

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 13
Case No. 04-43221 RJK

Paul Jerome Johnson and
Barbar Sue Johnson,

Debtors.

OBJECTION TO CONFIRMATION

1. CitiCapital Commercial Corporation, f/k/a Associates Commercial Corporation ("Creditor"), a secured creditor of Debtors herein, makes this objection to the confirmation of the Debtor's proposed Chapter 13 Plan.

2. This objection is filed pursuant to Bankruptcy Rule 3020(b), Local Rules 604 and 1202, and Creditor requests this Court to enter an order denying confirmation of Debtors' proposed Chapter 13 Plan (the " Plan").

3. The Debtors voluntarily filed a petition commencing this case and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334(a) and 157(a), 11 U.S.C. § 1325 and applicable rules. This matter is a core proceeding.

4. Hearing on Confirmation of the Plan is scheduled for August 19, 2004, at 10:30 a.m., before the Honorable Robert J. Kressel in Courtroom No. 8 West at United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota, or as soon thereafter as counsel may be heard.

5. Any objection to the relief requested herein must be served and filed not later than 10:30 o'clock a.m., on August 18, 2004 (excluding Saturdays, Sundays and holidays), which is 24 hours before the time set for the hearing. UNLESS A RESPONSE OPPOSING THE

MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

6. Creditor is a secured creditor of the Debtors herein. Pursuant to a Note and Security Agreement, the Debtor is indebted to Creditor in the amount of \$14,219.80. The Note and Security Agreement is secured by (the "Equipment"):

1 Melroe Bobcat Model 763 S/N 512238708, 1 Melroe Auger Model 15 S/N

_____,
Rubber Tracks, Extension and Bits

A copy of the Note and Security Agreement is attached hereto as Exhibit A.

7. At the time the Petition was filed, Debtors were delinquent under the terms of the note. The Equipment is depreciating in value.

8. The Debtors' Plan makes no provision for Creditor. Creditor is not scheduled in the bankruptcy.

9. The value of the Equipment is \$13,330 as per the attached Exhibit B.

10. If testimony is necessary as to any facts relevant to this motion, Jonya Chism, CitiCapital Commercial, 250 E. John Carpenter Freeway, 4 Decker, Irving, TX 75062, will testify behalf of Creditor.

WHEREFORE, Creditor respectfully requests this Court to enter an order denying confirmation of the Debtors' proposed plan and such other further relief as is just and equitable.

Date: August 17, 2004.

FOLEY & MANSFIELD, P.L.L.P.

By /s/ Ruth E. Honkanen

Thomas J. Lallier (#163041)

Ruth E. Honkanen (#175924)

Attorneys for Creditor

250 Marquette Avenue, Suite 1200

Minneapolis, MN 55401

(612) 338-8788

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 13
Case No. 04-43221 RJK

Paul Jerome Johnson and
Barbar Sue Johnson,

Debtors.

MEMORANDUM OF LAW

This Memorandum of Law is submitted in support of the Objection to Confirmation filed by CitiCapital Commercial Corporation ("Creditor").

FACTS

Creditor is a secured creditor of the Debtors herein. Pursuant to a Note and Security Agreement, the Debtors are indebted to Creditor in the amount of \$14,219.80. The Note and Security Agreement is secured by (the "Equipment"):

1 Melroe Bobcat Model 763 S/N 512238708, 1 Melroe Auger Model 15 S/N _____,
Rubber Tracks, Extension and Bits

At the time of the Petition, Debtors were in arrears in the contract payments. The Equipment is depreciating. The Debtors' Plan makes no provision for Creditor. Creditor was not scheduled in Debtors' bankruptcy schedules. The value of the Equipment is \$13,330.00.

DISCUSSION

The Debtors' Plan does not adequately protect Creditor because the Plan makes no provision for the debt to Creditor. The correct standard of valuation is "replacement value" which is the cost of a like asset for the same proposed use. Associates Comm'l. Corp. v. Rash, 520 U.S. 953, 117

S.Ct. 1879,138 L.Ed. 148 (1997). Creditor values the Equipment at \$13,330. The retail value reflects the cost incurred to obtain a like asset for the same proposed use.

WHEREFORE, Creditor respectfully requests this Court to deny confirmation of Debtors' proposed Chapter 13 Plan.

Date: August 17, 2004.

FOLEY & MANSFIELD, P.L.L.P.

By /s/ Ruth E. Honkanen

Thomas J. Lallier (#163041)

Ruth E. Honkanen (#175924)

Attorneys for Creditor

250 Marquette Avenue, Suite 1200

Minneapolis, MN 55401

(612) 338-8788

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 13
Case No. 04-43221 RJK

Paul Jerome Johnson and
Barbar Sue Johnson,

Debtors.

VERIFICATION

I, Jonya Chism, of CitiCapital Commercial Corporation, declare, under penalty of perjury,
that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on: _____, 2004

Signed: _____

111-0092885-000

Bobcat Financial Services

RETAIL INSTALLMENT CONTRACT

Subject to the terms and conditions of this Contract (this "Agreement"), the undersigned buyer, meaning all buyers jointly and severally ("Buyer"), having been offered both a time sale price and cash sale price, hereby purchases from the undersigned seller (herein, with its successors and assigns, called "Seller") the property described below, with all present and future attachments, accessories, replacement parts, repairs, additions or substitutions, referred to collectively as "Equipment," for the Time Sale Price stated below.

