

UNITED STATES BANKRUPTCY COURT  
SOUTHERN District of OHIO (COLUMBUS)

PROOF OF CLAIM

In re (Name of Debtor): TRIAD RESOURCES, INC.  
TAX ID: 34-XXXXXX4

Case Number: 08-62733

FILED

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" of payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

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Name of Creditor  
(The person or entity to whom the debtor owes money or property):  
  
CNH Capital America LLC  
  
Name and Address where notices and disbursements should be sent:  
  
CNH Capital America LLC  
P.O. Box 3600  
Lancaster, PA 17604-3600  
  
Telephone Number: (717) 355-5925

- Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
- Check box if you have never received any notices from the bankruptcy court in this case.
- Check box if the address differs from the address on the envelope sent to you by the court.

KENNETH JORDAN, CLERK  
U.S. BANKRUPTCY COURT  
COLUMBUS, OHIO

THIS SPACE IS FOR COURT USE ONLY

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:  
  
0829517986-71296001

- Check here if this claim:
- replaces a previously filed claim, dated:
  - amends a previously filed claim, dated:

RECD  
FEB 02 2009

1. BASIS FOR CLAIM:

- Goods sold
- Services performed
- Money loaned
- Personal injury/wrongful death
- Taxes
- Lease
- Equipment Lease
- Secured Equipment Transaction
- Retiree benefits as defined in 11 U.S.C. § 1114(a)
- Wages, salaries, and compensations (Fill out below)  
Your social security number \_\_\_\_\_  
Unpaid compensations for services performed from \_\_\_\_\_ to \_\_\_\_\_

2. DATE DEBT WAS INCURRED: February 9, 2007

3. IF COURT JUDGMENT, DATE OBTAINED:

4. TOTAL AMOUNT OF CLAIM AT TIME CASE FILED: \$2,090.54 (net)  
Principle: \$1,940.54  
Interest: \$0.00  
Late Fees: \$0.00  
Other Fees: \$150.00

If all or part of your claim is secured or entitled to priority, also complete item 5 or 6 below.  
 Check this box if claim includes interest or other charges in addition to the principal amount of the claim.

5. SECURED CLAIM. \$2,090.54 (net)

Check this box if your claim is secured by collateral (including a right of setoff).

Brief Description of Collateral:

Real Estate     Motor Vehicle     Other (Describe briefly)

35SR KOBELCO EXCAVATOR PX1212411

Estimated Value of Collateral: \$40,000.00  
(Subject to appraisal if necessary)

Amount of arrearage and other charges at time case filed included in secured claim, if any: \$0.00

6. UNSECURED PRIORITY CLAIM.

Check this box if you have an unsecured priority claim  
Amount entitled to priority \_\_\_\_\_  
Specify the priority of the claim:

- Wages, salaries, or commissions (up to \$4300)\* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3).
- Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4).
- Up to \$1,950\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(8).
- Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7).
- Taxes or penalties of governmental units - 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)( )

\* Amounts are subject to adjustment on 4/1/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

7. CREDITS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

CREDITOR REMARKS: Please add the above address to the Matrix. Acceptance of any plan by CNH Capital America LLC is conditioned upon the debtor maintaining proper insurance on the secured collateral.

CNH CAPITAL AMERICA LLC REQUESTS AN INTEREST RATE OF AT LEAST 10.00%

CHAPTER 11

Date: January 7, 2009

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):

JEFF WALTMAN  
(AGENT)

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 457a



**CNH Capital** RETAIL INSTALLMENT SALE CONTRACT AND SECURITY AGREEMENT (Fixed Rate)

Dealer No. 71296  
Credit Application No. 99921-1B

E22-29-87 366383

|  |   |   |
|--|---|---|
| Buyer(s) Legal Name(s), Street Address City State Zip Code<br>Triad Resources, Inc<br>27724 St Rt 7 PO Box 430<br>Marietta, OH 45750 | <input type="checkbox"/> Individual/Sole Proprietorship<br>If So, State of Principal Residence _____<br><input type="checkbox"/> General Partnership<br>If So State of Chief Executive Officer _____<br><input checked="" type="checkbox"/> Corporation/LLC/LP<br>If So State in Which Formed: OH<br>Organization ID No. 688669 | "Seller" (Dealer's Legal Name and Address)<br>Southeastern Equipment Co., Inc.<br>10874 E Pike Rd<br>Cambridge, OH 43725<br>Guernsey County |
| County/Parish <u>Washington</u><br>Social Security No _____<br>or Taxpayer ID No. <u>34</u>  |   |   |

