mentioned Obligor, to lease to, or finance for the Obligor, the equipment described hereto, together with all attachments, accessions, replacements thereto (the "Equipment").

Under the terms of the Contract, CuLease has or will obtain title to and/or has or will obtain a security interest, charge and/or hypothec in or lien on the Equipment and the proceeds thereof (collectively, the "Collateral").

1	2001 JOHN DEERE 160LC EXCAVATOR	S/N: P00160X041741
1	2001 JOHN DEERE 160LC EXCAVATOR	S/N: P00160X041792
1	2001 JOHN DEERE 160L EXCAVATOR	S/N: P00160X041793
1	2001 JOHN DEERE 200LC EXCAVATOR	S/N: FF0200X502017
1	2001 JOHN DEERE S50C DOZER	S/N: T0850CX900908
1	2000 JOHN DEERE 160LC EXCAVATOR	S/N: P00160X041361
1	2001 JOHN DEERE 1050C DOZER	S/N: LU1050C005288

A search of the public records indicates that you may have security interest, charge and/or hypothec in the Collateral.

Please indicate, by signing below, that you acknowledge that you have not assigned your security interest, charge and/or hypothec and that you do not have and will not in the future claim any right, title, interest, hypothec, charge or security in the Collateral which ranks in priority to the right, title, interest, hypothec, charge and security interest now or hereafter held by CuLease in the Collateral. For greater certainty, you are acknowledging and agreeing that, as against you, CuLease shall have a first priority right, title, interest, hypothec, charge and security interest in the Collateral.

Yours truly,

CULEASE FINANCIAL SERVICES

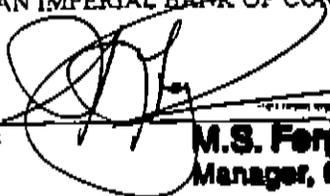
For valuable consideration, and recognizing that CuLease is relying on this acknowledgment in entering the Contract referred to herein, we hereby acknowledge and agree that we do not have and will not in the future claim any right, title, interest, hypothec, charge or security interest in the Collateral which ranks prior to the right, title, interest, hypothec, charge and security interest now or hereafter held by CuLease in the Collateral, and we hereby postpone and subordinate to CuLease for all purposes all rights, title, interests, hypothecs, charges and security interests that we may now have or hereafter acquire in the Collateral to all the rights, title, interests, hypothecs, charges and security interests that CuLease may now have or hereafter acquire in the Collateral.

Dated this 11th day of January, 2002

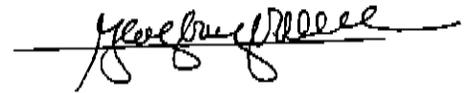
CANADIAN IMPERIAL BANK OF COMMERCE (Secured Creditor)

Per:

Name:


M.S. Ferguson
Manager, Commercial Credit

Sworn before me
this 19th day of December, 2002



**FINAL DETERMINATION
RE: CANADIAN IMPERIAL BANK OF COMMERCE CLAIMS**

Final Determination
December 3, 2002

Final Determination of PricewaterhouseCoopers Inc. ("PWC") as Trustee of Hickman Equipment (1985) Limited in respect of the Claims of Canadian Imperial Bank of Commerce ("CIBC") to Security Interests

1. Introduction

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

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

2. Summary Determination

CIBC's claim:

- (a) to be owed \$15,433,523.95 (the "Total Debt") by HEL, as at the Date of Bankruptcy, as set out in its Proof of Claim, is allowed in the amount of \$15,269,395 (the "Total Debt Allowed");
- (b) to a security interest in Assets of HEL based on:
 - (i) a General Assignment of Book Debts, Accounts, etc. (the "GABD") dated January 4, 1985, as security for the Total Debt Allowed, is allowed;
 - (ii) a Floating Charge Debenture dated January 7, 1985 and Supplementary Debentures (collectively, the "Debenture") dated February 19, 1990, April 17, 1997, August 6, 1997, and July 9, 1998 as security for the "Total Allowed Debt" up to the principal sum of \$20,000,000 plus interest as provided in the Debenture, is allowed;
 - (iii) a Security Agreement dated January 25, 2000 (the "GSA"), is disallowed;

- (iv) *Bank Act Security* registered on October 26, 2000 as Registration Number 01074579, is disallowed.

The Trustee has determined that the Assets in respect of which security interests are created in favour of CIBC for the Total Allowed Debt allowed are:

- (a) based on the GABD a security interest in:

"all debts, accounts, claims, moneys, and choses in action which now or at any time hereinafter be due or owing to or owned by (HEL), and also all securities, bills, notes and other documents now held or owned by (HEL) or anyone on behalf of (HEL) in respect of the said debts, accounts, claims, moneys and choses in action or any part thereof"

- (b) based on the Debenture a security interest in:

all of HEL's undertaking, property and assets, present and future, other than in Assets in which the holders of Permitted Encumbrances have a security interest. The Bank's interest in such Assets is subordinated to the interests of the holders of Permitted Encumbrances including, *inter alia*, unperfected PMSI holders and the Assets in which Permitted Encumbrancers have a security interest is held in trust by CIBC for the Permitted Encumbrancers.

The effective date of perfection for purposes of s.36 of the PPSA of:

- (a) the security interest created by the GABD is January 16, 1985; and
(b) the security interest created by the Debenture is January 29, 1985.

If it is subsequently determined as a result of an appeal that the Trustee's determination disallowing CIBC's claim to a security interest in Assets of HEL based on the GSA is wrong, the Trustee has determined that the Assets in respect of which a security interest is created in favour of CIBC for the Total Allowed Debt based on the GSA is a security interest in:

"all of the personal property of HEL in existence on March 13, 2002 and proceeds thereof, other than personal property or proceeds thereof in which holders of Permitted Encumbrances have a security interest. CIBC's interest in such Assets is subordinated to the interests of the holders of Permitted Encumbrances including, *inter alia*, unperfected PMSI holders and the Assets in which Permitted Encumbrancers have a security interest is held in trust by CIBC for the Permitted Encumbrancers."

The effective date of perfection of the GSA for purposes of the PPSA is January 25, 2000.

3. Defined Terms

When used in this Final Determination, the following words or abbreviations shall have the meaning ascribed:

- "Asset(s)" - all of the Assets of HEL, as defined in the Receivership Order and of which PricewaterhouseCoopers Inc. is the Receiver
- "BIA" - *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended
- "Date of Bankruptcy"- March 13, 2002
- "Debenture" - the Original Debenture together with the Supplementary Debentures referred to in paragraph 8(h)
- "Documents" - the documentation referred to in paragraph 8
- "GABD" - the General Assignment of Accounts etc. referred to in paragraph 8(g)
- "GSA" - the Security Agreement referred to in paragraph 8(i)
- "HEL" - Hickman Equipment (1985) Limited
- "Permitted Encumbrances" - mortgages, liens or other encumbrances on Assets permitted by paragraph 2.2 of the Original Debenture; and Purchase Money Liens, liens existing on an asset when it was acquired, a renewal or replacement of a Purchase Money Lien or of a lien existing on an asset when it was acquired, so long as the principal amount secured by the Lien does not increase, or a Normal Course Lien, permitted by Credit Agreements dated April 17, 2000 and June 19, 2000
- "Permitted Encumbrancers" - the holders of Permitted Encumbrances
- "PMSI" - Purchase Money Security Interest
- "PPR" - Personal Property Registry
- "PPSA" or "Act" - *Personal Property Security Act*, S.N.L. 1998, c.P-7.1
- "Province" - Newfoundland and Labrador
- "Regulations" - *Personal Property Security Regulations* (103/99)
- "Total Allowed Debt"- \$15,269,395.00

"Total Debt"	-	\$15,433,523.95
"Trustee"	-	PricewaterhouseCoopers Inc., in its capacity as Trustee of the Estate of Hickman Equipment (1985) Limited

4. Assets

The assets which are the subject of this Final Determination are the Assets.

5. Assumptions

For the purposes of this Final Determination, the Trustee has assumed:

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

6. Qualifications

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

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

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

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

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

Notwithstanding the findings in this Final Determination concerning the validity of CIBC's Claim, the Trustee is not precluded by such determination from taking proceedings in respect of the Debt, Security Interest or Assets dealt with herein pursuant to the provisions of the BIA or any provincial or other legislation dealing with Preferences, reviewable or fraudulent transactions or settlements.

Except where a specific claim to proceeds has been made and material provided in support of that claim, the Trustee expresses no opinion with respect to claims to proceeds or claims involving tracing. An outline of the proceeds claim procedure and issues are set out in paragraph 17.

7. Overview of Claim

CIBC has filed a Proof of Claim under the BIA claiming HEL owed it as at the Date of Bankruptcy the total sum of \$15,433,523.95 as set out in Schedule A.

CIBC claims to have a security interest in all of the "book debts", including choses in action of HEL by virtue of the GABD and a security interest generally in all of the undertaking and assets of HEL, present and future, by virtue of the Debenture, the GSA, and security under s.427 of the *Bank Act*.

8. Documentation

For the purposes of this Final Determination, the Trustee has been provided with, reviewed, considered and relied upon the following:

- (a) Proof of Claim dated April 17, 2002 filed by CIBC herein and attachments thereto;
- (b) Credit Agreement dated March 17, 1997 between CIBC and HEL, with Standard Credit Terms attached;
- (c) Credit Agreement dated July 18, 1997, between CIBC and HEL, with Standard Credit Terms attached;
- (d) Credit Agreement dated June 26, 1998 between CIBC and HEL, with Standard Credit Terms attached;
- (e) Credit Agreement dated April 17, 2000 between CIBC and HEL, with Standard Credit Terms attached;
- (f) Credit Agreement dated June 19, 2000 between CIBC and HEL, with Standard Credit Terms attached;
- (g) General Assignment of Accounts, etc. between HEL as Assignor and CIBC as Assignee dated January 4, 1985, stamped to certify registration under the *Assignment of Book Debts Act* on January 16, 1985 with PPSA Registration Statement attached indicating registration as #1063565 on June 29, 2001 under the provisions of the PPSA;
- (h) Demand Debenture on CIBC Form 1073-79 dated January 7, 1985 (the "Original Debenture") in the principal amount of \$3,000,000 containing a Floating Charge issued by HEL in favour of CIBC with Certificate of Registration on January 29, 1985 in Role 77, Frame 70 endorsed, together with:
 - (i) Supplemental Debenture to Original Debenture dated February 19, 1990 and containing a fixed charge on real estate with Certificate of Registration on February 22, 1990 in Roll 732, Frame 839 endorsed;
 - (ii) Supplemental Debenture to Original Debenture dated April 17, 1997 increasing the principal amount to \$5,000,000 with Certificate of Registration on April 30, 1997 in Roll 1521, Frame 1435 endorsed;
 - (iii) Supplemental Debenture to Original Debenture dated August 6, 1997 increasing the principal amount of the Debenture to \$10,000,000 with Certificate of Registration on August 29, 1997 in Roll 1564, Frame 2095 endorsed;