| | | | |
|--|------|---|--|
| BUYER'S NAME, Mailing Address (incl. County & Zip Code) JOHNSON, PAUL J DBA: JEROME JOHNSON EXCAVATING | | SELLER'S NAME and Address (incl. Zip Code) TRI-STATE BOBCAT, INC | |
| 2884 COUNTY RD 92 N INDEPENDENCE | MENN | MN 55359-9735 | 1800 WEST HIGHWAY 13 BURNSVILLE MN 55337 |
| S.S.N. or Fed. Tax I.D. # 468848378 | | | |

DESCRIPTION OF EQUIPMENT

1 MELROE BOBCAT MODEL 763 5/N 612238708
1 MELROE AUGER MODEL 15 5/N
RUBBER TRACKS, EXTENSION AND BITS
1898092018184701

LOCATION OF EQUIPMENT: Buyer agrees the Equipment will be kept at the following location (or, if left blank, at Buyer's address):

The Equipment will be used primarily for:

business or commercial use other than farming operations;
 farming operations

DELIVERY DATE: The Equipment was delivered to Buyer:

Same date as Agreement date.
 Other (Specify)

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS AGREEMENT.

PHYSICAL DAMAGE INSURANCE COVERING THE COLLATERAL IS REQUIRED; however, Buyer has the option of furnishing the required insurance through an agent or broker of Buyer's choice.

Buyer requests and authorizes Seller to obtain insurance coverage in the nature of "All Risk" insurance (Fire, extended coverage, vandalism, theft and collision and containing exclusions from coverages acceptable to Seller) on the equipment for _____ months from the date of this Agreement, and for the premium of \$ _____ with a \$ _____ deductible per occurrence.

Buyer has obtained the required coverages through:

(Agent's Name and Address) _____
(Name of Insurance Company) _____
Phone # _____

Buyer hereby authorizes Seller and any assignee to release to any insurance company affiliated with Seller or any assignee any information relating to a contract or policy of insurance which is providing or may provide insurance coverage against physical damage to the Equipment.

CREDIT INSURANCE. If included, is not a factor in the approval of credit, is not required by the Seller and is for the term of the credit only.

Buyer desires Credit Insurance: Premium _____ 0.00

Buyer does not want Credit Insurance.

BUYER _____ Date _____
(Only one person may sign above, and any credit insurance covers only that person. Credit insurance does not cover any co-buyer.)

| | |
|--|--------------|
| 1. CASH SALE PRICE (including Any Applicable Tax) | \$ 28,443.00 |
| 2. TOTAL DOWN PAYMENT (a + b) | \$ 4,800.00 |
| (a) Cash Down Payment | \$ 4,800.00 |
| Allowance for Trade-In | \$ 0.00 |
| Less Payoff To: | \$ 0.00 |
| (b) Net Allowance for Trade-In | \$ 0.00 |
| 3. UNPAID BALANCE OF CASH SALE PRICE (1 Minus 2) | \$ 23,643.00 |
| 4. OTHER CHARGES (a + b + c + d) | \$ 475.00 |
| (a) Physical Damage Insurance | \$ 0.00 |
| (b) Credit Life Insurance | \$ 0.00 |
| (c) Official Fees | \$ 0.00 |
| (d) Other | \$ 475.00 |
| (Describe) DOCUMENTATION FEES | |
| 5. PRINCIPAL BALANCE (3+4) | \$ 24,118.00 |
| 6. FINANCE CHARGE (TIME PRICE DIFFERENTIAL) | \$ 1,477.64 |
| 7. UNPAID TIME BALANCE (TOTAL OF PAYMENTS (1+5+6)) | \$ 25,595.64 |
| 8. TIME SALE PRICE (TIME PRICE) (1 + 4 + 6) | \$ 30,395.64 |

PAYMENT SCHEDULE

Buyer promises to pay Seller the Total Amount of \$ 25,595.64 (the "Total Amount") in 38 installments as follows:

(a) \$ 710.99 on 11/01/1999, and a like sum on the like date of each month thereafter until fully paid;

(b) or

provided, however, that the final installment will be in the amount of the then remaining unpaid balance.



RETAIL INSTALLMENT CONTRACT

Subject to the terms and conditions of this Contract (this "Agreement"), the undersigned Buyer, meaning an buyer jointly and severally ("Buyer"), having been offered both a time sale price and cash sale price, hereby purchases from the undersigned seller (herein, with its successors and assigns, called "Seller") the property described below, with all present and future attachments, accessories, replacement parts, repairs, accessories or substitutions, referred to collectively as "Equipment," for the Time Sale Price stated below.

| | | | |
|---|--|---|--|
| BUYER'S NAME, Mailing Address (incl. County & Zip Code) JOHNSON, PAUL J DBA: JEROME JOHNSON EXCAVATING 2864 COUNTY RD 92 N INDEPENDENCE MN 55359-8735 S.S.N. or Fed. Tax I.D. # 468848378 | | SELLER'S NAME and Address (incl. Zip Code) TRI-STATE BOBCAT, INC 1800 WEST HIGHWAY 13 BURNSVILLE MN 55327 | |
|---|--|---|--|

DESCRIPTION OF EQUIPMENT

1 MELROE BOBCAT MODEL 763 S/N 512238708
 1 MELROE AUGER MODEL 15 S/N
 RUBBER TRACKS, EXTENSION AMP BITS
 1398092015104701

LOCATION OF EQUIPMENT: Buyer agrees the Equipment will be kept at the following location (or, if left blank, at Buyer's address):

The Equipment will be used primarily for:

business or commercial use other than farming operations;
 farming operations

DELIVERY DATE: The Equipment was delivered to Buyer

Same date as Agreement date.
 Other (Specify):

| | |
|--|--------------|
| 1 CASH SALE PRICE (including Any Applicable Tax) | \$ 28,443.00 |
| 2. TOTAL DOWN PAYMENT (A + B) | \$ 4,800.00 |
| (a) Cash Down Payment | \$ 4,800.00 |
| Allowance for Trade-in | \$ 0.00 |

INSURANCE COVERAGE
LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS AGREEMENT.