The undersigned Buyer (if more than one, collectively called "Buyer") hereby purchases from Seller and Seller hereby sells to Buyer the following goods (the "Equipment") at the Time Sale Price and upon the terms set forth herein

| NEW OR USED | "EQUIPMENT" (Make and Type) | MODEL | SERIAL NUMBER | HOURS | "CASH SALE PRICE" |
|-------------|-----------------------------|-------|---------------|-------|-------------------|
| N           | Kobelco Excavator           | 35SR  | PX12-12411    | 220 0 | 36,000 00         |
|             |                             |       |               |       |                   |
|             |                             |       |               |       |                   |

The above Equipment is purchased for  commercial/business use  agricultural use. \*New Equipment is unused equipment, a rental unit or a demonstrator for which the manufacturer will supply all or a portion of a new equipment warranty; this Equipment may have been manufactured in a year prior to the year of purchase.

| MAKE | "TRADE-IN EQUIPMENT" TYPE | MODEL | SERIAL NUMBER | HOURS | GROSS ALLOWANCE (in Dollars) | SECURED DEBT DUE (in Dollars) | NET TRADE IN ALLOWANCE (in Dollars) |
|------|---------------------------|-------|---------------|-------|------------------------------|-------------------------------|-------------------------------------|
|      |                           |       |               |       | N/A                          | N/A                           | N/A                                 |
|      |                           |       |               |       |                              |                               |                                     |

**NO WARRANTY** The Equipment is sold AS IS except for any applicable manufacturer's express, written warranty if any manufacturer's express warranty applies to the Equipment, such warranty is restricted to the manufacturer's written, limited warranty provided separately to Buyer. Seller and manufacturer make no other representation or warranty, express or implied, and specifically exclude the implied warranties of merchantability and fitness for particular purpose. Neither Seller nor manufacturer will be liable for incidental or consequential damages resulting from a breach of the express warranty or any implied warranty imposed by law.  
 \*Some states do not allow these limitations and exclusions, and they shall not apply to the extent such limitations or exclusions are not allowed by applicable state law.

**PREPAYMENTS** Buyer may make a partial prepayment of the unpaid time balance hereunder (the "Time Balance") at any time, but any partial prepayment will not change or defer Buyer's next scheduled payments. If Buyer prepays the full unpaid Time Balance on construction equipment for commercial/business use, Buyer shall pay a prepayment fee of up to \$150 unless such fee is prohibited by applicable law.

**LATE CHARGES/DEFAULT RATE/RETURNED CHECKS** Buyer shall pay a late charge on each payment more than 10 days past due at the highest amount permitted by applicable law. Buyer shall pay interest on the unpaid balance after maturity (by acceleration or otherwise) at the highest rate permitted by applicable law. If a check is returned for any reason, Seller or Assignee may charge Buyer a returned check processing fee as established by Seller or Assignee from time to time not to exceed the maximum permitted under applicable law.

**EXTENSIONS AND REFINANCING.** If Seller or Assignee extends, defers or refinances any payments due under this Agreement, Seller or Assignee may, at its option, increase the Time Price Differential Rate.

**SECURITY INTEREST AND COLLATERAL.** Buyer hereby grants to Seller a security interest in the Equipment and in all improvements, parts and accessories belonging to the Equipment, and all substitutions, replacements, products, proceeds (such as insurance proceeds) and all accessions related to the Equipment (the Equipment and such items are collectively referred to herein as the "Collateral"), to secure payment and performance of all existing and future obligations of Buyer under this agreement (the "Agreement") or any other agreement between Buyer and Seller, between Buyer and Assignee or any affiliate of Assignee (the "Obligations"). Loss of or damage to the Equipment shall not release Buyer from any of the obligations.

Upon request, Buyer shall take any action reasonably deemed necessary by Seller to protect and enforce Seller's interest in the Collateral or rights under this Agreement. Seller is authorized to examine the Collateral wherever located at any reasonable time or times. Buyer authorizes Seller to insert in this Agreement or amend any financing statement or title registration documentation to reflect the serial and/or model numbers of the Equipment if unknown at the time this Agreement is executed and to correct any errors in such numbers or any other errors in the description of the Equipment.

BUYER REPRESENTS THAT THE EQUIPMENT IS NOT BEING PURCHASED FOR FAMILY, HOUSEHOLD OR PERSONAL USE.

- NOTICE TO THE BUYER**
- DO NOT SIGN THIS BEFORE YOU READ THE WRITING ON THE ADDITIONAL PAGES, EVEN IF OTHERWISE ADVISED
  - DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES
  - YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN

ADDITIONAL PROVISIONS CONCERNING RIGHTS AND DUTIES OF THE PARTIES ON THE ADDITIONAL PAGES OF THIS AGREEMENT ARE A PART OF THIS AGREEMENT. THE FIRST PAGE MUST BE SIGNED, AND ALL OTHER PAGES INITIALED BY THE BUYER(S).