- (iv) Supplemental Debenture to Original Debenture dated July 15, 1998 increasing the principal amount secured to \$20,000,000 with Certificate of Registration in Roll 1668, Frame 1748 endorsed;
- (i) Security Agreement dated January 25, 2000 on CIBC Form 6100 between HEL and CIBC with a PPSA Registration Statement attached indicating registration as #78490 on January 28, 2000 under the provisions of the PPSA;
- (j) *Bank Act* Security (s.427), including:
 - (i) Notice of Intention to Give Security under s.427 of the *Bank Act* dated October 18, 2000 endorsed as received on October 26, 2000 by CSRS as Registrar for Bank of Canada;
 - (ii) Confirmation Letter from the Canadian Securities Registration System addressed to Deloitte & Touche Inc. confirming entry on October 26, 2000 of the name of HEL on the register of notices of intention to give security;
 - (iii) Application by HEL for Credit and Promise to Give Special Security under the *Bank Act* requesting a line of credit in the maximum amount of \$13,500,000 dated October 18, 2000;
 - (iv) Security under s.427 of the *Bank Act* dated October 18, 2000;
- (k) Letter of Credit in the amount of \$55,000 bearing reference number SBGT719550 in favour of the City of St. John's, with an expiry date of July 31, 2002;
- (l) Letter of Credit in the amount of \$34,400 bearing reference number SBGT720372 in favour of the City of St. John's, with an expiry date of November 9, 2002;
- (m) Letter of Credit in the amount of \$17,600 bearing reference number SBGT720510 in favour of the City of St. John's, with an expiry date of November 28, 2002;
- (n) Current Account Statement with respect to account number 00-02801 (subsequently converted to term loan number 63/5181-054) from December 3, 2001 - March 25, 2002;
- (o) Current Account Statement for account number 45-09110 (subsequently converted to term loan number 63/5181-151) from November 30, 2001 - March 25, 2002;
- (p) Term Loan Statement number 63/3900-754 from September 17, 2001 - February 21, 2002;
- (q) Current Account Statement for account number 11-54613 from January 22, 2002 - March 28, 2002;

- (r) PRR Registration Report dated March 21, 2002;
- (s) A Reply dated October 18, 2002 of CIBC to the Information Request of the Trustee dated October 2, 2002;
- (t) A letter from Benson Myles dated November 29, 2002 containing submissions in respect of the draft final determination with respect to CIBC's claim;
- (u) The affidavits of John H. Webber of Victoria, British Columbia, who says he was the Director - Commercial Banking of Canadian Imperial Bank of Commerce, St. John's, NL, during, *inter alia*, the period when the GSH was provided and the April and June 2000 Credit Agreements were entered into between CIBC and HEL;
- (v) The affidavit of Mr. Gary Bishop, C.A., of St. John's, NL, who says that prior to January 2002 and including the calendar year 2000, he was the Comptroller and Secretary of Hickman Motors Limited, in which capacity he coordinated the overall banking operations of the Hickman Group of Companies, including HEL.

9. The Claim

A. The Debt:

(a) Claimed

- (i) CIBC has set out in its Proof of Claim the sum of \$15,433,523.95 as being the total amount owed to it at the Date of Bankruptcy in respect of the Loans and/or Facilities provided by CIBC to HEL as detailed in Schedule A.

CIBC has provided additional information concerning the accrual of interest, legal and other expenses after the Date of Bankruptcy which will not be determined by this Final Determination.

(b) Allowed or Disallowed

- (i) The amount of debt allowed as at the Date of Bankruptcy in this Determination is \$15,269,395. The Trustee in this Determination has disallowed \$164,128 of the amount claimed on the following basis:

- (1) \$107,000 has been claimed in respect of the Letters of Credit, no evidence has been provided that any amounts have been paid by CIBC on the Letters of Credit.

- (2) calculation of the amounts owed in respect of the loans referred to in Schedule A based on CIBC's Reply dated October 18, 2002 indicates the following balances outstanding as at the Date of Bankruptcy:

Term Loan 63/5881-054

Principal	12,208,798.35
Interest Accrued (Pre Class)	48,849.25
Accrued Interest to March 13	31,776.32
Fees (Pre Class)	680.00

Term Loan 63/5181-151

Principal	2,934,312.71
Interest Accrued (Pre Class)	13,109.00
Accrued Interest (to March 1)	7,637.51

Term Loan 63/3900-754

Principal	24,100.00
Interest Accrued (Pre Class)	72.90
Accrued Interest	60.75

Operating Account 63/5881-054

This Account had a credit balance on the Date of Bankruptcy	0
---	---

Letters of Guarantee

No evidence of any amount paid on the L/C's	0
---	---

The documents on which the Trustee has based its allowance of debt are:

- (1) the Credit Agreement dated June 19, 2000 which provided for the provision by CIBC to HEL of an Operating Line to a limit of \$15,000,000 (which includes provision for Letters of Credit) at CIBC Prime plus 1% and a Demand Instalment Loan of \$96,100.
- (2) the statements referred to in paragraphs 8(n)-(q) of this Determination.
- (3) calculations provided to the Trustee in CIBC's Reply of October 18, 2002 to the Information Request of the Trustee.

B. The Security Interests

(a) Asserted

CIBC claims to have a security interest:

- (i) In the Assets of HEL described in the GABD (generally the accounts receivable and choses in actions of HEL);
- (ii) In all of the Assets based on:
 - (1) the Debenture;
 - (2) the GSA;
 - (3) *Bank Act* Security referred to in paragraph 8(j).

The Security Interests claimed are as security for the Total Debt.

(b) Security Interests Allowed or Disallowed

Determinations

1. The Trustee has determined that:

- (a) CIBC has a security interest in the Assets described in the GABD as security for the "Total Allowed Debt";
- (b) CIBC has a security interest in all of the Assets described in the Debenture (all of HEL's undertaking, property and assets, present and future) other than in assets in which the holders of Permitted Encumbrances have a security interest. The Bank's interest in assets in which the holders of Permitted Encumbrances have a security interest is subordinated to the interests of Permitted Encumbrancers including, *inter alia*, the holders of unperfected PMSIs and the assets in which Permitted Encumbrancers have a security interest are held in trust by CIBC for the Permitted Encumbrancers;
- (c) CIBC has no security interest in Assets based on the GSA, but if the Trustee is found to be wrong in this aspect of its determination, the security interest which CIBC has in Assets based on the GSA is:

a Security Interest in all of the Assets described in the GSA (all Personal Property of HEL existing on March 13, 2002 including all Proceeds thereof) other than in assets in which the holders of

Permitted Encumbrances have a security interest. The CIBC's interest in assets in which the holders of Permitted Encumbrances including, *inter alia*, the holders of unperfected PMSI's and the assets in which Permitted Encumbrancers have a security interest are held in trust by CIBC for the Permitted Encumbrancers; and

(d) CIBC has no security interest in Assets based on the *Bank Act* security.

for the reasons set out following:

The Credit Agreements:

The Credit Agreements set out the Facilities to be provided by CIBC to HEL and the security to be provided by HEL to CIBC for the Facilities. The Credit Agreement in effect on the Date of Bankruptcy is dated June 19, 2000 and is contained in a letter from CIBC to HEL accepted by HEL on July 6, 2000 ("June 2000 Credit Agreement"). A copy of the June 2000 Credit Agreement is attached as Schedule B. The June 2000 Credit Agreement provided in part:

"We, Canadian Imperial Bank of Commerce (CIBC), are pleased to establish the following Credits to you, our customer.

Credit A: Operating Line

Credit Limited: The lesser at any time of:
(a) \$15,000,000; and
(b) ...

Description & Rates: A revolving demand credit, for general business purposes, as follows:

(1) Canadian dollar loans and overdrafts. The interest rate is as follows: Prime Rate plus 1.00%

(2) Canadian dollar or foreign currency L/C's. The total amount of the L/C's outstanding at any time may not exceed \$500,000

...

Credit B: Demand Instalment Loans

Loan Amount: \$96,100.
Purpose: Renewal of existing facility
Interest Rate: Prime Rate plus 0.85% per year

...

Security

Security: The following security is required: [my underlining]

Assignment of Receivables: General Assignment of accounts receivable.

Bank Act Security: Security under Section 427 of the Bank Act.

Debenture: Floating charge debenture for \$20,000,000 giving CIBC a 1st charge over all assets subject to a Priority Agreement dated July 5, 1985, with John Deere Limited, plus acknowledged assignment of fire and other perils insurance, with loss payable to CIBC.

Guarantee: Guarantee & Postponement of Claim from Group Holdings Limited in an amount that is unlimited and supported by:

Fixed charge debenture for \$3,000,000 giving CIBC a 1st charge over the following properties:

(various properties of Group Holdings are listed)

Postponement: Postponement of claims signed by Hickman Motors Limited for \$1,000,000.

Covenants

Covenants: You will ensure that
...
...
Negative Pledge: There is no lien on any of your present or future assets, and that you do not assign any right to any income, without our prior consent (which consent will not be unreasonably withheld), except for the four exceptions below, namely:

- (a) a Purchase Money Lien;
- (b) a lien existing on an asset when it was acquired;
- (c) a renewal or replacement of a Purchase Money Lien or a Lien referred to in (b) above, so long as the principal amount secured by the Lien does not increase; or
- (d) a Normal Course Lien
... [my underlining]

Upon acceptance, this Agreement replaces the existing credit agreement dated April 18, 2000, between you and CIBC. Outstanding amounts (and security) under that Agreement will be covered by this Agreement. [my underlining]

The terms contained in the April 17, 2000 Credit Agreement are the same, except the Credit limited is \$13,500,000 and the Demand Instalment Loan was \$103,000.

The Security

The following security agreements required by the June 2000 Credit Agreement are relevant to this Determination:

1. GABD
2. *Bank Act* Security (s.427)
3. Debenture - Floating Charge - \$20,000,000

The GSA which was not required by the June 2000 Credit Agreement or any of the other Credit Agreements is also relevant to this determination.

GABD

The GABD is required by the June 2000 Credit Agreement as security for the Facilities. It provides that HEL assigns and transfers to CIBC:

"all debts, accounts, claims, moneys and choses in action which now are or which may at any time be due or owing to or owned by the undersigned..."

The Trustee is satisfied that this assignment was provided for the purpose of creating and creates a security interest in the Assets described in Schedule A as security for the Total Allowed Debt.

Bank Act Security (s.427)

The Trustee has reviewed the documents relating to CIBC's claim to a security interest in Assets based on security provided by HEL under the provisions of the *Bank Act* (the "s.427 security") referred to in paragraph 8(j).

Security under the *Bank Act* is excluded from the ambit of the PPSA by section 5(k). Security under the *Bank Act* is governed by the *Bank Act* and common law relating thereto. The *Bank Act* Security was required by the June 2000 Credit Agreement and the Trustee is satisfied it was provided by HEL for the purpose of creating a security interest in all of HEL's Assets as security for the debt arising from provision of the Facilities.

However, the Trustee has determined that the *Bank Act* security does not create a security interest in any of the Assets as the description of the assets to be charged is too imprecise.

The security provided by HEL under s.427 describes the security as follows:

"...all property and classes of property hereinafter described of which the undersigned is now or may hereafter become an owner, to wit: All assets, subject to Priority Agreement with John Deere Limited dated July 5, 1985 and that now or may hereafter be in the place or places hereafter designated to wit: (no place or places are identified)."

All assets may not be taken as security under the *Bank Act*:

"427(1) A bank may lend money and make advances
(a) to any wholesale or retail purchaser or shipper, or dealer in, products of agriculture, products of aquaculture, products of the forest, products of the quarry and mine, products of the sea, lakes and rivers or goods, wares and merchandise, manufactured or otherwise, on the security of such products or goods, wares and merchandise and of goods, wares and merchandise used in or procured for the packing of such products or goods, wares and merchandise." [my underlining]

"The descriptions of the security in the documents giving the security need not be subjected to strict or exceptionally rigorous detail... Thus the courts have taken a liberal approach to descriptions although they have invalidated securities when the descriptions are so imprecise as to be of no use whatsoever in identifying the security for the loan or advance." *Banking Law of Canada*, 2nd ed., 1998, Carswell, M.H.Ogilvie [my underlining]

Security under s.427 of the *Bank Act* cannot be taken on all HEL's assets. The description contained in the s.427 security agreement is too imprecise to permit the property on which s.427 security can be taken and which is intended to be charged to be identified.