PHYSICAL DAMAGE INSURANCE COVERING THE COLLATERAL IS REQUIRED; however, Buyer has the option of furnishing the required insurance through an agent or broker of Buyer's choice.

Buyer requests and authorizes Seller to obtain insurance coverage in the nature of "All Risk" insurance (Fire, extended coverage, vandalism, theft and collision) and containing exclusions from coverage acceptable to Seller on the Equipment for months from the date of this Agreement, and for the premium of \$ 0.00 with a \$ deductible per occurrence.

Less Payoff To:

| | |
|--------------------------------|---------|
| (b) Net Allowance for Trade-in | \$ 0.00 |
|--------------------------------|---------|

| | |
|---|--------------|
| 3 UNPAID BALANCE OF CASH SALE PRICE (1 Minus 2) | \$ 23,643.00 |
| 4 OTHER CHARGES (a + b + c + d) | \$ 475.00 |
| (a) Physical Damage Insurance | \$ 0.00 |
| (b) Credit Life Insurance | \$ 0.00 |
| (c) Other Fees | \$ 0.00 |
| (d) Other | \$ 475.00 |
| (EVEN IF) DOCUMENTATION FEES | |

Buyer HAS OBTAINED the required coverage through:

SCOTT NIMBAR
 ROSS NEEBITT AGENCY MN
 9531 W 78 ST EDEN RAINIE, 55344
 (Agent's Name and Address)
 INDIANA INSURANCE CO
 (Insurance Company)
 Phone # 612-941-9712

| | |
|---|--------------|
| 5. PRINCIPAL BALANCE (3-4) | \$ 24,118.00 |
| 6 FINANCE CHARGE (TIME PRICE DIFFERENTIAL) | \$ 1,477.64 |
| 7 UNPAID TIME BALANCE (TOTAL OF PAYMENTS) (5+6) | \$ 25,595.64 |
| 8. TIME SALE PRICE (TIME PRICE) (1 + 4 - 6) | \$ 30,385.64 |

PAYMENT SCHEDULE
 Buyer promises to pay Seller the Total Amount of \$ 25,595.64 (the "Total Amount") in 36 installments as follows:

| |
|---|
| (a) \$ 710.99 on 11/01/1989, and a like sum on the like date of each month thereafter until fully paid; |
| (b) |

Buyer hereby authorizes Seller and any assignee to release to any insurance company affiliated with Seller or any assignee any information relating to a contract or policy of insurance which is providing or may provide insurance coverage against physical damage to the Equipment.

CREDIT INSURANCE, if included, is not a factor in the approval of credit, is not required by the Seller and is for the term of the credit only.

Buyer desires Credit Insurance; Premium 0.00

Buyer hereby requests and authorizes Seller to obtain Credit Insurance, if specified above, to the extent the cost thereof is included in item 4(b) Other Charges.

Buyer does not want Credit Insurance.

BUYER _____ Date _____
 (Only one person may sign above, and any Credit insurance covers only that person. Credit insurance does not cover any co-buyer.)

provided, however, that the final installment will be in the amount of the then remaining unpaid balance

Page 1 of 4 of Retail Installment Contract between JOHNSON, PAUL J (Buyer) and TRI-STATE BOBCAT, INC (Seller which includes, without limitation, an item of Collateral with the following serial number: 512238708)

5823000 Rev. 7-88
 Copy: Non-Ven
 1 02

ORIGINAL

Buyer's Initials: P.J.

*Bobcat is a licensed service mark of Clark Equipment Company

1. **ACCELERATION INTEREST.** Buyer agrees to pay Seller, upon acceleration of the above indebtedness, interest on all sums then owing hereunder at the rate of 1 1/2% per month if not prohibited by law, otherwise at the highest rate Buyer can legally obligate itself to pay and/or Seller can legally collect. Any debt taken herewith evidences indebtedness and not payment. All amounts payable hereunder are payable at Seller's address or at such other address as Seller may specify from time to time in writing.

2. **DELINQUENCY AND RETURNED CHECK CHARGES.** For each installment not paid when due, Buyer agrees to pay to Seller a delinquency charge calculated thereon at the rate of 1 1/2% per month for the period of delinquency or, at Seller's option, 5% of such installment, provided that such a delinquency charge is not prohibited by law, otherwise at the highest rate Buyer can legally obligate itself to pay and/or Seller can legally collect. Buyer agrees to immediately repay to Seller any amounts paid by Seller in the enforcement or administration of its rights under this Agreement including without limitation any amounts paid by Seller to a depository institution in the event that a check, draft or other mode or drawn by or for the benefit of Buyer is returned unpaid for any reason and, if allowed by law, to pay Seller an additional handling charge in the amount of \$25.00 or in the event applicable law limits or restricts the amount of such reimbursement and/or handling charge, the amounts chargeable under this provision will be limited and/or restricted in accordance with applicable law.

3. **SECURITY INTEREST.** To secure payment of the UNPAID TIME BALANCE (item 7) and all of Buyer's obligations with respect to the purchase price of the equipment, Seller retains title to and a security interest in the equipment and all cash and non-cash proceeds thereof (the Equipment and all such proceeds are herein called the "Collateral") regardless of any retention and resolvency of the Collateral to Buyer.