I agree to the foregoing. I have received and examined the Equipment, which is in good operating order and condition and is as described. I acknowledge receipt of a copy of this Agreement. I agree to purchase the Equipment described above on the terms of this Agreement.

X [Signature] Buyer/Buyer's Representative Title (if applicable) CFO

02-09-2007 Triad Resources, Inc  
Date Print Name

X Buyer/Buyer's Representative Title (if applicable)

X [Signature] Seller's Representative  
Date Print Name Financial Asst.

02-09-2007 Southeastern Equipment Co., Inc  
Date Print Name



Dealer No. 71296  
 Credit Application No. 99921-1B  
 Buyer Name Triad Resources Inc

STATEMENT OF TRANSACTION

|     |  |                   |           |
|-----|--|-------------------|-----------|
| 1   | Cash Sale Price  | 1 \$              | 38,000.00 |
| 2   | Cash Down Payment  | \$                | 15,525.20 |
|     | Net Trade-In Allowance   | \$                | N/A       |
|     | Manufacturer's Rebate  | \$                | N/A       |
|     | Total Down Payment   | 2 \$              | 15,525.20 |
| 3   | Unpaid Balance of Cash Sale Price (1 minus 2)  | 3 \$              | 20,474.80 |
| 4   | Other Charges  |                   |           |
| (a) | Taxes (Not in Cash Price)  | \$                | 2,520.00  |
| (b) | Official Fees  | \$                | 12.00     |
| (c) | UCC Filing Service Fee   | \$                | 12.50     |
| (d) | Administrative Fee   | \$                | 266.50    |
| (e) | Physical Damage Insurance  | \$                | N/A       |
| (f) | Credit Life Insurance  | \$                | N/A       |
| (g) | Credit Accident & Health Insurance   | \$                | N/A       |
| (h) | Liability Insurance  | \$                | N/A       |
| (i) | Manufacturer's Extended Warranty Plan  | \$                | N/A       |
| (j) | Extended Service Protection Plan   | \$                | N/A       |
| (k) | (Other)  | \$                | N/A       |
|     | Total Other Charges  | 4 \$              | 2,813.00  |
| 5   | Unpaid Balance (Amount Financed) (3+4)   | 5 \$              | 23,287.80 |
| 6   | Time Price Differential (Finance Charge)   | 6 \$              | N/A       |
| 7   | Time Balance to be Paid (Total of Payments) (5+6)  | 7 \$              | 23,287.80 |
| 8   | Time Sale Price (Total Sale Price) (1+4+6)   | 8 \$              | 38,813.00 |
| 9   | The Unpaid Balance hereof shall bear Finance Charges computed at a per annum rate (the "Time Price Differential Rate" or "APR") equal to <u>0.00</u> % (this is a <b>FIXED RATE contract</b> ) |                   |           |
| 10. | Date APR begins accruing   | <u>02-09-2007</u> |           |
|     |  | Mo Day Yr         |           |

Buyer agrees to pay to the order of Seller the Time Balance (line item 7) in accordance with the following schedule:

| NO. OF PAYMENTS | PERIOD OF PAYMENTS | AMOUNT OF EACH PAYMENT | BEGINNING MM/DD/YYYY |
|-----------------|--------------------|------------------------|----------------------|
| 23              | 1 Month            | \$ 970.33              | 03/08/2007           |
| 1               | 1 Month            | \$ 970.21              | 02/09/2009           |
|                 |                    | \$                     |                      |
|                 |                    | \$                     |                      |
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|                 |                    | \$                     |                      |
|                 |                    | \$                     |                      |
|                 |                    | \$                     |                      |

The total "Secured Debt Due" is \$ N/A  
 The secured debt on the Trade-In Equipment is owed to.

Lender Name \_\_\_\_\_ Acct. No. \_\_\_\_\_  
 Lender Address \_\_\_\_\_ Phone No. \_\_\_\_\_  
 Lender City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Payoff Good Through \_\_\_\_\_

If checked, Seller represents that the above debt has been paid  
 Buyer hereby conveys to Seller all right, title and interest in the Trade-In Equipment free and clear of all encumbrances except as noted above.

GUARANTY

The undersigned guarantees the prompt performance of Buyer's Obligations under the Agreement, and all modifications and extensions thereof, including prompt payment of all sums when due. The undersigned shall, immediately upon demand, pay any sum due under the Agreement and all modifications and extensions thereof, without setoff. The undersigned hereby waives notice of any modifications, amendments, or extensions of the Agreement, and of Buyer's nonperformance or breach of the Agreement. The payment obligations under this Guaranty are the direct, primary, and continuing obligations of the undersigned and the undersigned's heirs, successors and assigns, and not merely a guaranty of collection. Capitalized terms used in this Guaranty have the same meaning given to them in the Agreement.