As the property on which a security is intended to be created cannot be identified, a security is not created in any of HEL's Assets based on the s.427 security.

The section 427 *Bank Act* Security is also void because of a failure to register a Notice of Intention to give security as required by section 427(4)(a) of the *Bank Act* before the security was given (see page 26 of this Determination).

Debenture

The Debenture is required by the June 2000 Credit Agreement.

The Original Debenture which comprises part of the Debenture contains the following charging provision:

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

Supplemental Debentures which are part of the Debenture add a fixed charge on real estate and the following to the floating charge provision:

"If the Bank gives value for the purpose of enabling the Company to acquire rights in or to any of the Charged Property, the Company granted the Bank a purchase money security interest in such Charged Property to the extent that the value is applied to acquire such rights. In this Debenture the mortgages and charges hereby constituted are called the "Security" and the subject matter of the Security is called the "Charged Property".

The Original Debenture provided:

"2.2 Until the Security becomes enforceable, the Company may dispose of or deal with the subject to 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." [my underlining]

The Debenture gives CIBC a security interest by virtue of paragraph 2.1 of the Original Debenture in the:

undertaking, property and assets both present and future, of every nature and kind and wheresoever situate,..."

and in addition:

"if the Bank gives value for the purpose of enabling the Company to acquire rights in or to any of the Charged Property, the Company grants the Bank a purchase money security interest in such Charged Property to the extent that the value is applied to acquire such rights."

(CIBC has not asserted the right to a PMSI in any of the Assets.)

However, the Trustee has determined that the Debenture (paragraph 2.2) and the Negative Pledge contained in the Credit Agreements of 2000 referred to at pages 11 and 12 of this Final Determination which permits HEL to grant Permitted Encumbrances without CIBC's consent subordinates CIBC's security interest and excludes from its charge the security interest of persons holding Permitted Encumbrances. The basis of this determination is as follows:

The language contained in paragraph 2.2 of the Debenture has been determined to be effective to and does subordinate the Bank's interest to other charges including the charges in property held by unperfected PMSI holders.

Canadian Imperial Bank of Commerce v. International Harvesters Credit Corp. of Canada Ltd. [1986] O.J.No. 1315, Ont.C.A: *Chiips v. Skyview Hotels Ltd.*

(1994), 166 D.L.R. (4th) 385, Alb.C.A. leave to appeal to the Supreme Court of Canada denied [1994] S.C.C.A. No. 444

The PPSA provides:

- s.41(1) A secured party may subordinate, in a security agreement or otherwise, the secured party's security interest to any other interest.
- (2) A subordination is effective according to its terms between the parties and may be enforced by a third party if the third party is the person or one of the class of persons for whose benefit subordination was intended.

In *Re Chiips and Skyview Hotel Ltd. et al.*, the Alberta Court of Appeal considered, in the context of section 40 of the Alberta PPSA (the equivalent to section 41 of the NL PPSA), the following clauses:

"Until the Security becomes enforceable, the Company may...provided that the Company shall not, without the prior written consent of the Holder, create, assume or have outstanding, except to the Holder, any mortgage, charge or other encumbrance in any part of the Mortgaged Property, ranking or purporting to rank or capable of being enforced in priority to or *pari passu* with the Security, other than,

- (a) 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." [my underlining]

and

"...the Company shall not: ...

- (c) create or permit any mortgage, charge, lien or other encumbrance upon any part or all of the Mortgaged Property ranking or purporting to rank in priority to or *pari passu* with the Security in order to secure any monies, debts, liabilities, bonds, debentures, notes or other obligations...or *pari passu* with this Debenture, provided, however, that this covenant shall not apply to, nor operate to prevent, and there shall be permitted:
- (i) the assuming or giving of purchase money mortgages or other purchase money liens on property acquired by the Company...provided that such purchase money mortgages or purchase money liens shall be secured only by the property being acquired by the Company and no other property of the Company..."

As reported in the headnote to the case:

"Per Forsy J.A: The provisions in the debenture were subordination clauses; they allowed the hotel to grant security to its suppliers in the form of purchase money security interests that would have priority over the floating charge in the debentures. Commercial reality also supported this conclusion. Section 40 of the PPSA, S.A. 1988, c.P-4.05 does not require registration of the subsequent security. Further it permits a third party, such as the

appellant, to enforce the subordination clauses, since the appellant was a person for whose benefit the clauses were included; and

Per Haradence, J.A. concurring. Section 40 made it essential to determine whether the clauses were valid subordination clauses. The clauses were subordination clauses, since they purported to give priority to certain later security interests. Further commercial reality made the ability to grant priority to suppliers in the ordinary course of business necessary. Moreover registration by the appellant was not contemplated by the debenture holders since they took their security before the Act was in force."

The language in paragraph 2.2 of the CIBC Debenture being substantially the same as the language contained in the debenture considered in the *Chiips* case, the Trustee has determined that the effect of the language in the CIBC Debenture is to subordinate the security interests contained in the CIBC Debenture to the security interest of Permitted Encumbrancers whether those Permitted Encumbrancers have perfected their security interests by registration under the applicable registration law or not.

It has also been determined that where the principles of subordination as referred to apply and a bankruptcy has occurred (as in the current situation), the subordination results in the bank (CIBC) holding the security interest in the property in trust for the Permitted Encumbrancers. *Grove Packaging Inc.*, Re 2001 Carswell Ont. 4763, 31 C.B.R. (4th) 37, Ontario Superior Court of Justice [Commercial List] Farley, J. *Bank of Montreal v. Dynex Petroleum Ltd.* (1997) 46 C.B.R. (39) 36 (Alb.Q.B.) Alberta Queen's Bench, Rooke, J., overturned on other grounds (1999), 15 C.B.R. (4th) 5 (Alta.C.A.)

The court in *Bank of Montreal v. Dynex* said:

"...the bankruptcy of [Dynex] does not effect the subordination of [B of M's] security interest in the [ORR's] overriding royalty and that the [B of M] continues to be obliged to hold in trust for [the ORR's] the proceeds it realized from the oil and gas properties to the extent of [the ORR's] overriding royalty interests."
(*Bank of Montreal v. Dynex* (1997), Carswell Alta.209 at p.26)

The foregoing translates in this case to read:

"...the bankruptcy of [HEL] does not affect the subordination of the [CIBC's] security interest to the [security interest of unperfected PMSI Holders or other permitted encumbrances] [CIBC continues to be obliged to hold in trust for the unperfected PMSI holders and other permitted encumbrancers] the proceeds realized for [the Assets in which the unperfected PMSI holders and other permitted encumbrancers had a security interest]."

The Security Agreement (GSA)

Under the PPSA, a security interest is defined to mean an interest in personal property that secures payment or performance of an obligation.

The GSA is dated January 25, 2000. A financing statement was registered in the PPR under the PPSA on January 28, 2000 as registration #78490.

On January 25, 2000, the GSA created a security interest in favour of the Bank. The Credit Agreement in effect between HEL and CIBC on January 25, 2000 was a Credit Agreement dated June 29, 1998 (the "'98 Credit Agreement").

The '98 Credit Agreement provided that security for HEL's obligations to the Bank included:

"All security CIBC may now and from time to time hold plus:"

-- specifically listed security, including the GABD, *Bank Act* Security, the Debenture, but not including the GSA.

The GSA when given became part of the security held by CIBC. It created a security interest, i.e. an interest in personal property that secured payment or performance of HEL's obligation under the '98 Credit Agreement.

In April of 2000, a new credit agreement was entered into between CIBC and HEL. This Credit Agreement was, in turn, replaced by a further new Credit Agreement dated June 19, 2000 (the "June 2000 Credit Agreement").

The June 2000 Credit Agreement was the Credit Agreement in effect between HEL and CIBC on the Date of Bankruptcy.

The April 2000 Credit Agreement provides:

"Upon acceptance, this Agreement replaces the existing credit agreement dated June 29, 1998, between you and CIBC. Outstanding amounts (and security) under that Agreement will be covered by this Agreement."

The June 2000 Credit Agreement provides:

"Upon acceptance, this Agreement replaces the existing credit agreement dated April 18, 2000 between you and CIBC. Outstanding amounts (and security) under that Agreement will be covered by this Agreement."

Each of the April and June 2000 Credit Agreements stated, in respect of security:

"The following security is required:"

-- specific security is listed, including the GABD, *Bank Act* Security, Debenture, Guarantees with supporting collateral and Postponement of Claim.

A GSA is not listed as part of the "required security".

The 2000 Credit Agreements do not include the phrase "All security CIBC may now and from time hold...".

The Standard Terms forming part of the 2000 Credit Agreements provided:

"1.17 Pre-Conditions: You may use the Credits granted to you under this Agreement only if:

- (a) ...
- (b) all the required security has been received and registered to our satisfaction;
[my underlining]
- (c) ...
- (d) ..."

From April 2000, the GSA ceased to be required security for the obligations of HEL to CIBC.

As the GSA was no longer security for an obligation, it no longer created a security interest. In the same way other security previously held by the Bank but not referred to in the 2000 Credit Agreement no longer constituted security for HEL's obligations to CIBC, the GSA no longer constituted security for HEL's obligations to the Bank under the Credit Agreements.

In the affidavits referred to in paragraphs 8(u) and (v):

1. Mr. John H. Webber says, among other things:

- (a) He was the Director - Commercial Banking of Canadian Imperial Bank of Commerce at all relevant times.
- (b) On or about January 25, 2000, CIBC asked HEL to execute a GSA as security for HEL's debt to CIBC. If HEL refused to execute the GSA, CIBC would have been entitled to regard that as sufficient grounds to demand payment.
- (c) The GSA was intended to be continuing security for HEL's liabilities to CIBC.
- (d) He understood when the 2000 Credit Agreements were signed that the GSA was to continue to act as security for the liability of HEL to CIBC.
- (e) It was never his understanding nor, to the best of his knowledge, CIBC's intention that the GSA would be terminated by execution of the 2000 Credit Agreements.
- (f) To the best of his knowledge, CIBC has never informed HEL that CIBC intended to cancel the GSA.

2. Mr. Gary Bishop, C.A., says, among other things:

- (a) Since January 2002, he has been the Vice-President and CFO of Hickman Motors Limited, and prior to that (including the year 2000) he was the Comptroller and

Secretary of Hickman Motors Limited and, in that capacity, he coordinated overall banking arrangements of the Hickman Group of Companies, including HEL.

- (b) In early 2000, John Webber asked him and Albert Hickman to arrange for the provision by HEL of a GSA for HEL's obligations to CIBC.
- (c) He understood the GSA was required because of the implementation of the PPSA and in order for CIBC to provide, *inter alia*, the Operating Line to HEL.
- (d) He forwarded a GSA (received from CIBC) to Gary Hillyard and Hubert Hunt, two of HEL's signing officers, for signature.
- (e) On or about January 28, 2000, he and Mr. Albert Hickman met with John Webber and provided him with the executed GSA.
- (f) He understood the GSA was to be continuing security for HEL's liabilities to CIBC until HEL's indebtedness to CIBC was paid in full.
- (g) He was aware that HEL was subsequently asked to execute the 2000 Credit Agreements. It was his understanding the GSA was to continue to act as security for HEL's liability to CIBC.
- (h) To the best of his knowledge, CIBC never indicated an intention to cancel the GSA.
- (i) It was never his understanding the intention of HEL was to terminate the GSA by virtue of the execution of the 2000 Credit Agreements.