4. **CROSS SECURITY.** Buyer grants to Seller a security interest in the Collateral to secure the payment of all absolute and all contingent obligations and liabilities of Buyer to Seller, or to any assignee of Seller, now existing or hereafter arising, whether under this agreement or any other agreement and whether due directly or by assignment; provided, however, upon any assignment of this Agreement by Seller, the assignee shall be deemed for the purpose of this paragraph as the only party with a security interest in the Collateral.

5. **REBATE AND PREPAYMENT FEE.** Upon prepayment in full or acceleration of the total UNPAID TIME BALANCE (from 7), Buyer shall receive a rebate of the unearned portion of the FINANCE CHARGE (item 8), computed in accordance with the Rule of 78's or if required by applicable law the Actual Method of such other method specified hereby, if permitted by applicable law, there shall be deducted from the rebate an acquisition or prepayment fee equal to (a) the greater of 350 or one percent (1%) of the amount prepaid or, if less, (b) the maximum acquisition or prepayment fee permitted by applicable law. A rebate of less than 5% will not be made.

6. **DISCLAIMER.** There are no warranties other than those provided by the Manufacturer of the Collateral. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE QUALITY, WORKMANSHIP, DESIGN, MERCHANTABILITY, SUITABILITY, OR FITNESS OF THE COLLATERAL FOR ANY PARTICULAR PURPOSE, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, unless such warranties are in writing and signed by Seller. Seller shall not under any circumstances be liable for loss of anticipatory profits or for consequential damages.

7. **TRADE IN AND DOWN PAYMENT.** Buyer warrants that (a) check or other instrument presented to Seller as any portion of the "Cash Down Payment" indicated above represents funds immediately available to Seller and will not be returned or dishonored for any reason; and (b) Buyer has title to and full authority to convey title to any Trade-In listed on the reverse side of this Agreement to Seller and, upon the payment to the party listed on the reverse side of this Agreement of any of the amount indicated, buyer shall have title to the Trade-In free and clear of any lien, claim, security interest or other interest of any party other than those claiming by or through Seller.

8. **ADDITIONAL WARRANTIES AND AGREEMENTS.** Buyer warrants and agrees that: the execution of and performance by Buyer under the terms of this Agreement has been approved for Buyer by all necessary action and by Buyer's partners or board of directors, as applicable; the Equipment was delivered to and accepted by Buyer in satisfactory condition; the Equipment will be maintained in good operating condition, repair and appearance and will be used and operated with care only by qualified personnel in the regular course of Buyer's business and in conformity with all applicable governmental laws and regulations, manufacturer's specifications and the restrictions contained in any insurance policy insuring the Equipment; the Equipment will not be used in conjunction with the storage, transportation or disposal of substances considered to be toxic and/or hazardous or in conjunction with any activity or for any use that would subject the Equipment to seizure or confiscation by any governmental body; and the Equipment will be kept by Buyer at the location set forth for it on the reverse side of this Agreement and will not be removed from said location without the prior written consent of Seller, except that if the Equipment is of a type which is mobile and normally used by Buyer at more than one location, Buyer may use the Equipment away from said location in the regular course of Buyer's business provided that (a) if the Equipment is not returned to said location within 30 days, Buyer will immediately thereafter, and each 30 days thereafter until the Equipment is returned, report the then current location of the Equipment to Seller in writing and (b) the Equipment shall not be removed from the State(s) of use indicated on the reverse side of this Agreement. Seller shall have the right to inspect the Equipment at all reasonable times and from time to time.

Buyer further warrants and agrees that: the title to and security interest in the Collateral taken and/or retained by Seller is and shall continue to be superior to any title to or interest in the Equipment now or hereafter held or claimed by any other party; the Collateral is free from and will be kept free from all liens, claims, security interests and encumbrances (whether prior superior or inferior to the interests of Seller) other than that created by this Agreement; notwithstanding Seller's interest in proceeds, Buyer will not and will not allow any other party to consign, sell, rent, lease, encumber, pledge, hypothecate or otherwise dispose of any of the Collateral without Seller's prior written consent; Buyer shall do everything Seller deems necessary or expedient to perfect or preserve the interests granted to Seller under this Agreement and the first priority of such interests; any Manufacturer's Statement or Certificate of Origin relating to the Equipment shall be immediately delivered to Seller and, if a Certificate of Title or registration is required for any item of Equipment, Buyer will cooperate with Seller in obtaining the Certificate of Title or registration of the interests of Buyer and Seller in the Equipment; Buyer shall defend any action, proceeding or claim affecting the Collateral or the interests of Seller in the Collateral; Buyer shall promptly pay all amounts payable in conjunction with the storage, maintenance or repair of the Equipment and all taxes, assessments, license fees and other public or private charges levied or assessed in conjunction with the operation or use of the Equipment or levied or assessed against the Collateral; this Agreement or any accompanying note except for those which are being consigned by Buyer in good faith by appropriate proceedings and which do not constitute a lien or encumbrance upon the Collateral; and Buyer shall from time to time furnish Seller with such financial statements and other information as Seller may reasonably request.