Guarantor Signature: \_\_\_\_\_ Address \_\_\_\_\_  
 Print Name \_\_\_\_\_ City, State, Zip \_\_\_\_\_

X [Signature]  
 Buyer's Initials

**CNH Capital**

Dealer No. 71286  
 Credit Application No 99921-1B  
 Buyer Name Triad Resources, Inc.

**ADDITIONAL PROVISIONS**

222/29/07 966911

- 1 **Assignment.** Seller will assign this Agreement to CNH Capital America LLC (hereinafter "Assignee") Buyer acknowledges that Seller has the right to assign this Agreement, that all rights and benefits but no obligations (if any) of Seller under this Agreement may be exercised by Assignee and that no obligations (if any) of Seller pass to Assignee. Upon receipt of notice from Assignee with instructions for payment, Buyer shall make all payments due under this Agreement directly to Assignee. This Agreement shall be binding on and inure to the benefit of Buyer and Seller and their respective heirs, personal representatives, successors or assigns, provided, however, that Buyer may not assign its obligations under this Agreement to any person without Assignee's prior written consent.
- 2 **Notification of Change in Residence, Principal Office, or Organizational Form.** If Buyer changes (a) its state of principal residence or (b) the state in which its chief executive office is located, or (c) the state in which its corporation, limited liability company or limited partnership is organized, or (d) its form of organization (such as from an individual to a corporation), Buyer will notify Assignee in writing promptly, but in no event more than thirty days after any such change.
- 3 **Waiver of Defenses Against Assignee, Indemnification.** Buyer will not assert against Assignee any claim or defense which Buyer may have against Seller or the manufacturer of the Equipment. Buyer agrees that its obligation to remit payments will not be subject to, and it will not make any claim against Assignee for breach of any representation, warranty or condition with respect to the Equipment and that its obligation to pay Assignee all amounts under this Agreement is absolute and unconditional without abatement, reduction, set-off, counterclaim or interruption for any reason whatsoever, notwithstanding any breach or alleged breach of any representation, warranty or condition with respect to the Equipment or any dispute which now or hereafter arises between Buyer and Seller or any other person. Buyer shall indemnify and hold harmless Seller, Assignee and their officers, directors, employees and agents from and against any damage, loss, theft or destruction of the Equipment or any part thereof, and from and against any and all loss, damages, injuries, claims, demands, costs and expenses (including without limitation reasonable attorneys' fees and expenses) of any kind and nature, arising out of or connected with the use, condition (including without limitation, all defects whether or not discoverable by Buyer, Seller or Assignee) or operation of the Equipment or any part thereof. Buyer shall promptly notify Assignee of any loss, damage, theft, destruction, injury, claim, demand, cost or expense related to this Agreement or the Equipment of which Buyer has notice.
- 4 **Buyer's Covenants.** Buyer shall (i) keep the Equipment in the county of Buyer's address set forth on page 1 of this Agreement and not remove the Equipment from such address, except temporarily in connection with its ordinary use, unless Assignee consents in writing; (ii) maintain the Equipment in good condition and repair and not permit its value to be impaired; (iii) keep the Collateral free of all liens, encumbrances and security interests of persons other than Assignee; (iv) defend the Collateral against all claims and legal proceedings by persons other than Assignee; (v) pay and discharge when due all taxes, fees, levies and other charges upon the Collateral; (vi) pay when due all taxes arising from the purchase of the Equipment under this Agreement, excluding any taxes based upon Seller's net income; (vii) use Equipment solely in the conduct of Buyer's business; (viii) ensure Equipment will be used solely within the intended uses of the manufacturer during the term of this Agreement; (ix) not sell, lease or otherwise dispose of the Equipment nor permit the Equipment to become an accession to other goods or a fixture; (x) not permit the Equipment to be used in violation of any law, regulation or policy of insurance; and (xi) strictly follow the terms of Provision 1 of this Agreement.

Each individual executing this Agreement represents and warrants that he or she has the requisite power and authority to enter into this Agreement and execute all related documents, to perform its obligations and consummate the transactions contemplated under this Agreement and related documents and that the execution and delivery of this Agreement and all related documents and the consummation of the transactions under this Agreement have been duly authorized by the Buyer.