CIBC submits that:

1. The GSA stands on its own as a separate and independent contract, enforceable in accordance with its terms.
2. The last paragraph of the 2000 Credit Agreements have the effect of incorporating by reference all pre-existing security held by the Bank which has not been specifically released or returned. The paragraph set out in the April 2000 Credit Agreement states:

"Upon acceptance, this agreement replaces the existing Credit Agreement dated June 26, 1998 between you and CIBC. Outstanding amounts (and security) under that agreement will be covered by this agreement."

The same paragraph appears in the June 2000 Credit Agreement; however, it refers to the existing Credit Agreement of April 2000.

Notwithstanding the affidavits and submissions, it is the Trustee's determination that on the acceptance of the 2000 Credit Agreements, the GSA ceased to constitute a valid enforceable security interest in the Assets as security for the liabilities of HEL to CIBC in respect of the Credit Facilities made available to HEL pursuant to the Credit Agreements.

The reasons for the Trustee's determination are as follows:

"If the parties have seen fit to put their contractual intentions into writing, it must be because they wanted their meaning to be clearly and unequivocally established. There should be no room for argument about what has been agreed. The written word should make plain beyond doubt or question what were the requirements of the contract that was entered into by the parties.

...The golden rule is that the literal meaning must be given to the language of the contract, unless this would result in an absurdity. Words of ordinary use in a contract must be construed in their ordinary and natural sense. The paramount test of the meaning of words in a contract is the intention of the parties. That is to be determined in the operative sense by reference to the surrounding circumstances at the time of signing the contract. But evidence of the commercial context surrounding the making of an agreement may be admitted only to show the purpose for which the various contractual provisions were included, not to vary the meaning of the words of a written contract."
The Law of Contracts, G.H.L. Fridman, Carswell, 4th ed. 1999 at pp.478-479.

The terms of the 2000 Credit Agreements are clear. It describes the credit facilities and the security required for provision of the Credit Facilities. The security required is listed. The GSA is not listed as part of the security required.

The only condition relating to use of the facilities relating to security is that:

"1.17 (b) all the required security has been received and registered to our satisfaction..."

CIBC drafted the 2000 Credit Agreements. If it had wished to require a GSA as part of the "required security", it could have listed it. It did not.

It is the Trustee's determination that the last paragraph of the Credit Agreements, which states:

"Upon acceptance, this Agreement replaces the existing credit agreement dated June 26, 1998, between you and CIBC. Outstanding amounts (and security) covered by that Agreement will be covered by this Agreement."

means that the only security for the Facilities is the security required by the 2000 Credit Agreement; it does not incorporate by reference all pre-existing security which had not been specifically released or returned. If the latter was the case, there would have been no need to refer in the Credit Agreement to the GABD, Bank Act security or postponement of claim by Hickman Motors Limited, all of which had been required in earlier Credit Agreements.

Notwithstanding the Trustee's determination that the GSA ceased to have any continuing effect after the 2000 Credit Agreements were entered into and their conditions fulfilled in the event the Trustee's determination in this respect is found to be wrong, it has made a determination concerning the nature and extent of the charge created by the GSA.

The GSA provides:

- "1. Grant of Security. The Customer mortgages, charges and assigns to CIBC and grants to CIBC, and CIBC takes a security interest in...
 - (b) All Personal Property: all of the Customer's present and after acquired undertaking and Personal Property...
4. Collateral Free of Charges. The Customer represents and warrants that the collateral is, and agrees that the Collateral will at all times be, free of any charge or trust except in favour of CIBC or incurred with CIBC's prior written consent... [my underlining]
5. Use of Collateral. The Customer will not, without CIBC's prior written consent sell, lease or otherwise dispose of any of the Collateral (other than Inventory, which may be sold, leased or otherwise disposed of in the ordinary course of the Customer's business.)" [my underlining]

The 2000 Credit Agreements provide:

"You will ensure that:

...
Negative Pledge: There is no lien on any of your present or future assets and that you do not assign any right to any income, without our prior consent (which consent will not be unreasonably withheld), except for the four exceptions below, namely:

- (a) a Purchase Money Lien;
 - (b) a lien existing in an asset when it was acquired;
 - (c) a renewal or replacement of a Purchase Money Lien or a lien referred to in (b) above, so long as the principal amount secured by the lien does not increase; or
 - (d) a Normal Course Lien."
- [my underlining]

The Pre-2000 Credit Agreements did not contain this Negative Pledge language; however, the Debenture contained exclusionary language as referred to at page 14 of this Final Determination.

It is the Trustee's determination that pursuant to Section 41 of the PPSA, the referenced provisions of the GSA and the 2000 Credit Agreements are effective to subordinate any security interest CIBC may have in the Assets based on the GSA to the security constituted by Permitted Encumbrances.

In the 2000 Credit Agreements and prior to that in paragraph 2.2 of the Original Debenture, CIBC has given written consent to the Permitted Encumbrances.

The 2000 Credit Agreements and paragraph 2.2 of the Debenture permit HEL to grant security to suppliers or other lenders as described in the Credit Agreements and the Original Debenture.

The GSA permits charges granted with CIBC's prior written consent. The decision of the Courts in *Chiips v. Skyview Hotel Ltd.* is applicable and the Trustee has determined that with the consents contained in the 2000 Credit Agreements, the clauses contained in the GSA are enforceable as subordination clauses. The policy rationale for such a determination is consistent with the policy rationale applied in *Chiips*. In *Chiips*, Mr. Justice Foisy stated in paragraph 28 *et seq.* of his decision as follows:

"The policy rationale for finding that the clauses in question should be enforceable by Chiips is one of commercial reality. The whole purpose for including these kinds of clauses in security agreements is to "remove any obstacles the debtor might encounter in acquiring new collateral for the conduct of his business" (see Ziegel, The Scope of Section 66a of the OPPSA and Effects of Subordination Clause: Euroclean Canada Inc. v. Forest Glade Investments Ltd." (1984), 9 C.B.L.J. 367 at p.372). Clauses such as those in this case are intended to confer priority on purchase money security interests; without this clause the debtor would not be able to purchase goods on credit as the potential creditor would not be able to get any sort of credit from the debtor.

I think it is clear that the clauses gave Skyview the right in the ordinary course of business to grant security to its suppliers (in the form of purchase money security interests) which would have priority over the floating charge in the debentures. At the time the debentures were granted, the law was clear that the language used in the debentures acted to subordinate the floating charge to a conditional sale or purchase money charge...The debenture holders ought to have known then that the provisions had that effect. Clearly, the parties intended that the floating charge would be subordinated to allow Skyview to carry on its business."

It is the Trustee's determination that it is equally clear that the language in the Credit Agreements coupled with the GSA and the Debenture was intended to subordinate the Bank's security to the type of charges described in the exception paragraph contained in the Credit Agreement and to the type of charges described in paragraph 2.2 of the Debenture.

It is the Trustee's determination that the principles set out by the Court in *Bank of Montreal v. Dynex* are applicable to the GSA with the result that if the GSA creates a valid security interest in favour of CIBC, CIBC holds in trust, for unperfected PMSI holders and other Permitted Encumbrancers, proceeds derived from Assets in which Permitted Encumbrancers had a security interest, whether that security interest was perfected or not.

10. Application of the PPSA

By section 4 of the PPSA, the PPSA applies to every transaction that in substance creates a security interest without regard to form and without regard to who has title to the collateral and

includes a chattel mortgage, conditional sale, fixed charge, floating charge, pledge, trust indenture, trust receipt, an assignment, a consignment, lease, trust or transfer of chattel paper where they secure payment or performance of an obligation.

Section 74(2) of the PPSA provides that, except as otherwise provided, the PPSA applies to every security agreement entered into before the commencement of the Act that was not validly terminated in accordance with prior law before the commencement of the Act ("Prior Security Agreement").

By Section 5(k) of the PPSA, security agreements governed by Part VIII of the *Bank Act* (Canada) are excluded from the application of the Act.

The GABD and Debenture are Prior Security Agreements to which by virtue of section 74(2), the PPSA applies.

The GSA falls within the ambit of the PPSA by virtue of section 4.

The *Bank Act* security referenced herein is excluded from the application of the PPSA.

11. Enforceability of the Security Agreements

Under s.11 of the PPSA, a security agreement is only enforceable against a 3rd party where a debtor (HEL) has signed a security agreement that contains an appropriate description of the collateral as provided in Section 11.

However, by virtue of section 74(3), section 11 does not apply to Prior Security Agreements, the validity of security interests created by Prior Security Agreements is governed by the prior law.

The PPSA does not apply to the *Bank Act* security.

In the result:

- (a) The GSA is only enforceable against 3rd parties if it satisfies the requirements of s.11 of the PPSA;
- (b) The GABD and Debenture are only enforceable against 3rd parties if they create valid enforceable security interests under the prior law;
- (c) The *Bank Act* Security is only enforceable against 3rd parties if it satisfies the requirements of the *Bank Act*.

The Security Agreement (GSA)

HEL has signed the GSA. The GSA contains a statement that a security interest is taken in all of the debtor's present and after-acquired undertaking and Personal Property.

Section 11(b) permits a description of collateral by a statement that a security interest is taken in all of the debtor's present or after-acquired personal property.

The Trustee has determined, based on the foregoing, that the description of the Property contained in the GSA is enforceable against 3rd parties pursuant to s.11 of the PPSA.

Notwithstanding the adequacy of the description for purposes of section 11 of the PPSA, the Trustee has determined that the GSA does not constitute a security interest in any of the Assets.

The GABD

The *Assignment of Book Debts Act*, R.N.F. 1990, c.A-19, in Section 5, provides that an assignment of book debts made by a person engaged in a trade or business in the province is void as against creditors of the assignor and against subsequent purchasers unless the assignment is:

- (a) in writing;
- (b) accompanied by an affidavit of the execution of it by the assignor, except in the case of assignments executed by a corporation which, by virtue of s.13 of the Act, do not require the affidavit of a certifying witness;
- (c) an affidavit of the assignee (CIBC) or its agent that the assignment was executed in good faith, for valuable consideration, and not merely for the purpose of protecting the book debts from creditors; and
- (d) registered as provided in the Act.

The Act requires registration in the Registry of Deeds by filing a copy of the Assignment with required affidavits.

The GABD dated January 4, 1985, in which CIBC bases a claim to a security interest is:

- (a) in writing and signed by HEL;
- (b) accompanied by the affidavits required; and
- (c) endorsed by the Registrar of Deeds as having been registered on January 16, 1985 as Document #16040.

The Debenture

The *Registration of Deeds Act*, R.S.N. 1990, c.R-10, provides in section 10 that an "instrument" made after March 27, 1862 and not proved and registered shall be judged fraudulent and void both at law and in equity against a subsequent purchaser or mortgagee for valuable consideration who first registers his or her instrument, or against a Trustee of an insolvent estate, or an assignee or trustee under a conveyance for the benefit of creditors.

The Debenture is an instrument defined in the *Registration of Deeds Act* as it existed prior to the commencement of the PPSA.