9. **INSURANCE AND RISK OF LOSS.** Buyer shall at all times bear all risk of loss of, damage to or destruction of the Equipment. Buyer agrees to immediately procure and maintain insurance on the Equipment, for the full insurable value thereof and for the life of this Agreement, in the form of "All Risk" or similar insurance insuring the Equipment for fire, extended coverage, vandalism, theft and collision and containing only those exclusions from coverage which are acceptable to Seller plus such other insurance as Seller may specify from time to time, all in form and amount and with insurers satisfactory to Seller. Buyer agrees to deliver promptly to Seller certificates or, if requested, policies of insurance satisfactory to Seller, each with a standard long-form loss-payable endorsement naming Seller or assigns as loss-payee and providing that Seller's rights under such policy will not be investigated by any act, omission or neglect of anyone other than Seller, and containing the insurer's agreement to give 30 days prior written notice to Seller before any cancellation or material change in the policy(s) will be effective as to Seller, whether such cancellation or change is at the direction of Buyer or insurer. Seller's acceptance of policies in lesser amounts or risks will not be a waiver of Buyer's obligation to procure insurance complying with the provisions hereof promptly after notice from Seller. Buyer assigns to Seller all proceeds of any physical damage or credit insurance complying with the provisions hereof, up to the amount owing hereunder by Buyer. Seller will not have the right to cancel any such insurance without Buyer's consent prior to the occurrence of any event of default and the repossession, loss or destruction of the Collateral. Buyer directs all insurers to pay such proceeds solely to the order of Seller for application to Buyer's indebtedness to Seller. Seller may, at its option, apply any such proceeds received by Seller to the final maturing installments due hereunder in the inverse order of their maturity.

Page 2 of 4 of RFR32 Installment Contract between JOHNSON, PAUL J (Buyer) and TRI-STATE BORCAT, INC (Seller) which includes, without limitation, on each of Collateral with the following serial number: 512238708
9823000 Rev 7-98
Comm'l Non-Veh
Vehicle Sales
1.02
Buyer's Initials: PJ
ORIGINAL

10. **PERFORMANCE BY SELLER.** If Buyer fails to perform any of Buyer's obligations pursuant to Paragraphs 8 or 9 above, Seller may perform the same for the account of Buyer. Any such action by Seller shall be in Seller's sole discretion and Seller shall not be obligated in any way to do so. Seller's performance on behalf of Buyer shall not obligate Seller to perform the same or any similar act in the future and shall not cure or waive Buyer's failure of performance as an event of default hereunder. All sums advanced or costs and expenses incurred by Seller pursuant to this Paragraph, including the reasonable fees of any attorney retained by Seller, shall be for the account of Buyer, shall constitute indebtedness secured by Seller's security interest in the Collateral, shall bear interest at the rate as specified on the reverse side of this Agreement in the event of acceleration and, unless Seller, in Seller's sole discretion agrees otherwise in writing, shall be immediately due and payable.

11. **EVENT OF DEFAULT.** Time is of the essence. An event of default shall occur if: (a) Buyer fails to pay when due any amount owed by it to Seller under this Agreement or if Buyer fails to pay when due any amount owed by it to Seller or to any affiliate of Seller under any other document, agreement or instrument; (b) Buyer fails to perform in compliance with any of its agreements hereunder or any warranty made by Buyer in this Agreement or becomes insolvent or if Buyer fails to perform or observe any term or provision to be performed or observed by it under any other document, instrument or agreement furnished by Buyer to Seller or any affiliate of Seller or otherwise acquired by Seller or any affiliate of Seller; (c) any information, representation, or warranty furnished by Buyer to Seller or to any affiliate of Seller is inaccurate or incorrect in any material respect when furnished; (d) Buyer becomes insolvent or ceases to do so or is prohibited by any court order or governmental action from conducting the business in which Buyer is principally engaged on the date of this Agreement as a going concern; (e) any surety or bonding company assumes any of Buyer's responsibilities under any contract or job; (f) if any of the Equipment is lost, stolen, destroyed, confiscated by any governmental agency, abandoned, or relocated, used or maintained in violation of the terms hereof or if Buyer attempts to repossess, sell, rent, lease or encumber any of the Equipment; (g) Buyer files a petition in bankruptcy, or for an arrangement, reorganization, or similar relief, or makes an assignment for the benefit of creditors, or applies for the appointment of a receiver or trustee for a substantial part of its assets or for any of the Equipment, or attempts to take advantage of any process or proceeding for the relief of debtors, or if any such action is taken against Buyer, (h) any other party attempts to attach, repossess or execute upon any of the Collateral, (i) Buyer ceases to exist as a legal entity or Buyer or any party in control of Buyer takes any action looking to Buyer's dissolution as a legal entity; (j) there shall be a material change in the management, ownership or control of Buyer, or (k) there shall be a material change in the management, ownership or control of Seller. (l) Seller in good faith believes that the prospect of payments or performance hereunder is impaired. Seller's notice with respect to an event of default shall not be a waiver of such default and Seller's waiver of any default shall not be a waiver of any other default.