- 5 **Insurance.** Buyer shall keep the Equipment and Seller's and its assigns interest in it insured against fire, theft, physical damage and other hazards under policies listing Assignee as loss payee or as an additional insured, with such provisions, for such amounts (but not less than the unpaid balance outstanding under this Agreement) and by such insurers as shall be satisfactory to Assignee from time and time, and shall furnish to Assignee evidence of such insurance satisfactory to Assignee. Such insurance shall provide at least 30 days written notice of cancellation, lapse or expiration to Assignee. Buyer assigns (and directs any insurer to pay) to Assignee Buyer's interest in the proceeds of all such insurance and any premium refund and Assignee may, at its option, apply such proceeds and refunds to any unpaid balance of the Obligations, whether or not due, and/or to repair or restore the Equipment, returning any excess to Buyer. Buyer must make all payments due under this Agreement whether or not the Equipment is insured or underinsured. Assignee is authorized, in the name of Buyer or otherwise, to make, adjust and/or settle claims under any insurance on the Equipment, or cancel the same after the occurrence of an event of default.

If Buyer purchased physical damage insurance that is financed under this Agreement, Buyer hereby requests and authorizes Seller (provided Seller is properly licensed to do so) or Seller's designee; (a) to arrange physical damage insurance for the benefit of Seller and Buyer that covers physical damage to the Equipment, (b) to replace or otherwise modify such insurance as Seller deems appropriate and (c) to be Buyer's attorney-in-fact to make claim for, receive payment of and execute and endorse and negotiate all documents, checks or drafts received in payment of loss or damage under the insurance. This Agreement includes and hereby incorporates by reference any Insurance and Extended Service Plan Addendum signed in connection with this Agreement.

**STATEMENT TO BUYER THE PHYSICAL DAMAGE INSURANCE PURCHASED UNDER THE TERMS OF THIS AGREEMENT COVERS ONLY LOSS OF OR DAMAGE TO THE EQUIPMENT. LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED AS PART OF THE PHYSICAL DAMAGE INSURANCE. BUYER UNDERSTANDS THAT IF INSURANCE IS FINANCED UNDER THIS AGREEMENT, PRE-PAYMENT OF BUYER'S OBLIGATIONS OR TERMINATION OF THIS AGREEMENT MAY RESULT IN LOSS OF INSURANCE COVERAGE.**

If Buyer purchased liability insurance that is financed under this Agreement, Buyer hereby requests and authorizes Seller (provided Seller is authorized to do so) or Seller's designee to arrange for the liability insurance to be issued.

- 6 **Modifications and Waivers.** This Agreement sets forth the entire understanding between Seller and Buyer. No modification, amendment or extension of this Agreement and no waiver of any provision of this Agreement shall be valid unless in writing and signed by the parties and a waiver of any default hereunder by Seller shall not constitute a waiver of any other prior or subsequent default, except that Buyer authorizes Seller to insert in this Agreement the serial number and/or model number of any Equipment if this information is unknown when this Agreement is executed or to correct any errors in such numbers or any other patent errors in the description of the Equipment.
- 7 **Authority of Assignee to Perform for Buyer.** If Buyer fails to perform any of Buyer's duties set forth in this Agreement (including, specifically but without limitation, the purchase of insurance), Assignee may, at its option, in Buyer's name or otherwise, take any such action, including, without limitation signing Buyer's name or paying any amount so required, and all costs and expenses incurred by Seller or Assignee in connection therewith shall form part of the Obligations and shall be payable by Buyer upon demand with interest from the date of payment by Seller or Assignee at the highest rate permitted by law.
- 8 **Default.** Buyer shall be in default under this Agreement if any of the following occurs:
  - (a) Buyer fails to pay when due any of the Obligations, or to perform any other obligation of Buyer in this Agreement or in any renewal or refinancing of this Agreement;
  - (b) a Buyer dies, ceases to exist, becomes insolvent or the subject of bankruptcy, insolvency or liquidation proceedings, attempts to assign this Agreement or attempts to remove, sell, transfer, further encumber part with possession of or sublet any Equipment;
  - (c) any warranty or representation made by Buyer to induce Seller or Assignee to extend credit to Buyer, under this Agreement or otherwise, is false in any material respect when made or Buyer fails to perform any covenant under this Agreement;
  - (d) Buyer fails to maintain applicable required insurance or fails to comply with the requirements of any such insurance;
  - (e) any other event occurs that causes Seller or Assignee, in good faith, to consider that payment or performance of the Obligations is impaired or that the Equipment is at risk; or
  - (f) the Equipment is impounded or confiscated by any federal, state or local governmental authority.