Under section 24(1) of the *Registration of Deeds Act*, a document submitted for registration is considered to be registered when it is delivered to the registry provided it:

- (a) is executed by all persons from whom an interest passes (here, HEL);
- (b) has attached to it the proper proof; and
- (c) is accompanied by the proper fee.

The Debenture, including the Original Debenture and the Supplements, have been executed by HEL, are proved in accordance with the *Registration of Deeds Act* and are endorsed by the Registrar of Deeds as to registration.

Based on the *Registration of Deeds Act*, the Debenture was not void or fraudulent as against third parties but was enforceable according to its terms.

The Bank Act Security

The *Bank Act* provides in section 427(4)(a) that:

“The rights and powers of the bank in respect of property covered by the security (s.427 security) are void as against creditors of the person giving the security and as against subsequent purchasers or mortgagees in good faith of the property covered by the security unless a notice of intention signed by or on behalf of the person giving the security was registered in the appropriate agency not more than three years immediately before the security was given.”

In Banking Law of Canada, 2nd ed., 1998, Carswell, M.H.Ogilvie, the following appears at page 362:

“to be valid however the notice of intention must be given at the time the security is taken and the security will be void if given after”

The Notice of Intention was registered under the provisions of the *Bank Act* on October 26, 2000. The security was given by HEL to CIBC on October 18, 2000.

As the Notice of Intention was not registered under the provisions of the *Bank Act* before the security was given, the security is void against creditors of HEL and against subsequent purchasers or mortgagees in good faith.

The Trustee has also determined that the section 427 *Bank Act* security is ineffective and fails to create a security interest in any of the Assets because of the inadequacy of the description of the property to be charged by the agreement (see page 13 of this Determination).

12. Effectiveness of the Security Agreements

According to s.10 of the PPSA, a security agreement is effective according to its terms.

The Trustee has determined that:

- (a) The terms of the GABD are effective to provide a security interest in the Assets described in it and, in particular, in the Assets described in Schedule C;
- (b) For the reasons set out in paragraph 9(b), the terms of the Debenture are effective to provide a security interest in all of the Assets other than Assets which are charged by Permitted Encumbrances.

The Security Interest in such Assets is held in trust by CIBC for the Permitted Encumbrancers as security for the debt owed to the Permitted Encumbrancer and intended to be secured by the Permitted Encumbrancer's security agreement, whether or not the security of such Permitted Encumbrancer has been properly perfected under the PPSA.

- (c) The terms of the GSA are effective to provide a security interest in all of the Assets other than Assets which are charged by Permitted Encumbrances; however, for the reasons set out in paragraph 9, the Trustee has determined that no security interest in the Assets exists by virtue of the GSA.

If the Trustee is incorrect in determining that no security interest exists by virtue of the GSA, the Trustee has determined that any security interest of CIBC in Assets charged by a Permitted Encumbrance is held in trust by CIBC for the Permitted Encumbrancers as security for the debt owed to the Permitted Encumbrancers and intended to be security by the Permitted Encumbrancer's security agreement, whether or not the security of such Permitted Encumbrancer has been properly perfected under the PPSA.

- (d) The PPSA does not apply to *Bank Act* Security; however, for the reasons more fully set out in paragraph 9, the Trustee has determined that the description of the property intended to be charged is so imprecise as to make the section 427 security agreement ineffective.

Canadian Banking Law, 2nd edition, Carswell, M.H. Ogilvie, at p.362; *Hawker v. Royal Bank* (1921), 59 D.L.R. 674 (Sask.K.B.); *Battle Island Paper Co. v. Molsen's* (1917), 38 D.L.R. 372.

13. Attachment

Pursuant to the terms of the PPSA, a security interest, including a security interest in the nature of a floating charge in collateral contained in a security agreement attaches when value is given and the Debtor has rights in the collateral.

The Bank Act Security

As the PPSA does not apply, concepts of attachment are not relevant to the *Bank Act* Security.

The GABD and the Debenture

CIBC gave value by providing credit facilities to HEL as described in the Credit Agreements referred to in paragraph 8. It was a condition of each of the Credit Agreements that the GABD and Debenture be provided as security for the credit facilities.

HEL had rights in all of the Assets which constitute collateral under the GABD and the Debenture on the Date of Bankruptcy.

The Debenture contains a floating charge. The law is clear that the use or existence of a floating charge debenture does not indicate an intention to delay attachment until crystallization. Use of floating charge form of security does not invoke the floating charge law. The charge and its priority are governed by the PPSA.

Introduction to the New Brunswick Personal Property Security Act, Catherine Walsh (1985), p.85; Atlantic Personal Property Security Act Handbook, 4th ed., Cummings & Wood, at p.152.

The GSA

The GSA attached when given in January of 2000.

The GSA was provided in furtherance of the '98 Credit Agreement and Value was provided by CIBC's continuing to make the Credit Facilities available to HEL.

However, in April 2000, a new Credit Agreement was entered into, under which only specific itemized security was required. The GSA was not required. Existence of a GSA was not a condition of the provision of the Credit Facility. The Facilities were made available to HEL without any requirement for the GSA. No value was given by CIBC to HEL for continuance of the GSA.

14. Perfection

A security interest is perfected when it has attached and all steps required for its perfection under the PPSA have occurred.

The Trustee has determined that the security interests which the Trustee has determined are valid, namely:

- (a) the GABD; and

(b) the Debenture

have been perfected as:

- (a) the Trustee has determined they have attached; and
(b) CIBC has made the following registrations under the PPSA:

Registration Number 1063565 at the PPR dated June 29, 2001 with an expiry date of June 29, 2006 contains the following information:

Security

GENERAL DESCRIPTION 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 PPSA) 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 therefrom which now are or which may be any time hereafter be due 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 PPSA, derived directly or indirectly from any dealings with collateral.

Debtor: Hickman Equipment (1985) Limited
Secured Party: Canadian Imperial Bank of Commerce

PRE-PPSA INFORMATION

16040

Assignment of Book Debts Act, 1985-01-16

Registration Number 1403243 at the PPR dated November 29, 2001 with an expiry date of November 29, 2006 contains the following information:

Security

GENERAL DESCRIPTION COLLATERAL

all of the debtor's present and after acquired personal property as defined in PPSA.

Debtor: Hickman Equipment (1985) Limited
Secured Party: Canadian Imperial Bank of Commerce

ADDITIONAL INFORMATION

Demand debenture dated Jan 7, 1985, registration number roll 77, frame 70, registration date January 29, 1985, registrar of deeds, Newfoundland.

PRE-PPSA INFORMATION

77-70

Registration of Deeds Act, 1985-01-29

In addition, CIBC has made the following Registration under the provisions of the PPSA:

Registration Number 78490 at the PPR dated January 28, 2000 with an expiry date of January 28, 2005:

Security

GENERAL DESCRIPTION COLLATERAL

all the debtor's present and after acquired personal property as defined in PPSA.

Debtor: Hickman Equipment (1985) Limited

Secured Party: Canadian Imperial Bank of Commerce

Section 24 of the Regulations permits a description of collateral by item or kind *or* by reference to, "goods", "document of title", "chattel paper", "security", "instrument", "money" or "intangible"; a statement that a security interest is taken in all of the debtor's present or after-acquired personal property; or a statement that a security interest is taken in all of the debtor's present and after-acquired personal property except specified items or kinds of personal property or except one or more of the following: "goods", "documents of title", "chattel paper", "security", "instrument", "money" or "intangible".

The description in Registration Numbers 1063565 and 1403243 are in compliance with the requirements of the Regulations. By operation of s.26 of the PPSA, the registrations qualify as a perfection step with respect to CIBC's security interest in the Assets in which a security interest is created by the GABD and the Debenture.

15. Effective Date of Perfection

It is the Trustee's determination that the effective date of perfection of the security interest claimed by CIBC for the purpose of s.36 of the PPSA are as follows:

- (a) the GABD is January 16, 1985; and
- (b) the Debenture is January 29, 1985.

If the GSA constitutes a valid security interest, which the Trustee has determined it does not, the effective date of its perfection is January 28, 2000.

Basis of Determination

The GABD and the Debenture are prior security interests as defined in s.74(1)(c) of the PPSA.

Under s.75 of the PPSA, a prior security interest that is covered by an unexpired registration under prior registration law, is considered to have been registered and perfected under the PPSA as of the time of registration under the prior registration law and to maintain that status for 2 years after the commencement of the PPSA.

If the security interest is registered in accordance with the Act within 2 years of the Act's commencement, its perfected status effective as at the date of its original registration under the prior law is continued.

Each of the GABD and the Debenture were registered under the prior law and were covered by an unexpired registration under the prior registration law on the date of commencement of the Act.

The Regulations set out in s.26, the requirements for registration under the PPSA, section 26 provides that where a financing statement is registered under s.75 to continue the registered and perfected status of a prior security interest covered by an unexpired registration under prior registration law, the registrant shall:

- (a) indicate under which prior registration law the security interest to which the registration relates is registered;
- (b) enter the registration number under prior registration law;
- (c) except in the case of a prior security interest covered by a registration under the *Registration of Deeds Act*, indicate the venue in which the registration under prior registration law is registered;
- (d) in the case of a prior security interest covered by a registration under the *Registration of Deeds Act*, indicate that the registration was made under that Act; and
- (e) enter the date on which registration became effective under prior registration law, with the number of the year entered first followed by the number of the month followed by the number of the day.

As appears from the particulars set out above concerning the Registrations made by CIBC under the PPSA, the requirements of s.26 of the Regulations have been satisfied so as to continue the perfection of the GABD and the Debenture from the date of their original registration under the prior law and the Trustee so determines.

A question has been raised as to whether or not s.26 required CIBC in its financing statement to provide particulars of the registration under prior law of the Original Debenture and each of the Supplementary Debentures.

The Trustee has determined that s.26 does not so require.

There is and has always been only One Debenture consisting of the Original Debenture dated January 27, 1995, and a series of Supplementary Debentures, each of which is expressly declared to be supplementary to and form one instrument with the Original Debenture and such Supplementary Debentures as already exist.

Each Supplemental Debenture contains the following (with appropriate variations depending on the number of Supplemental Debentures then in existence):

3. The Company hereby declares, covenants and agrees with the Bank that (a) this Supplemental Debenture shall be supplementary to and form one instrument with the Debenture, the 1990 Supplemental Debenture, the 1997 Supplemental Debenture and the 1997 Second Supplemental Debenture, (b) the Debenture, the 1990 Supplemental Debenture, the 1997 Supplemental Debenture and the 1997 Second Supplemental Debenture by this reference shall be incorporated herein with the same effect as if set forth at length herein and shall for all purposes be deemed to form part hereof, and (c) unless there is something in the subject or context inconsistent herewith, expressions used in this Supplemental Debenture shall have the same meaning as ascribed to corresponding expressions in the Debenture, the 1990 Supplemental Debenture, the 1997 Supplemental Debenture and the 1997 Second Supplemental Debenture;

4. The Company hereby declares, covenants and agrees with the Bank that the Debenture, 1990 Supplemental Debenture, the 1997 Supplemental Debenture and the 1997 Second Supplemental Debenture and all covenants, provisions, agreements and power contained therein and supplemented or amended by this Supplemental Debenture and the lien and security created thereby are in all respects confirmed and preserved."

There being only One Debenture, there is only one prior security interest as defined in s.74(1)(c) of the Act created which needs to be continued under the PPSA.

The date upon which the Debenture was registered under the prior law is the original date of registration.

If the Trustee is wrong in respect of the foregoing, it is its determination that the omission is not seriously misleading and the registration is effective notwithstanding the omission.

