

EQUIPMENT FINANCING AGREEMENT

Debtor Full Legal Name - Include DBA if Applicable			
Billing Address		City	State
Zip			
Quantity	Full Description of Equipment, Including Make, Model and Serial Number		

Payments _____ installments of \$ _____ payable _____ followed by _____ payment(s) of \$ _____ payable _____ month(s) after final installment.	Initial Payment (to accompany agreement) \$ _____ <input type="checkbox"/> First \$ _____ <input type="checkbox"/> Deposit \$ _____ <input type="checkbox"/> Last \$ _____ <input type="checkbox"/> Other \$ _____	Equipment Cost / Advance \$ _____
Equipment Location: (if differs from Debtor billing address)		

Debtor and Creditor agree that Creditor will finance the above-described personal property (collectively and including replacements the "Equipment" and individually an "Item") under the terms of this equipment financing agreement ("agreement") which are set forth here and on page 2 of this agreement.

- SECURITY INTEREST.** Debtor hereby grants Creditor a security interest under the Uniform Commercial Code in the Equipment. The grant as to an Item and Debtor's related obligations will be effective as of the later of execution hereof or when Debtor acquires an interest therein. The security interest secures Debtor's performance of Debtor's obligations hereunder and under any other agreement under which Debtor now or hereafter has obligations to Creditor. Debtor shall insure that such security interest is and remains a sole first lien security interest.
- PAYMENTS.** Debtor will repay the Equipment Cost/Advance shown above in the payments shown above. The payment amounts shown above are based on the Equipment Cost/Advance. Actual payments will be calculated in the proportion that the actual advance bears to the Equipment Cost/Advance. If this transaction is not consummated, any initial payment may be retained by Creditor as partial compensation for Creditor's costs and expenses incurred. Any excess or deficiency between the first payment and the payment amount as finally determined will be payable with or credited to the second payment. The initial payment is due upon execution of this agreement. The second installment payment will be due on the 1st of the month, or other period set forth above, following Debtor's execution of the Disbursement Authorization, if execution occurs on or before the 15th of the month and otherwise on the 15th of the following month, or other period set forth above. Subsequent payments will be due on the same day of each period set forth above thereafter until paid, whether or not an invoice is rendered. Other amounts due hereunder are payable upon Debtor's receipt of an invoice therefor. Debtor will pay Creditor amounts due under this agreement at Creditor's address shown above or as Creditor may otherwise notify Debtor. Amounts to be applied to the last payment(s) will be applied in inverse order until exhausted provided there has been no default under the agreement. If there is a default, payments may be applied to Debtor's obligations as Creditor chooses.
- CREDITOR TERMINATION.** If the Disbursement Authorization has not been executed and delivered to Creditor, Creditor may terminate its obligations to finance the Equipment on notice to Debtor (a) subsequent to 60 days from the agreement date, (b) upon a material adverse change in Debtor's financial condition, (c) if the actual advance would exceed the Equipment Cost/Advance by more than 10% or (d) if the agreement is in default
- LOCATION; INSPECTION; USE.** Debtor will keep, or permanently garage and not remove from such location for more than 30 days or from the United States for any period, each Item in Debtor's possession and control at the Equipment Location or such other location to which Creditor may consent in writing. Upon request, Debtor will advise Creditor as to the exact location of an Item. Creditor may inspect an Item during normal business hours, and Debtor will ensure Creditor's access for such purpose. Each Item will be operated carefully and properly in compliance with all applicable governmental, insurance and manufacturer's warranty requirements and all manufacturer's instructions.
- MAINTENANCE; ALTERATIONS.** Debtor will maintain each Item in good condition and repair and as specified in such requirements. Debtor will cause each Item of a type generally covered by a service contract to be covered under a contract providing sufficient coverage issued by a competent servicing entity. Debtor will not make any alterations or additions to an Item which detract from its economic value or functional utility except as stated in the second preceding sentence. Alterations or additions not readily removable or made to comply with governmental requirements will be deemed accessions to the Item.
- LOSS AND DAMAGE; STIPULATED VALUE.** Debtor will bear all risk of loss, theft, destruction or requisition of or damage to an Item ("Casualty Occurrence"). Debtor will give Creditor prompt notice of a Casualty Occurrence and will then repair the Item; provided, if Creditor decides the Item is lost, stolen, destroyed or damaged beyond repair or is requisitioned or suffers a constructive loss under an insurance policy carried hereunder, Debtor will pay Creditor the "Stipulated Value" equal to (a) any amounts due Creditor from Debtor at the time of the payment and (b) the remaining payments as to the Item with each discounted to present value at 5% per annum from the date due to the date of payment. Upon such payment Creditor's security interest will terminate as to the Item; provided this agreement is not then in default.
- TITLING; REGISTRATION.** Each Item subject to title registration laws will at all times be titled and/or registered by Debtor in such a manner and jurisdictions as Creditor directs. Debtor will promptly notify Creditor of any necessary or advisable retitling and/or re-registration of an Item in a different jurisdiction.
- TAXES.** Debtor will make all filings and pay all taxes and other governmental assessments relative to the Equipment as required by law. Debtor will pay or reimburse Creditor for any other taxes and other governmental assessments other than Creditor's net income taxes related to the payments due under or otherwise related to this agreement. Returns in connection with these latter matters will be filed by Creditor or Debtor as Creditor specifies.
- INSURANCE.** Debtor will maintain all risk insurance on the Equipment for not less than its full replacement value naming Creditor as Loss Payee. Creditor may require Debtor to maintain combined public liability and property damage insurance with a single limit of not less than \$500,000 per occurrence, or such other amount as Creditor may require on notice to Debtor, naming Creditor as an Additional Insured. All required insurance must be in a form and with companies approved by Creditor, must name Debtor as a Named Insured, must provide at least ten (10) days advance written notice to Creditor of change or cancellation, must provide breach of warranty protection, where relevant, and must provide that the coverage is "primary." Insurance proceeds, at Creditor's option, will be applied to (a) the repair of applicable Items, (b) payment of the Stipulated Value and/or (c) payment of other obligations to Creditor. Any excess will belong to Debtor. Debtor appoints Creditor as Debtor's attorney-in-fact to do all things necessary or advisable to secure payments under any policy contemplated hereby on account of a Casualty Occurrence. Debtor will cause Creditor to receive evidence reasonably requested by Creditor of the coverage required above.
- CREDITOR'S PAYMENT.** If Debtor fails to perform any obligation hereunder, Creditor may perform the obligation, and Debtor will reimburse Creditor's related costs. However, before Creditor purchases insurance because Debtor has failed to comply with paragraph 9, Creditor will give Debtor notice and an opportunity to obtain the required coverage. If Debtor does not do so and Creditor places coverage, the charge for the replacement insurance Creditor obtains, which will be billed and be payable with the installment payments, will include a fee plus interest on the premium as well as the allocable premium. Also, any insurance Creditor obtains will not provide any liability coverage whatsoever, will insure Creditor only and will not relieve Debtor from Debtor's liability for the difference between the insurance proceeds and Debtor's responsibility for the Stipulated Value if the agreement must be paid off as to any Equipment after a Casualty Occurrence or cover any equity Debtor may have. No further insurance charges will be imposed once and for so long as Debtor complies with paragraph 9.