*[Signature]*  
 Buyer's initials

**CNH Capital**

Dealer No. 71296  
 Credit Application No. 99921-1B  
 Buyer Name Triad Resources Inc

218993 356912

- 9 Expenses To the extent not prohibited by law, Buyer shall reimburse Seller or Assignee for any expense incurred by Seller or Assignee in protecting or enforcing their rights under this Agreement, including, without limitation reasonable attorneys' fees and legal expenses and all expenses of taking possession, transporting, holding, repairing, refurbishing preparing for disposition and disposing of the Collateral, and all expenses and costs incurred in collecting the Obligations, and all such expenses shall form part of the Obligations
- 10 Conflict with Law Any provision of this Agreement prohibited by applicable law shall be ineffective to the extent of the prohibition without invalidating the remaining portions of this Agreement. The validity, construction and enforcement of this Agreement are governed by the laws of the state in which the Seller is located. All terms not otherwise defined have the meanings assigned to them by the Uniform Commercial Code.
- 11 Authorization to Execute and File Financing Statements and Lien Documents Buyer hereby authorizes Seller or Seller's designee to execute and file financing statements, and any motor vehicle title, registration and lien notification documentation, and any amendments thereto on behalf and in the name of Buyer to evidence Seller's security interest in the Collateral
- 12 Time Price Calculations. If this is a variable rate contract, the Prime Rate for a given calendar month shall be the rate designated as the "Prime Rate" as published in *The Wall Street Journal* on the twentieth day of the prior calendar month (or on the next day published if not published on the twentieth day) if *The Wall Street Journal* ceases publication permanently or no longer publishes a "Prime Rate", the Prime Rate shall mean the prime loan rate of any federally chartered bank selected by Assignee. The payments, including Time Price Differential (Finance Charge) indicated herein, have been calculated using the Time Price Differential Rate (APR) in effect at the commencement of this Agreement and indicated herein. The final payment shall be recalculated to reflect increases/decreases in the Prime Rate during the remaining term. The Time Price Differential Rate (APR) shall never be less than 0%.  
 For all contracts, the Time Price Differential Rate (APR) shall be calculated for the actual number of days elapsed, using a daily rate determined by dividing the annual rate by 365. Buyer shall make all payments in lawful money of the United States of America.
- 13 Remedies upon Default. Upon the occurrence of any event of default, Seller shall have all rights and remedies provided by the Uniform Commercial Code or any other applicable law and Seller may, at its option, (i) declare all Obligations immediately due and payable (excluding the unearned Time Price Differential) without notice or demand, nor any waiver of intent to accelerate or notice of acceleration, (ii) take possession of the Collateral, without notice or hearing, and, where permitted by law, Buyer expressly waives any right to notice or a prior hearing (iii) render the Equipment unusable, (iv) require Buyer to assemble the Collateral and make it available to Seller at any convenient place designated by Seller; or (v) sell (including at wholesale) or otherwise dispose of the Collateral at public or private sale for cash or on credit terms, without notice unless required by law. If notice is required by law, ten (10) days' notice to Buyer shall be deemed reasonable notice. All rights and remedies may be exercised by Seller either separately or in combination and any action taken by Seller to recover payment from Buyer of the Obligations shall not limit Seller's rights with respect to the Collateral. Seller may apply all proceeds of realization of the Collateral to such part or parts of the Obligations as Seller may decide. If there is a deficiency, Buyer will pay the amount of the deficiency upon demand. To the extent permitted by law Buyer waives notice of dishonor, presentment and demand as to this Agreement.

The undersigned authorizes CNH Capital America LLC or any assignee ("CNH Capital") to initiate withdrawals from the account designated below and maintained with the bank identified below by any means agreed upon by CNH Capital and the bank, or to withdraw by electronic fund transfer from said account, sums due CNH Capital pursuant to retail contracts or leases. The undersigned further authorizes the bank to take all actions necessary to effect such withdrawals and transfers. The undersigned may cancel these authorizations by providing CNH Capital written notice but any such cancellation will become effective five days after CNH Capital receives the notice. CNH Capital may cancel this authorization at any time by written notice.

Customer Name (as it appears on the payment notices) Triad Resources, Inc.  
 Address PO Box 430 City Keno State OH Zip 45723  
 Customer's Bank Name Peoples Bank  
 Bank Address 133 Putnam St City Marietta State OH Zip 45773  
 Customer Account Number \_\_\_\_\_

I prefer to use my checking account. I have enclosed a voided check.  
 Routing # \_\_\_\_\_ Account # \_\_\_\_\_  
 I prefer to use my savings account. I have confirmed with my bank the routing number and my withdrawal slip is enclosed

Routing # \_\_\_\_\_ Account # \_\_\_\_\_  
 Be sure to date and sign this form.