The PPSA provides in section 44(7) that:

"The validity of the registration of a financing statement is not affected by any defect, irregularity, omission or error in the financing statement unless the defect, omission or error is seriously misleading."

The PPSA creates a notice system of registration. The object of registration under the PPSA is not to provide a searcher with precise particulars of the security interest claimed or the debt it secures; it is to provide notice that a person claims a security interest in a particular asset or class of assets.

A subsequent lender is put on notice of the existence of a security interest in an asset or class of assets and permitted to make inquiry of the particulars of the security. Failure to provide particulars of the registration under prior law of the amending debenture would not result in a person being seriously misled. A person conducting a search would have notice of the Debenture. If affected, a person can and should make inquiry pursuant to section 19 of the Act.

It is the particulars provided by the security holder after inquiry on which the subsequent lender is entitled to rely (see PPSA, section 19 and Commentary, An Introduction to the New

Brunswick Personal Property Security Act, Catherine Walsh, 1995, at pp.99-101 and Alberta Personal Property Security Act Handbook, 4th ed., Cummings and Wood at pp.179-184.

16. PMSI

CIBC does not assert an entitlement to a PMSI in any of the Assets.

17. Proceeds

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

The Trustee does not believe CIBC is asserting a claim to proceeds; however, the Trustee has made no determination with respect to competing claims to proceeds as with respect to this is an issue of priority and not within the Trustee's mandate under the Claims Plan. However, the Trustee has outlined below the statutory requirements that must be met by a secured party in order to assert a claim to proceeds from the disposition of collateral as against other secured creditors.

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

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

- (a) includes a description of the proceeds that would be sufficient to perfect a security interest in original collateral of the same kind;
- (b) includes a description of the original collateral, where proceeds are of a kind that are within the description of the original collateral; or
- (c) includes a description of the original collateral, where the proceeds consist of money, cheques or deposit accounts in a bank, credit union, or similar financial institutions.

If proceeds do not fall into one of these categories, s.29(4) of the PPSA requires registration with respect to the proceeds collateral within 15 days after such proceeds arise. Such registration would be in accordance with the same rules as the original collateral.

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

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

18. Additional Comments on Priorities

While it is not within the mandate of the Trustee to determine priorities, it nevertheless offers the following comments in order to provide assistance to any creditor who may also have a valid perfected security interest in the Asset(s) and wishes to determine, for its own benefit, the relative ranking of security and creditors with respect to same.

The Trustee is aware of a priority agreement made between CIBC and John Deere Limited which is specifically referred to in the Credit Agreements. It is also aware of a priority agreement made between General Motors Acceptance Corporation, CIBC and HEL.

19. Auction Proceeds

As CIBC claims a security interest in all of the Assets for the Total Debt, the Trustee has not listed Auction Proceeds for Assets in which CIBC claims a security interest. The Auction Proceeds are set out in a report on the Receiver's website.

SCHEDULE A

MARCH 13, 2002

<u>Term Loan 63 / 5881-054</u>	
Principal:	\$12,246,055.82
Interest Accrued (Pre-Class.):	48,849.25
Accrued Interest (Current):	33,411.67
Fees (Pre-Class.):	680.00
Total	\$ 12,328,996.54
<u>Term Loan 63 / 5181-151</u>	
Principal:	\$ 2,935,458.77
Interest Accrued (Pre-Class.):	13,109.00
Accrued Interest (Current):	8,042.36
Total	\$ 2,956,610.12
<u>Term Loan 63 / 3800-754</u>	
Principal:	\$ 24,100.00
Interest Accrued (Pre-Class.):	72.90
Accrued Interest (Current):	60.75
Total	\$ 24,233.65
<u>Operating Account 63 / 5881-054</u>	
Principal:	\$ 16,683.64
Interest Accrued:	0.00
Total	\$ 16,683.64
<u>Letters of Guarantee</u>	
Total Outstanding	\$ 107,000.00
Total Liabilities	\$ 15,433,523.95

Schedule B



Canadian Imperial Bank of
Commerce

St. John's CBC
Box 340
St. John's, NF
A1C 5J9

June 19, 2000

HICKMAN EQUIPMENT (1985) LIMITED
P.O. Box 8340, Station A
St. John's, NF
A1B 3N7
Attention: Mr. Howard Hickman
Mr. Garry Bishop

Dear Mr. Hickman and Mr. Bishop,

We, Canadian Imperial Bank of Commerce ("CIBC"), are pleased to establish the following Credits for you, our customer.

Credit A: Operating Line

Credit Limit:

The lesser at any time of:

- (a) \$15,000,000; and
- (b) the total of

- ▶ 75% of the Receivable Value, plus
- ▶ 65% of the Inventory Value, except this amount cannot
50% of the outstandings, minus
- ▶ all Priority Claims

Description and Rate:

A revolving demand credit, for general business purposes, as follows:

- (1) Canadian dollar loans and overdrafts. The interest rate is as follows: Prime Rate plus 1.00%:
- (2) Canadian dollar or foreign currency L/Cs. The total amount of the L/Cs outstanding at any time may not exceed \$500,000. L/Cs may not have terms to expiry of more than 12 months. Fees are CIBC standard L/C fees, minimum \$250, plus out of pocket expenses. Our standard L/C documentation is also required.

If there is a drawing under any L/C, we will pay it by drawing on your Operating Account, unless you have made other arrangements with us.

Credit B: Demand Installment Loan

Loan Amount: \$96,100
Purpose: Renewal of existing facility.
Interest Rate: Prime Rate plus 0.85% per year.
Scheduled Payments: Unless we make demand, you will pay CIBC as follows:
Regular monthly payments of \$3,600 each, plus interest.

Security

Security: The following security is required:
Assignment of Receivables: General assignment of accounts receivable.
Bank Act Security: Security under Section 427 of the Bank Act.

Debenture: Floating charge debenture for \$20,000,000 giving CIBC a first charge over all assets subject to a Priority Agreement dated July 5, 1985, with John Deere Limited, plus acknowledged assignment of fire and other perils insurance, with loss payable to CIBC.

Guarantee: Guarantee and Postponement of Claim from Group Holdings Limited in an amount that is unlimited and supported by:

Debenture: Fixed charge debenture for \$3,000,000 giving CIBC a first charge over the following properties:-

504 Water Street, St. John's, NF

6 Stratford Place, St. John's, NF

"HBC Site", Placentia, NF

1 Grenfell Heights, Grand Falls, NF

15 Bayley Street, Grand Falls, NF

239 Main Street, Burin, NF

166 Bayview, Fortune, NF

162-164 Bayview, Fortune, NF

and a floating charge over all your business assets, plus acknowledged assignment of fire and other perils insurance, with loss payable to CIBC as first mortgagee.

This fixed debenture is also held as security for the Credit Facilities of Group Holdings Ltd., Hickman Leasing Ltd., Hickman Motors Ltd., and 10067 Newfoundland Ltd.

Postponement of claim signed by Hickman Motors Limited for \$1,000,000.

Covenants

Covenants:

You will ensure that:

Minimum Equity: The customer will ensure, determined on a non-consolidated basis, of (A) its shareholders' equity less "Due from related companies", "Investments in related companies", and "Intangible assets" plus (B) such subordinated debt shareholders' equity is not at any time less than \$7,500,000.

Interest Coverage Ratio: Your Interest Coverage Ratio is not at any time less than 1.75:1.

Negative Pledge: There is no Lien on any of your present or future assets, and that you do not assign any right to any income, without our prior consent (which consent will not be unreasonable with held), except for the four exceptions below, namely:

- (a) a Purchase Money Lien
- (b) a Lien existing on an asset when it was acquired;
- (c) a renewal or replacement of a Purchase Money Lien or a Lien referred to in (b) above, so long as the principal amount secured by the Lien does not increase; or
- (d) a Normal Course Lien

Reporting Requirements

Reporting Requirements:

You will provide:

- (1) Within 30 days of each calendar month-end, a summary of Receivable Value and a summary of Inventory Value, together with an aged list of receivables and an aged list of accounts payable and a Monthly Statement of Available Credit Limit, as of that month-end. Detailed Account receivable listings to be provided as at June 30 each year.
- (2) Within 30 days of the end of each month, financial statements for that month.

- (3) Within 120 days of each fiscal year-end, financial statements for that fiscal year on an audited basis.
- (4) Within 120 days of each fiscal year-end, financial statements from the Guarantor for that fiscal year on an audited basis.
- (5) Within 120 days of each fiscal year-end, a business plan/forecast for the next fiscal year.

Fees

Standby: For the Credit A, 0.25 % per year of the undrawn portion, payable monthly.

Set-up: Waived.

Review: A fee of \$5,000.

Amendment: If you require an amendment to this Agreement, there will be a fee of 0.25 % of the amended amount requested, with a minimum of \$500.

Pricing Protection. The customer acknowledges that each fee, interest rate and other charge for all the Customer's banking arrangements with CIBC is priced dependent upon the others. If the Customer cancels any of those banking arrangements, the Customer agrees to be bound to any increased or added fees, interest rates, and charges (as CIBC may determine and notify the Customer), effective from the date of such cancellation.

Other Provisions

Calculations: When applicable, the calculations made under the "Covenants" and "Reporting Requirements" sections of this Agreement are to be done on an unconsolidated basis.

Interest Rate Applicable to Credit Limit Excesses: Prime Lending Rate plus 5 % per year. If the Credit Limit of a Credit, or the Credit Limit of part of a Credit, or the Overall Credit Limit, is exceeded at any time, the Interest Rate Applicable to Credit Limit Excesses is calculated on that excess amount.

Next Scheduled Review Date: We will review the credit by August 31, 2000. At that time, we will review your financial statements, your forecast business and financial plans, and how well you have complied with the requirements of this Agreement. The terms of this Agreement will continue to apply until either a new Agreement or an Amendment to this one is settled.

Standard Credit Terms: ~~The attached Schedule - Standard Credit Terms forms part of this~~
Agreement.

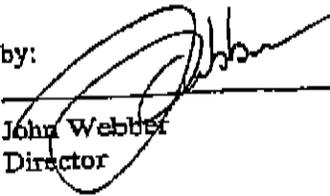
Please indicate your acceptance of these terms by returning a signed copy of this Agreement.

Upon acceptance, this Agreement replaces the existing credit agreement dated April 18, 2000, between you and CIBC. Outstanding amounts (and security) under that Agreement will be covered by this Agreement.

Yours truly,

Canadian Imperial Bank of Commerce

by:



John Webber
Director

Phone: 709 576-8996
Fax: 709 576-8744

by:



Susan Ewanick
Commercial Lending Specialist

Phone: 709 576-8789
Fax: 709 576-8744

Acknowledgment: The undersigned certifies that all information provided to CIBC is true, and acknowledges receipt of a copy of this Agreement (including any Schedules referred to above).

Accepted this 6 day of July, 2000.

HICKMAN EQUIPMENT (1985) LTD.

By: [Signature]
Name: H. J. Hickman
Title: DIRECTOR

By: [Signature]
Name: A. Hickman
Title: DIRECTOR

Guarantor

Group Holdings Ltd.

By: [Signature]
Name: H. J. Hickman
Title: Director

By: [Signature]
Name: A. Hickman
Title: DIRECTOR

Schedule - Standard Credit Terms

Article 1 - General

1.1 Interest Rate. You will pay interest on each Credit at nominal rates per year equal to:

(a) For amounts above the Credit Limit of a Credit or a part of a Credit or the Overall Credit Limit, as described in section 1.4, or for amounts that are not paid when due, the Interest Rate Applicable to Credit Limit Excesses, and

(b) for any other amounts, the rate specified in this Agreement.