12. **REMEDIES UPON DEFAULT.** Upon the occurrence of an event of default, and at any time thereafter as long as the default continues, Seller may, at its option, with or without notice to Buyer (i) declare this Agreement to be in default, (ii) declare the indebtedness hereunder to be immediately due and payable, (iii) declare all other debts then owing by Buyer to Seller to be immediately due and payable, (iv) cancel any insurance and cross any interest in the indebtedness, and (v) exercise all of the rights and remedies of a Seller under the Uniform Commercial Code and any other applicable laws, including, without limitation, the right to require Buyer to assemble the Equipment and deliver it to Seller at a place to be designated by Seller which is reasonably convenient to both parties, and to lawfully enter any premises where the Collateral may be without judicial process and take possession thereof. Acceleration of any of all indebtedness, if so elected by Seller, shall be subject to all applicable laws including those pertaining to refunds and rebates of unearned charges. Any property other than the Collateral which is in or upon the Equipment at the time of repossession may be taken and held without liability until no return is requested by Buyer. Any sale or other disposition of any of the Equipment may be made at public or private sale or through public auction at the option of Seller. Seller may buy at any sale and become the owner of the Equipment. Unless otherwise provided by law, any requirement of reasonable notice which Seller may be obligated to give regarding the sale or other disposition of Collateral will be met if such notice is given to Buyer at least ten days before the time of sale or other disposition. Buyer agrees that Seller may bring any legal proceedings it deems necessary to enforce the payment and performance of Buyer's obligations hereunder in any court in the State chosen in Seller's address set forth herein, and service of process may be made upon Buyer by mailing a copy of the summons to the address set forth in this Agreement, or at any later address designated in writing by Buyer. The filing by Seller of any action or proceeding with respect to the Equipment or any of Buyer's obligations hereunder shall not constitute an election by Seller of Seller's remedies or a waiver of Seller's rights to take possession of the Equipment as provided above. Expenses of retaining, notifying, preparing for sale, selling and the like shall include (a) the reasonable fees of any attorneys retained by Seller, (b) any amounts advanced or expenses incurred by Seller pursuant to Paragraph 9 hereof and (c) all other legal and other expenses incurred by Seller. Buyer agrees that it is liable for a writ promptly pay any deficiency resulting from any disposition of Collateral after default and all costs and expenses, including the reasonable fees of any attorney, incurred by Seller in the collection of any such deficiency.

13. **MISCELLANEOUS.** (A) All of Seller's rights hereunder are cumulative and not alternative. (B) The inclusion of a trade name or division name in the identification of Buyer hereunder shall not limit Seller's rights, after the occurrence of an event of default, to proceed against all of Buyer's assets, including those held or used by Buyer individually or under another trade or division name. (C) If permitted by law, Buyer agrees that a carbon, photograph or other reproduction of this Agreement or of a financing statement may be filed as a financing statement. (D) Seller may correct patent errors herein and fill in blanks. (E) All of the terms and conditions hereof shall apply to and be binding upon Buyer, its heirs, personal representatives, successors and assigns and shall survive the termination or expiration of this Agreement. (F) Buyer and Seller hereby waive any right to trial by jury in any action or proceeding relating to this Agreement or the transaction contemplated hereby. (G) If allowed by law, "the reasonable fees of attorneys retained by Seller shall include the amount of any flat fee, retainer, contingent fee or the hourly charges of any attorney retained by Seller in enforcing any of Seller's rights hereunder or in the prosecution or defense of any litigation related to this Agreement or the transactions contemplated by this Agreement. (H) To the extent allowed by law, Buyer hereby waives any exemptions or appraisals. (I) No waiver or change in this Agreement or in any related note shall be binding upon Seller, or Seller's assignee, unless such waiver or change is in writing and signed by one of its officers and any such waiver or change shall then be effective only upon the terms and to the extent provided in such writing. (J) The acceptance by any party of any instrument or document hereunder shall be effective only upon the terms and to the extent provided in such writing. (K) Any captions or headings included in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning of any provision contained in this Agreement. (L) Any provision contained herein which is contrary to, prohibited by or invalid under applicable laws or regulations shall be deemed inapplicable and omitted herefrom, but shall not invalidate the remaining provisions hereof.

14. **ASSIGNMENT.** Buyer shall not assign this Agreement without the prior written consent of Seller. Seller may assign this Agreement with or without notice to or the consent of Buyer. Upon assignment, the term "Seller" shall mean and refer to any assignee who is the holder of this Agreement. After assignment of this Agreement by Seller, the assignee will not be the assignor's agent for any purpose and Buyer's obligations to the assignee will be absolute and unconditional and, to the extent permitted by applicable law, will not be subject to any statement, reduction, recoupment, defense, set-off or counterclaim available to Buyer for breach of warranty or for any other reason whatsoever. Upon full payment of all obligations secured by this Agreement, the assignee may deliver all original papers to the assignor for Buyer.

15. **POWER OF ATTORNEY AND FINANCING STATEMENT.** BUYER HEREBY APPOINTS SELLER OR ANY OFFICER, EMPLOYEE OR DESIGNEE OF SELLER OR ANY ASSIGNEE OF SELLER (OR ANY DESIGNEE OF SUCH ASSIGNEE) AS BUYER'S ATTORNEY-IN-FACT TO IN BUYER'S OR SELLER'S NAME, TO: (a) PREPARE, EXECUTE AND SUBMIT ANY NOTICE OR PROOF OF LOSS IN ORDER TO REALIZE THE BENEFITS OF ANY INSURANCE POLICY INSURING THE EQUIPMENT; (b) PREPARE, EXECUTE AND FILE ANY INSTRUMENT WHICH, IN SELLER'S OPINION, IS NECESSARY TO PERFECT AND/OR GIVE PUBLIC NOTICE OF THE INTERESTS OF SELLER IN THE EQUIPMENT; AND (c) ENDORSE BUYER'S NAME ON ANY REMITTANCE REPRESENTING PROCEEDS OF ANY INSURANCE RELATING TO THE EQUIPMENT OR THE PROCEEDS OF THE SALE, LEASE OR OTHER DISPOSITION OF THE EQUIPMENT (WHETHER OR NOT THE SAME IS A DEFAULT HEREUNDER). This power is coupled with an interest and is irrevocable so long as any indebtedness hereunder remains unpaid. Buyer agrees to execute and deliver to Seller, upon Seller's request such documents and assurances as Seller deems necessary or advisable for the consummation or perfection of the Conditional Sales Contract and Seller's rights hereunder, including such documents as Seller may require for filing or recording. BUYER FURTHER AGREES TO PAY A ONE-TIME USE FILING FEE TO COVER SELLER'S COST FOR SUCH FILING(S) AND OTHER DOCUMENTATION COST. IF PERMITTED BY LAW, BUYER AGREES THAT A CARBON, PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS LEASE OR OF A FINANCING STATEMENT MAY BE FILED AS A FINANCING STATEMENT.