Initial _____

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11. **INDEMNITY.** Debtor will indemnify, defend and hold harmless Creditor against any liabilities, losses, claims, actions and expenses, including court costs and legal expenses, incurred by Creditor relating to this agreement or the Equipment, including claims of latent or other defects, strict liability claims (whether in either case relating to an event while Creditor has a security interest therein) and claims for patent, trademark or copyright infringement. Each party will give the other notice of any covered event promptly after learning thereof.
12. **DEFAULT.** This agreement will be in default if (a) Debtor fails to pay any amount hereunder when due; (b) Debtor fails to perform any other obligation hereunder or under any other agreement between Creditor and Debtor; (c) Debtor dies or is declared legally incompetent, if an individual; (d) a petition is filed by or against Debtor under the Bankruptcy Act or under any other law providing relief for debtors; (e) Debtor makes an assignment for the benefit of creditors, a receiver or trustee is appointed for Debtor, a proceeding contemplating winding up of Debtor's affairs is instituted, Debtor ceases business affairs or Debtor makes an abnormal transfer of a material portion of Debtor's assets; (f) an event described in (c), (d) or (e) occurs as to a guarantor of Debtor's obligations hereunder; or (g) there is a material misrepresentation to Creditor by Debtor or a guarantor in connection with this agreement or a default occurs under a real estate lease or mortgage covering property where an Item is located allowing exercise of default remedies thereunder.
13. **REMEDIES.** If the agreement is in default, Creditor may, at its option, do any one or more of the following: (a) accelerate the remaining payments and declare due the Stipulated Value; (b) use self-help and other lawful remedies to take possession of any Items; (c) sell or otherwise dispose of any Items in a manner which is commercially reasonable; (d) recover from Debtor all amounts then due and owing hereunder less the net sales price (net of all Creditor's costs and expenses of sale) of any Items Creditor has repossessed and sold; or (e) utilize any other remedy available to Creditor under the Uniform Commercial Code or otherwise at law or in equity.
- All remedies are cumulative and may be exercised concurrently or separately from time to time. Debtor will also pay Creditor all costs and expenses not offset against the proceeds of sale of any Equipment incurred by Creditor in enforcing this agreement, including those incurred by using Creditor's salaried employees and those prior to filing of an action or in connection with a dismissed action. Any waiver by Creditor of a provision of this agreement must be in writing, and forbearance by Creditor will not constitute a waiver. Post-default amounts will bear interest at 18% per annum or at such lesser default rate as set by law until paid.
14. **ASSIGNMENT.** Without the prior written consent of Creditor, Debtor will not lease, transfer an interest in or allow a lien against any Item or transfer any obligation under this agreement except a lien in an Item created by Creditor. Debtor's obligations are not assignable by operation of law. All Creditor's rights under this agreement and interest in the Equipment may be disposed of without notice to Debtor. Debtor will acknowledge receipt of any notice of assignment in writing and will pay any assigned amounts as directed in the notice. If Creditor assigns this agreement or any interest herein, Debtor will not assert against the assignee any claim or defense it may have against Creditor, and Debtor will pursue any rights on account thereof solely against Creditor personally. No assignee will be obligated to perform any obligation of Creditor under this agreement unless assumed by the assignee. Subject to the foregoing, this agreement is for the benefit of, and binds, the heirs, legatees, personal representatives, successors and assigns of the parties.
15. **PERSONAL PROPERTY.** Debtor will mark the Equipment or Equipment Location at Creditor's request to indicate Creditor's security interest in the Equipment. Each Item will remain personally despite attachment to realty. Debtor will obtain and deliver to Creditor, upon Creditor's request, real property waivers in form satisfactory to Creditor from all persons claiming an interest in the real property on which an Item is or is to be located.
16. **ADDITIONAL DOCUMENTS.** Debtor will obtain and deliver to Creditor such documents as Creditor requests to protect its interest in this agreement and the Equipment, including financing statements and fixture filings, both of which Debtor hereby alternatively authorizes Creditor to sign on Debtor's behalf. Debtor will reimburse Creditor for all Creditor's search, filing and appraisal fees and other costs paid third parties in connection with this agreement. Debtor will furnish Creditor such financial data or information relative to this agreement or the Equipment as Creditor may from time to time reasonably request.
17. **LATE PAYMENT.** If Debtor fails to pay an amount hereunder within 10 days of when due, Debtor will pay Creditor (a) a 5% late charge; (b) amounts Creditor pays others in connection with collection of the amount; and (c) Creditor's standard returned check charge, if relevant.
18. **DEPOSIT.** Any deposit Debtor furnishes in connection with this agreement will not bear interest and may be applied by Creditor to any obligations of Debtor to Creditor which are in default. When Debtor has satisfied all Debtor's obligations hereunder, Creditor will return any remaining balance of the deposit to Debtor.
19. **GENERAL.** This agreement contains the entire agreement between Creditor and Debtor concerning the financing of the Equipment and may be amended only by a written agreement signed by the party to be charged. Notices hereunder must be in writing and mailed with appropriate U.S. First Class Mail postage prepaid to the party involved at its respective address set forth above or at such other address as such party may provide the other on notice. Notices to Debtor will be effective upon deposit and to Creditor upon receipt. Each party will promptly notify the other of any change in address. The singular includes the plural and the word "Creditor" includes all assignees of Creditor. The liability of co-debtors is joint and several. Paragraph titles are not an aid in interpretation. A copy of a facsimile copy of this agreement, the Disbursement Authorization or a related document may be entered into evidence as an original.