1.2 Variable interest. Each variable interest rate provided for under this Agreement will change automatically, without notice, whenever the Prime Rate changes.

1.3 Payment of interest. Interest is calculated on the daily balance of the Credit at the end of each day. Interest is due once a month, unless the Agreement states otherwise. Unless you have made other arrangements with us, we will automatically debit your Operating Account for interest amounts owing. If your Operating Account is in overdraft and you do not deposit to the account an amount equal to the monthly interest payment, the effect is that we will be charging interest on overdue interest (which is known as compounding). Unpaid interest continues to compound whether or not we have demanded payment from you or started a legal action, or got judgment, against you.

1.4 Interest Rate Applicable to Credit Limit Excesses. To determine whether the Interest Rate Applicable to Credit Limit Excesses is to be charged, the following rules apply:

(a) Interest Rate Applicable to Credit Limit Excesses will be charged on the amount that exceeds the Credit Limit of any particular Credit. This will happen even if the Overall Credit Limit has not been exceeded.

(b) If there are several parts of a Credit, Interest Rate Applicable to Credit Limit Excesses will be charged if the Credit Limit of a particular part is exceeded. For example, if Credit A's limit is \$250,000, and the limit of one part is \$100,000 and the limit of that part is exceeded by \$25,000, the Interest Rate Applicable to Credit Limit Excesses will be charged on that \$25,000 excess, even if the total amount outstanding under Credit A is less than \$250,000.

(c) To determine if the Overall Credit Limit has been exceeded, the outstanding principal amount of each Credit is totalled, and any amounts in foreign currency are converted to Canadian dollars. If that total exceeds the Overall Credit Limit, the Interest Rate Applicable to Credit Limit Excesses will be charged on that excess amount. For example, if there are three Credits, each with a Credit Limit of \$100,000 and an Overall Credit Limit of \$250,000, if each of those Credits is at \$80,000, they are each under their own Credit Limits, but the Overall Credit Limit has been exceeded by \$20,000, and the Interest Rate Applicable to Credit Limit Excesses will be charged on that excess amount.

1.5 Fees. You will pay CIBC's fees for each Credit as outlined in the Letter. You will also reimburse us for all reasonable fees (including legal fees) and out-of-pocket expenses incurred in registering any security, and in enforcing our rights under this Agreement or any security. We will automatically debit your Operating Account for fee amounts owing.

1.6 Our rights re demand Credits. At CIBC, we believe that the banker-customer relationship is based on mutual trust and respect. It is important for us to know all the relevant information (whether good or bad) about your business. CIBC is itself a business. Managing risks and monitoring our customers' ability to repay is critical to us. We can only continue to lend when we feel that we are likely to be repaid. As a result, if you do something that jeopardizes that relationship, or if we no longer feel that you are likely to repay all amounts borrowed, we may have to act. We may decide to act, for example, because of something you have done, information we receive about your business, or changes to the economy that affect your business. Some of the actions that we may decide to take include requiring you to give us more financial information, negotiating a change in the interest rate or fees, or asking you to get further accounting assistance, put more cash into the business, provide more security, or produce a satisfactory business plan. It is important to us that your business succeeds. We may, however, at our discretion, demand immediate repayment of any outstanding amounts under any demand Credit. We may also, at any time and for any cause, cancel the unused portion of any demand Credit. Under normal circumstances, however, we will give you 30 days' notice of any of these actions.

1.7 **Payments:** If any payment is due on a day other than a Business Day, then the payment is due on the next Business Day.

1.8 **Applying money received.** If you have not made payments as required by this Agreement, or if you have failed to satisfy any term of this Agreement (or any other agreement you have that relates to this Agreement), or at any time before default but after we have given you appropriate notice, we may decide how to apply any money that we receive. This means that we may choose which Credit to apply the money against, or what mix of principal, interest, fees and overdue amounts within any Credit will be paid.

1.9 **Information requirements.** We may from time to time reasonably require you to provide further information about your business. We may require information from you to be in a form acceptable to us.

1.10 **Insurance.** You will keep all your business assets and property insured (to the full insurable value) against loss or damage by fire and all other risks usual for property such as yours (plus for any other risks we may reasonably require). If we request, these policies will include a loss payee clause (and if you are giving us mortgage security, a mortgagee clause). As further security, you assign all insurance proceeds to us. If we ask, you will give us either the policies themselves or adequate evidence of their existence. If your insurance coverage for any reason stops, we may (but do not have to) insure the property. We will automatically debit your Operating Account for these amounts. Finally, you will notify us immediately of any loss or damage to the property.

1.11 **Environmental.** You will carry on your business, and maintain your assets and property, in accordance with all applicable environmental laws and regulations. If (a) there is any release, deposit, discharge or disposal of pollutants of any sort (collectively, a "Discharge") in connection with either your business or your property, and we pay any fines or for any clean-up, or (b) we suffer any loss or damage as a result of any Discharge, you will reimburse CIBC, its directors, officers, employees and agents for any and all losses, damages, fines, costs and other amounts (including amounts spent preparing any necessary environmental assessment or other reports, or defending any lawsuits) that result. If we ask, you will defend any lawsuits, investigations or prosecutions brought against CIBC or any of its directors, officers, employees and agents in connection with any Discharge. Your obligation to us under this section continues even after all Credits have been repaid and this Agreement has terminated.

1.12 **Consent to release information.** We may from time to time give any credit or other information about you to, or receive such information from, (a) any financial institution, credit reporting agency, rating agency or credit bureau, (b) any person, firm or corporation with whom you may have or propose to have financial dealings, and (c) any person, firm or corporation in connection with any dealings you have or propose to have with us. You agree that we may use that information to establish and maintain your relationship with us and to offer any services as permitted by law, including services and products offered by our subsidiaries when it is considered that this may be suitable to you.

1.13 **Our pricing policy.** Fees, interest rates and other charges for your banking arrangements are dependent upon each other. If you decide to cancel any of these arrangements, you will have to pay us any increased or added fees, interest rates and charges we determine and notify you of. These increased or added amounts are effective from the date of the changes that you make.

1.14 **Proof of debt.** This Agreement provides the proof, between CIBC and you, of the credit made available to you. There may be times when the type of Credit you have requires you to sign additional documents. Throughout the time that we provide you credit under this Agreement, our loan accounting records will provide complete proof of all terms and conditions of your credit (such as principal loan balances, interest calculations, and payment dates).

1.15 **Renewals of this Agreement.** This Agreement will remain in effect for your Credits for as long as they remain unchanged. We have shown a Next Scheduled Review Date in the Letter. If there are no changes to the Credits this Agreement will continue to apply, and you will not need to sign anything further. If there are any changes, we will provide you with either an amending agreement, or a new replacement Letter, for you to sign.

1.16 **Confidentiality:** The terms of this Agreement are confidential between you and CIBC. You therefore agree not to disclose the contents of this Agreement to anyone except your professional advisors.

1.17 **Pre-conditions.** You may use the Credits granted to you under this Agreement only if:

- (a) we have received properly signed copies of all documentation that we may require in connection with the operation of your accounts and your ability to borrow and give security;
- (b) all the required security has been received and registered to our satisfaction;
- (c) any special provisions or conditions set forth in the Letter have been complied with; and
- (d) if applicable, you have given us the required number of days notice for a drawing under a Credit.

1.15 **Notices.** We may give you any notice in person or by telephone, or by letter that is sent either by fax or by mail.

1.19 **Use of the Operating Line.** You will use your Operating Line only for your business operating cash needs. You are responsible for all debits from the Operating Account that you have either initiated (such as cheques, loan payments, pre-authorized debits, etc.) or authorized us to make. Payments are made by making deposits to the Operating Account. You may not at any time exceed the Credit Limit. We may, without notice to you, return any debit from the Operating Account that if paid, would result in the Credit Limit being exceeded, unless you have made prior arrangements with us. If we pay any of these debits, you must repay us immediately the amount by which the Credit Limit is exceeded.

1.20 **Margin Requirements.** If your Operating Line is margined against Inventory and/or Receivable Value, the available Credit Limit of that Credit is the lesser of the Credit Limit stated in the Letter and the amount calculated using the Monthly Statement of Available Credit Limit.

1.21 **Instalment Loans.** The following terms apply to each Instalment Loan.

(a) **Non-revolving loans.** Unless otherwise stated in the Letter, any Instalment Loan is non-revolving. This means that any principal payment made permanently reduces the available Loan Amount. Any payment we receive is applied first to overdue interest, then to current interest owing, then to overdue principal, then to any fees and charges owing, and finally to current principal.

(b) **Floating Rate Instalment Loans.** Floating Rate Instalment Loans may have either (i) blended payments or (ii) payments of fixed principal amounts, plus interest, as described below.

(i) **Blended payments.** If you have a Floating Rate Loan that has blended payments, the amount of your monthly payment is fixed for the term of the loan, but the interest rate varies with changes in the Prime or US Base Rate (as the case may be). If the Prime or US Base Rate during any month is lower than what the rate was at the outset, you may end up paying off the loan before the scheduled end date. If, however, the Prime or US Base Rate is higher than what it was at the outset, the amount of principal that is paid off is reduced. As a result, you may end up still owing principal at the end of the term because of these changes in the Prime or US Base Rate.

(ii) **Payments of principal plus interest.** If you have a Floating Rate Loan that has regular principal payments, plus interest, the principal payment amount of your Loan is due on each payment date specified in the Letter. The interest payment is also due on the same date, but it is debited from your Operating Account one or two banking days later. Although the principal payment amount is fixed, your interest payment will usually be different each month, for at least one and possibly more reasons, namely: the reducing principal balance of your loan, the number of days in the month, and changes in the Prime Rate or US Base Rate (as the case may be).

(c) **Prepayment.** Unless otherwise agreed, the following terms apply to prepayment of any Instalment Loan:

(i) **Floating Rate Instalment Loans.** You may prepay all or part of a Floating Rate Instalment Loan (whether it is a Demand or a Committed Loan) at any time without notice or penalty.

(ii) **Fixed Rate Instalment Loans.** You may prepay all (but not part) of a fixed Rate Instalment Loan, on the following condition. You must pay us, on the prepayment date, a prepayment fee equal to the greater of (A) three months' interest on the Loan, and (B) the interest rate differential for the remainder of the term of the Loan, determined in accordance with the standard formula used by CIBC in these situations.

(d) **Demand or Fixed Rate Demand Instalment Loans.** If you have a Fixed Rate Demand Instalment Loan and we make demand for payment, you will owe us (i) all outstanding principal, (ii) interest, (iii) any other amount due under this Agreement, and (iv) a prepayment fee. The prepayment fee is equal to the interest rate differential for the remainder of the term of the loan, in accordance with the standard formula used by CIBC in these situations.

Article 2 - Bankers' Acceptances

2.1 **Definitions.** In this Article, the following terms have the following meanings:

"Bankers' Acceptance" or "B/A" means a Canadian dollar Draft that we have accepted under this Agreement.

"Commercial Acceptance Rate" means the variable reference rate that we declare from time to time as our stamping or acceptance fee for Drafts accepted by us.

"Draft" means, at any time, either a depository bill within the meaning of the *Depository Bills and Notes Act* or a bill of exchange within the meaning of the *Bills of Exchange Act*, in blank, drawn by the Customer on us (in satisfactory form), but before we have accepted it.