Date 02/05/07 Signature J. L. Truini CFO  
 Date \_\_\_\_\_ Signature \_\_\_\_\_

X J. L. Truini  
 Buyer's Initials

**CNH Capital**

Dealer No 71296  
 Credit Application No. 99921-1B  
 Buyer Name Tried Resources Inc

**ASSIGNMENT**

Dealer (hereinafter "Assignor") hereby assigns all its rights, title and interest in and to the Agreement and the Equipment to CNH Capital America LLC (hereinafter "Assignee"), under terms also described in the Retail Finance Agreement or other documents (collectively hereinafter "Agreement") executed by the Assignor and Assignee.

Assignor warrants and represents as follows (a) all statements contained in the Agreement, including, but not limited to, the trade-in and down payment information, are true and correct and Assignor did not provide either the trade-in or the down-payment, (b) the Agreement is a valid and binding obligation arising out of a bona-fide obligation in the ordinary course of business and is fully enforceable according to its terms, (c) the collateral is as represented to the Buyer, (d) Assignor made all disclosures required by law, and in the manner required by law prior to Buyer's execution thereof (e) Buyer is not a minor and has the capacity to contract (f) Assignor has obtained, or caused to be obtained, a properly perfected first priority security interest (or, in Quebec a first ranking movable hypothec) in the collateral or has delivered the title or caused the title to be delivered, to Assignee or noted, or caused to be noted, Assignee's lien on the title to the collateral, whichever applies, (g) as of the date of the Agreement, Assignor has verified that the Buyer has obtained the insurance required by the applicable Agreement and has valid proof of such verification; (h) Assignor has a properly completed and signed credit application from the Buyer, (i) the collateral was not delivered to the Buyer until credit approval has been obtained from the Assignee and the Agreement has been properly and fully completed by Buyer and Assignor, (j) title to the collateral is vested in the Assignor, free of all liens and encumbrances, and Assignor has the right to assign said title, and any property received in trade for the collateral is free of all liens and encumbrances, (k) the collateral has been paid in full or will be paid in full with Agreement proceeds, (l) Assignor is (and at all times will be) solvent and operating in the ordinary course of business, (m) the Agreement is not subject to any defense, counterclaim or setoff (or compensation in Quebec), except to the extent enforceability may be limited by bankruptcy, receivership, insolvency or moratorium laws, or by other similar laws of general application and (n) all Agreements (other than Assignee's forms) comply with all applicable state, provincial and federal laws

Assignor hereby unconditionally agrees to purchase the Agreement from Assignee upon demand for the full amount then unpaid whether the Agreement shall then be, or not be, in default if Buyer or any other person makes a claim against Assignee alleging facts that could constitute a breach of any of the foregoing warranties Assignor shall assume the defense of such claims and shall indemnify and hold Assignee harmless from all loss, cost and expense arising therefrom. In addition, the Assignment includes the provisions, as outlined in the Dealer Handbook or Retail Finance Agreement, of the box checked below by Assignor which sets forth the Assignor's obligation to Assignee

The liability of the Assignor, shall not be affected by any extension, renewal, or other change in the time of the payment of the Agreement, nor any change in the manner, place or terms of the payment thereof nor the release of, nor settlement or compromise with any party liable for the payment thereof or the release or non-perfection of any security thereunder Assignee shall not be bound to exhaust its recourse against Buyer or any other person nor any security Assignee may at any time have, before being entitled to payment from Assignor hereunder Assignor waives notice of the acceptance of this Assignment and notices of non-payment and non-performance of the Agreement and any other notices required by the law and waives all setoffs and counterclaims. This Assignment shall become effective upon delivery of the Agreement to Assignee or upon Assignee's payment of the purchase price therefor, whichever first occurs

ENDORSEMENT CODES  N  R  F  O  
 OTHER ENDORSEMENT EXPLANATION \_\_\_\_\_

PROCEEDS  WHLS (excludes payoffs) \$ \_\_\_\_\_  
 DIST  CHK/ACH \$ 23,163.30

X [Signature] Financial Asst  
 Seller's Representative

02-09-2007 Southeastern Equipment Co., Inc  
 Date Print Name

ENDORSEMENT CODES N - Non-Recourse, R - Repurchase; F - Full Recourse; O - Other

**RETAIL CONTRACT CHECKLIST**

- \_\_\_\_\_ Original signed customer credit application(s)
- \_\_\_\_\_ If Customer providing own PDI insurance, proof of customer PDI insurance coverage
- \_\_\_\_\_ Buyer(s) have signed and initialed completed contract
- \_\_\_\_\_ Buyer(s) name is exact legal name and physical address
- \_\_\_\_\_ Dealer has checked and signed applicable endorsement code in assignment section
- \_\_\_\_\_ Guaranty form for corporations completed, signed and included (if applicable)
- \_\_\_\_\_ Cross collateralization form completed, signed and included (if applicable)
- \_\_\_\_\_ Invoice included for allied equipment
- \_\_\_\_\_ Automatic payment plan enrollment form completed, signed and attached with voided customer check or withdrawal slip (if applicable)