Page 3 of 4 of Refid Installment Contract between JOHNSON, PAUL J (Buyer) and TRI-STATE BOBCAT, INC (Seller) which includes, without limitation, an item of Collateral with the following serial number, 512238708 Buyer's Initials PJ
 9823006 Rev. 7-98
 Conn'l Non-Van
 Vendor Stamp
 1.02
ORIGINAL

16. CHATTEL PAPER This specific Security Agreement is to be sold only to ASSOCIATES COMMERCIAL CORPORATION and is subject to the security interest of ASSOCIATES COMMERCIAL CORPORATION. The only copy of this Security Agreement which constitutes Chattel Paper for all purposes of the Uniform Commercial Code is the copy marked "ORIGINAL FOR ASSOCIATES" which is delivered to and held by ASSOCIATES COMMERCIAL CORPORATION. Any change in the name of the assignee of this Security Agreement from ASSOCIATES COMMERCIAL CORPORATION shall render the copy of this Security Agreement so changed VOID and of no force and effect. No assignee or secured party other than ASSOCIATES COMMERCIAL CORPORATION will under any circumstances acquire any rights in, under or to this Security Agreement of any kind not hereunder.

THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. Buyer and Seller agree that this is a four page agreement and each page hereof constitutes a part of this Agreement.

NOTICE TO BUYER - DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE AGREEMENT YOU SIGN.

Buyer and Seller have executed this Contract on 09/30/88 the Contract Date. Buyer acknowledges receipt of a true and complete file in copy of this Contract.

| | |
|--|-------------------------------|
| Buyer: JOHNSON, PAUL J DBA: JEROME JOHNSON EXCAVATING | Seller: TRI-STATE BOBCAT, INC |
| By: <u>Paul Johnson</u> | By: <u>Godfrey Newman</u> |
| Title: <u>INDIVIDUAL</u> | Title: <u>Controller</u> |

Page 4 of 4 of Retail Installment Contract between JOHNSON, PAUL J (Buyer) and TRI-STATE BOBCAT, INC (Seller) which includes, without limitation, an item of Collateral with the following serial number: 512238708

5623000 Rev. 7-88
Comm'l Non-Ven
Vario-8 States
1.02

ORIGINAL

CUT

CUT

CUT

PRE-AUTHORIZED PAYMENT PLAN

I/We hereby request and authorize Associates Commercial Corporation ("Associates") to initiate withdrawals from the checking account named below pertaining to any payments payable to Associates pursuant to a Retail Installment Contract executed by me/us on the same date as the authorization by any means agreed upon between Associates and my bank, or to draw by an such amounts by electronic funds transfer from my checking account. This authorization may be canceled at any time by Associates and may be canceled by me/us at any time pursuant to the provisions of Federal Reserve Board Regulation D upon at least three (3) business days prior notice to my bank and Associates.

PLEASE ATTACH A SPECIMEN CHECK MARKED "VOID"

Bank: _____
Branch: _____
Depositor Name: _____
Account Number: _____

Customer: _____
Authorized Signatory: _____
Date: _____

**SELLER'S ASSIGNMENT AND GUARANTY
TERMS AND CONDITIONS**

This Seller's Assignment and Guaranty relates to that certain Retail Installment Contract dated 09/30/89 ("Agreement") between JOHNSON, PAUL J (Buyer) and DBA: JEROME JOHNSON EXCAVATING TRI-STATE BOBCAT, INC

(Seller) which includes, without limitation, an item of Equipment with the following serial number: 512238708

Seller warrants to Bobcat Financial Services, A division of Associates Commercial Corporation ("Associates") that: the Agreement is genuine, enforceable, the only contract executed concerning the equipment ("Equipment") described in the Agreement and is and will continue to be free from defenses and offsets; all signatures, names, addresses, amounts and other statements and facts contained in the Agreement are genuine, true and correct; the Equipment has been delivered to Buyer under the Agreement in satisfactory condition and has been accepted by Buyer; the Agreement evidences a valid reservation of title to, and a first lien upon, the Equipment, and all necessary action has been taken in accordance with applicable law so that the security interest reserved in the Agreement is perfected and effective against any persons and all the confirmations made below are true and correct.

In consideration of the purchase by Associates of the Agreement, Seller guarantees (subject, however, to the provisions of an underlying written agreement relating to the guaranty of customer or retail paper between Seller and Associates, if there is such an agreement) payment of the full amount remaining unpaid on the Agreement (or the contingent liability stated below in writing and approved by Associates) and coverage of default (made in payment of any installment or) or the performance of any obligation under the Agreement to pay immediately the full amount then unpaid to Associates, its successors or assigns. Seller shall be liable under this guaranty regardless of any settlement, extension or variation of terms of the Agreement, or by the discharge or release of the obligation of Buyer or any other person interested, by operation of law or otherwise. Seller waives notice of acceptance of this guaranty and notice of nonpayment and nonperformance.

FOR VALUE RECEIVED, subject to the above terms and conditions, Seller sells, assigns, transfers and sets over to Associates, its successors and assigns, all of Seller's right, title and interest in and to the Agreement, and all right, title and interest in and to the Equipment, and authorizes Associates to do every act and thing necessary to collect and discharge the Agreement.