2.2 Availability. B/As are available only with terms to maturity of between 30 and 180 days.

2.3 Minimum issue amount. You will present Drafts for acceptance in a minimum amount of \$1 million. We can change this minimum amount at any time by 30 days' prior written notice.

2.4 Required Notice. You may either obtain a new advance by issuing a B/A stamped by CIBC (including a rollover of an existing B/A) or you may convert an amount outstanding under another Credit to issuance of a B/A on the following terms. You must give us notice (in the form we require, including, when applicable, the date of acceptance, the amount and the maturity date). Notice must be given by 10:00 a.m. (local time where the CIBC Branch/Centre is located) on the Business Day prior to the requested date of issuance. You must also give us any other notice required by the Letter.

2.5 Special Conditions.

(a) Draft Conditions. You will deliver to us the Drafts that you want us to issue. Each Draft must (i) be in a whole multiple of C\$100,000, (ii) be dated the date of delivery (which will be the same date as the requested date you notified us); (iii) mature on a Business Day; and (iv) be presented to the CIBC Branch/Centre for acceptance by 12:00 noon on the date of delivery (unless you have made prior arrangements in writing with us).

(b) Maturity Limitation. The maturity date of a Draft submitted to us for acceptance may not (i) be after a scheduled or mandatory final maturity or termination date for that Credit or (ii) conflict, in our opinion, with any scheduled or mandatory repayment for that Credit.

(c) Conversion-To-Loan Limitation. You may only convert a B/A into a loan otherwise allowed under this Agreement if the total of "A" plus "B" is less than Prime Rate existing on that maturity date, where:

"A" is the annual discount rate quoted at 9:30 a.m. (Toronto time) by the Toronto office of Wood Gundy Inc. as the discount rate at which it would purchase a bankers' acceptance issued by CIBC having a term to maturity of 30 days, and

"B" is the annual stamping or acceptance rate applicable to a Draft accepted by us under this Agreement, as determined on the maturity date of that B/A.

In making these calculations, each of "A" and "B" is expressed as a percentage.

2.6 Stamping Fee. When we accept a Draft under this Agreement, you will pay us a stamping fee, on the date of acceptance, in the amount as set out in the Letter. The stamping fee will be calculated on the face amount of that Draft for the number of days to maturity based on a 365 day year.

2.7 Reimbursement. B/As are negotiable instruments that are purchased in financial markets at a discount. Market forces determine what the discount amount for B/As is at any particular time. At maturity, the holder of a B/A redeems it from CIBC. We then pay the holder the face amount. You will, therefore, reimburse us at the maturity date for the face amount of all B/As that we have accepted for you, unless you convert those amounts to another Credit (assuming all proper notice has been given). If you do not reimburse us or convert those amounts to another Credit, we may convert them to any type of loan (if available) under any Credit.

2.8 Signatures and Safekeeping. All Drafts must either be signed by a properly authorized signing officer or bear a mechanically reproduced facsimile signature of that officer (subject to any prior written arrangements with us). Each Draft and B/A bearing a facsimile signature of that officer will be as binding on you as if it had been manually signed by that officer. This applies even for individuals who may no longer be authorized or otherwise be an officer at any time. You will compensate us for any loss or expense relating to any Draft or B/A that we deal with under this Agreement. We need only exercise the same degree of care in safekeeping executed Drafts delivered to us for future acceptance as if they were CIBC's property and we were keeping them at the place at which they are to be held.

2.9 Credit Cancellation. If your B/A Credit is terminated for any reason, we may require you to pay us immediately on demand the appropriate reimbursement amount for each B/A then outstanding. We will calculate the reimbursement amount in accordance with standard practice in the banking industry in Canada. After making this payment, (a) you will have no further liability for that B/A, and (b) we will (i) become the sole party liable under the B/A, and (ii) compensate you if you have to pay anyone else under that B/A.

2.10 **Waiver.** You will not claim any days of grace for the payment of a B/A. You waive any defence to payment which might otherwise exist if for any reason a B/A is held by us in our own right at its maturity.

2.11 **Obligations Absolute.** Your obligations for Drafts and B/As are unconditional and irrevocable. You will perform your obligations strictly in accordance with the provisions of this Agreement including, among other things, (a) any lack of validity or enforceability of a Draft accepted by us as a B/A, and (b) the existence of a claim, set-off, defence or other right which you may have against the holder of a B/A, CIBC or another person.

Article 3 - Definitions

3.1 **Definitions.** In this Agreement, the following terms have the following meanings:

"**Business Day**" means any day (other than a Saturday or a Sunday) that the CIBC Branch/Centre is open for business.

"**CIBC Branch/Centre**" means the CIBC branch or banking centre noted on the first page of this Agreement, as changed from time to time by agreement between the parties.

"**Credit**" means any credit referred to in the Letter, and if there are two or more parts to a Credit, "Credit" includes reference to each part.

"**Credit Limit**" of any Credit means the amount specified in the Letter as its Credit Limit, and if there are two or more parts to a Credit, "Credit Limit" includes reference to each such part.

"**Current Assets**" are cash, accounts receivable, inventory and other assets that are likely to be converted into cash, sold, exchanged or expended in the normal course of business within one year or less, excluding amounts due from related parties.

"**Current Liabilities**" means debts that are or will become payable within one year or one operating cycle, whichever is longer. They usually include accounts payable, accrued expenses, deferred revenue and the current portion of long-term debt.

"**Current Ratio**" means the ratio of Current Assets to Current Liabilities.

"**Debt to Effective Equity Ratio**" means the ratio of X to Y, where
X is the total of all liabilities, less all Postponed Debt, and
Y is the total Shareholders' Equity, plus all Postponed Debt, less (i) amounts due from investments in related parties and (ii) intangibles.

"**Interest Rate Applicable to Credit Limit Excesses**", unless otherwise defined in the Letter, means the Standard Overdraft Rate.

"**Demand Instalment Loan**" means an Instalment Loan that is payable upon demand. Such a Loan may be either at a fixed or a floating rate of interest.

"**Fixed Rate Instalment Loan**" means an Instalment Loan that is also a Fixed Rate Loan.

"**Fixed Rate Loan**" means any loan drawn down, converted or extended under a Credit at an interest rate which was fixed for a term, instead of referenced to a variable rate such as the Prime Rate or US Base Rate, at the time of such drawdown, conversion or extension. For purposes of certainty, a Fixed Rate Loan includes a LIBOR Loan.

"**Floating Rate Instalment Loan**" means either an Instalment Loan that is either a Prime Rate Loan or a Base Rate Loan.

"**Instalment Loan**" means a loan that is repayable either in fixed instalments of principal, plus interest, or in blended instalments of both principal and interest. A Demand Instalment Loan is repayable on demand. A Committed Instalment Loan is repayable only upon the occurrence of an Event of Default.

"**Intangibles**" means assets of the business that have no value in themselves but represent value. They include such things as copyright, patents and trademarks; franchises; licences; leases; research and development costs; and deferred development costs.

"**Interest Coverage Ratio**" means the ratio of earnings before interest and taxes to interest expense.

"Inventory Value" means the total value (based on the lower of cost or market) of your inventories (other than (i) inventories supplied by trade creditors who at that time have not been fully paid and would have a right to repossess all or part of such inventories if you were then either bankrupt or in receivership, (ii) work in process, and (iii) those inventories we may from time to time designate).

"Letter" means the letter agreement between you and CIBC to which this Schedule and any other Schedules are attached.

"Letter of Credit" or "L/C" means a documentary or stand-by letter of credit, a letter of guarantee, or a similar instrument in form and substance satisfactory to us.

"L/C Acceptance" means a draft (as defined under the *Bills of Exchange Act* (Canada)) payable to the beneficiary of a documentary L/C which the L/C applicant or beneficiary, as the case may be, has presented to us for acceptance under the terms of the L/C.

"Monthly Statement of Available Credit Limit" means the CIBC form by that name, as it may from time to time be changed.

"Operating Account" means the account that you normally use for the day-to-day cash needs of your business, and may be either or both of a Canadian dollar and a US dollar account.

"Postponed Debt" means any debt owed by you that has been formally postponed to CIBC.

"Prime Rate" means the variable reference rate of interest per year declared by CIBC from time to time to be its prime rate for Canadian dollar loans made by CIBC in Canada.

"Prime Rate Loan" means a Canadian dollar loan on which interest is calculated by reference to Prime Rate.

"Priority Claims" means any amount owing to a creditor that ranks, or may rank, equal to or in priority to our security. These may include unremitted source deductions and taxes; other amounts owing to governments and governmental bodies; and amounts owing to creditors who may claim priority under the *Bankruptcy and Insolvency Act* or under a purchase money security interest in inventory or equipment.

"Receivable Value" means, at any time of determination, the total value of those of your trade accounts receivable, including accounts domiciled in the United States, that are subject to the security (other than those accounts:

- (i) outstanding for 90 days or more,
- (ii) owing by persons, firms or corporations affiliated to you, and
- (iii) that we may from time to time designate).

"Shareholders' Equity" means paid-in capital, retained earnings and attributed or contributed surplus.

"Standard Overdraft Rate" means the variable reference interest rate per year declared by CIBC from time to time to be its standard overdraft rate on overdrafts in Canadian or US dollar accounts maintained with CIBC in Canada.

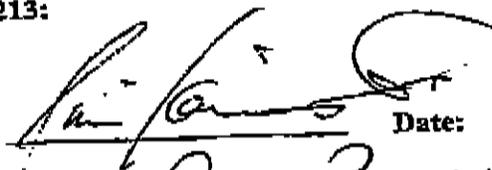
ACKNOWLEDGEMENT FOR RECEIPT OF TERMS LETTER

Name of Company: HICKMAN EQUIPMENT (1985) LTD.

Date of Terms Letter: June 19/00

Please acknowledge receipt by signing & dating below and return the original copy to my attention at CSSC - TR: 82213:

Risk Analyst:

 Date: Aug 11 / 00
Per: Betty

Thanks,

Karalisa Johnson
Security Analyst
Tel: (416) 980-5099
Fax: (416) 980-8150

Comments:

GROUP/CONNECTION A.E. Hickman et al
CUSTOMER Hickman Equipment (1989) Ltd.
CREDIT AGREEMENT DATE 19-Jun-08
ACCOUNT TO DEBIT 53 * RA to complete
Bank AGB
OR SICAN Susan Embick 709 578-5729

TYPE OF AGREEMENT
 Credit Agreement
 Amendment
 Renewal

NEW FUNDS INCREASE No
NEW SECURITY No
CHANGE MARGIN No
CHANGE COVENANTS No
CHANGE PRICING No
ATO APPROVED ATO date

LOAN RATE % refer to Credit Agree¹
OVERDRAFT INTEREST RATE %
OTHER BA, LIBOR, ETC bps
LETTER OF CREDIT FEE %
LOAN ADMIN FEE 1/month
Overdraft Excess Interest Rate P + 5.00

DISCHARGE FEE Real
1/dec
Amount Received Number/Amount

APPLICATION OF CONSULTING FEES
COMMIT FEE - ON SIGNING
COMMIT FEE ON DRAWDOWN
TOTAL ANTICIPATED FEE

AMENDMENT/RENEWAL FEE \$ 3,750.00
EXPOSURE FEE
SITE VISIT FEE every _days

STANDBY FEE
Unutilised CR Amnt. Tier Rate
Exam Td.
Tier 1
Tier 2
Tier 3

RA to Advise
RA Report to MF

Revenue Deductions	date collected	Initials

Operating Facility Increased to \$15,000K from \$13,000K

Diary Notes & Details (optional)