**THANK YOU FOR YOUR BUSINESS**

182/99-87 346913


**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

**A NAME & PHONE OF CONTACT AT FILER [optional]**

**B SEND ACKNOWLEDGMENT TO (Name and Address) CRE**

Corporation Service Company  
 Suite 400  
 2711 Centerville Road  
 Wilmington, DE 19808



0 8 2 9 5 1 7 9 8 8 7 1 2 9 6 0 0 1 0 1  
 754062-190

**Facsimile of Filing Acknowledgment**  
 Jurisdiction OH Secretary Of State  
 UCC Filing Section  
 Initial Filing Number OH0011856805  
 Filed 2/12/2007,

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**1 DEBTOR'S EXACT FULL LEGAL NAME** insert only one debtor name (1a or 1b) do not abbreviate or combine names

**1a. ORGANIZATION'S NAME**  
 TRIAD RESOURCES, INC

OR  
**1b. INDIVIDUAL'S LAST NAME** FIRST NAME MIDDLE NAME SUFFIX

**1c. MAILING ADDRESS** CITY STATE POSTAL CODE COUNTRY  
 27724 ST RT 7 PO BOX 430 MARIETTA OH 45750 USA

**1d. SEE INSTRUCTIONS** ADD'L INFO RE ORGANIZATION DEBTOR **1e. TYPE OF ORGANIZATION** CORP **1f. JURISDICTION OF ORGANIZATION** OH **1g. ORGANIZATIONAL ID # if any** 698669  NONE

**2 ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME** insert only one debtor name (2a or 2b) do not abbreviate or combine names

**2a. ORGANIZATION'S NAME**

OR  
**2b. INDIVIDUAL'S LAST NAME** FIRST NAME MIDDLE NAME SUFFIX

**2c. MAILING ADDRESS** CITY STATE POSTAL CODE COUNTRY

**2d. SEE INSTRUCTIONS** ADD'L INFO RE ORGANIZATION DEBTOR **2e. TYPE OF ORGANIZATION** **2f. JURISDICTION OF ORGANIZATION** **2g. ORGANIZATIONAL ID # if any**  NONE

**3 SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR(S))** insert only one secured party name (3a or 3b)

**3a. ORGANIZATION'S NAME**  
 CNH Capital America LLC

OR  
**3b. INDIVIDUAL'S LAST NAME** FIRST NAME MIDDLE NAME SUFFIX

**3c. MAILING ADDRESS** CITY STATE POSTAL CODE COUNTRY  
 100 BRUBAKER AVE NEW HOLLAND PA 17557 USA

**4 This FINANCING STATEMENT covers the following collateral**  
 KOBELC 35SR EXCAVATOR PX1212411

**5 ALTERNATIVE DESIGNATION (if applicable)** LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG LIEN NON UCC FILING

**6 This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS**  **7 Check to REQUEST SEARCH REPORT(S) on Debtor(s)**  **All Debtors**  **Debtor 1**  **Debtor 2**  **(ADDITIONAL FEE)**  **(optional)**

**8 OPTIONAL FILER REFERENCE DATA** 08295179867129600101

OH-Secretary Of State

# Southern District of Ohio Claims Register

## 2:08-bk-62733 Triad Resources, Inc.

**Judge:** C Kathryn Preston      **Chapter:** 11  
**Office:** Columbus                      **Last Date to file claims:** 05/25/2009  
**Trustee:**                                      **Last Date to file (Govt):**

|   |   |  |
|---|---|--|
| <i>Creditor</i> (11973974)<br>CNH Capital America LLC<br>PO Box 3600<br>Lancaster PA 17604-3600 | <b>Claim No 2</b><br><i>Original Filed</i><br>Date 01/05/2009<br><i>Original Entered</i><br>Date 01/12/2009 | <i>Status</i><br>Filed by CR<br>Entered by 2be<br>Modified |
|---|---|--|

|  |
|--|
| Unknown claimed    \$2090 54<br><b>Total      claimed    \$2090 54</b> |
|--|

|  |
|--|
| <i>History</i><br><b>Details</b> <u>2-1</u> 01/05/2009 Claim #2 filed by CNH Capital America LLC, total amount claimed \$2090 54 (2be) |
| <i>Description</i>   |
| <i>Remarks</i>   |

### Claims Register Summary