Seller: TRI-STATE BOBCAT, INC

By: *Rodney Newman* Title: Controller

SELLER MUST CONFIRM THE FOLLOWING

FINANCING STATEMENTS

- The required financing statements have been filed. Evidence of filing is attached as follows:
 - Financing Statement has been forwarded to Filing Office(s). Security copy is enclosed.
 - Filing Office Receipt Copy is enclosed.

N/A

INSURANCE

- We have verified that all required insurance coverage (per the Agreement) is in force, including a Loss Payable Clause showing Associates Commercial Corporation as Loss Payee for All Risk insurance and showing Associates as additional insured for general liability insurance. Evidence of insurance is as follows:
 - Copies of the insurance policies or certificates showing either proper loss payee clause or Associates as additional insured are enclosed.
 - Coverage has been confirmed, and copies of the policies or certificates will be forwarded within 10 days.

CONTINGENT LIABILITY

- Contingent liability is acknowledged of 0 % for the first 30 payments, then 0 % for the next 0 payments.
- Contingent liability is acknowledged of \$ 0.

THE EQUIPMENT

- Was Purchased from:
 - Held on unpaid manufacturer's inv. # _____
 - Unpaid item in Dealer Open Account with Associates
 - Held on Floor Plan # _____
 - In Associates financed rental fleet, RE # _____
 - Paid for

FINANCE CHARGE: The Customer Finance Charge is 3.9 per Annum.

CONFIRMED BY: *Rodney Newman*
 Title: Controller
 TRI-STATE BOBCAT, INC.⁷
 1500 WEST HWY 13
 BUREAU BLVD, MN 55337
 (612) 894-0894
 FAX: (612) 894-5759

3700080
 Seller A/R & Guar -Bobcat Financial Services
 1.01

ORIGINAL FOR ASSOCIATES

*Bobcat is a licensed service mark of CASE Equipment Company



Associates Commercial Corporation
A subsidiary of Associates Corporation of North America

DEALER ACKNOWLEDGMENT OF ELECTRONIC FORMS

FAX TO: Jacqueline Page

REFERENCE CREDIT APPROVAL NUMBER: 1999092015184701

CUSTOMER: JOHNSON, PAUL J

If Associates decides in its sole discretion to buy this contract from you prior to Associates receipt of the originally signed documents, you agree to remain liable for the delivery of the original documentation and, if all original documentation required by Associates is not received by Associates within ten (10) days of the date of such purchase, you hereby agree to immediately repurchase the contract from Associates for the same purchase price paid by Associates upon demand by Associates. Furthermore, you agree to indemnify and hold Associates harmless from and against any and all claims, damages, cost and expenses arising out of, or relating to, the failure to deliver such original documentation Associates. Please acknowledge your agreement to these terms by executing where indicated below.

ACKNOWLEDGE AND AGREE TO:
TRI-STATE BOBCAT, INC.
1800 WEST HWY 19
BURNSVILLE, MN 55337
(612) 894-0894
FAX: (612) 894-6758

=> Dealer Name: _____
=> By: John G. Newman
=> Title: Controller

**PLEASE SIGN AND RETURN WITH THE ORIGINAL SIGNED
LOAN DOCUMENTATION!**



Machines For Sale

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 contains 763 and Year>=1999 and Year<=1999
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| YEAR | MANUFACTURER Description Contact | MODEL | PRICE (US \$) | LOCATION |
|--|---|-------|----------------------|--|
| 1999 Photo(s) Send a Message | BOBCAT S/N: 512240960, 1100 hours, FILLED TIRES, GP BUCKET | 763 | \$15,000 | GA |
| Add To Machines Of Interest | Remco Equipment Sales Inc. | | (706)935-2378 | Updated: Jul 2 2004 9:57AM (706)965-7055 |
| 1999 Send a Message | BOBCAT Stk #: BT3007, 1082 hours | 763 | \$13,330 | KY |
| Add To Machines Of Interest | Brandels Machinery | | (502)493-4380 | Updated: Jun 28 2004 7:46AM (502)499-3180 |
| 1999 Send a Message | BOBCAT Stk #: 87589, 1091 hours | 763 | \$13,000 | NY |
| Add To Machines Of Interest | United Rentals Genesee Region | | (585)621-7318 | Updated: Jul 21 2004 8:17AM |
| 1999 Send a Message | BOBCAT S/N: 512242644, 1363 hours, # 80963099 , SKIDSTEER LOADER-1351-1600 LB | 763 | \$12,400 | VA |
| Add To Machines Of Interest | Rental Service Corporation | | (800)222-7777 x#3 | Updated: Aug 15 2004 5:28PM (480)368-3997 |
| 1999 Send a Message | BOBCAT S/N: 512242951, 1158 hours, # 80966909 , SKIDSTEER LOADER-1351-1600 LB | 763 | \$12,200 | WI |
| Add To Machines Of Interest | Rental Service Corporation | | (800)222-7777 x#3 | Updated: Aug 15 2004 5:28PM (480)368-3997 |

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 13
Case No. 04-43221 RJK

Paul Jerome Johnson and
Barbar Sue Johnson,

Debtors.

ORDER

This matter came before this Court for confirmation of the Debtors' Chapter 13 Plan of Reorganization. Appearances were noted in the record. Based upon all the files and records, the Court makes this Order pursuant to the Federal Rules of Bankruptcy Procedure.

IT IS HEREBY ORDERED, That confirmation of the Debtors' Chapter 13 Plan is denied.

Dated: _____

Robert J. Kressel
United States Bankruptcy Judge