20. **GOVERNING LAW; VENUE.** THIS AGREEMENT WILL BE GOVERNED BY THE INTERNAL LAWS OF CALIFORNIA. VENUE FOR ANY RELATED ACTION WILL BE IN AN APPROPRIATE COURT IN CONTRA COSTA COUNTY, CALIFORNIA SELECTED BY CREDITOR WHICH DEBTOR CONSENTS OR IN ANOTHER COURT CREDITOR SELECTS HAVING JURISDICTION.

21. **NO OFFSET; PREPAYMENT.** DEBTOR'S OBLIGATION TO MAKE ALL PAYMENTS UNDER THIS AGREEMENT IS ABSOLUTE AND UNCONDITIONAL AND WILL NOT BE SUBJECT TO ANY ABATEMENT, COUNTERCLAIM, RECOUPMENT, OFFSET OR DEFENSE. DEBTOR MAY NOT VOLUNTARILY PREPAY ITS OBLIGATIONS HEREUNDER.

22. **NO AGENCY.** DEBTOR ACKNOWLEDGES THAT NO SUPPLIER NOR ANY FINANCIAL INTERMEDIARY NOR ANY AGENT OR EITHER IS AN AGENT OF CREDITOR, THAT NONE OF SUCH PARTIES IS AUTHORIZED TO WAIVE OR ALTER ANY TERM OR CONDITION OF THIS AGREEMENT AND THAT NO REPRESENTATION AS TO THE EQUIPMENT OR ANY OTHER MATTER BY ANY SUCH PARTY IS BINDING UPON CREDITOR.

23. **FINANCING.** THIS AGREEMENT IS SOLELY A FINANCING AGREEMENT. CREDITOR HAS HAD NO INVOLVEMENT IN THE SELECTION OR PURCHASE OF AND HAS MADE NO AGREEMENT, REPRESENTATION OR WARRANTY AS TO ANY ITEM.

By execution hereof Debtor requests Creditor to finance the Equipment hereunder. Execution hereof by a duly authorized officer of Creditor indicates Creditor's acceptance of such offer. Debtor warrants that Debtor will use the Equipment solely for commercial or business purposes. Debtor recognizes that Creditor will check Debtor's credit references and history and advise others as to Creditor's experience with Debtor and consents thereto. Debtor certifies and warrants that the financial data and other information which Debtor has submitted or will submit to Creditor, is or will be a true and complete statement of the matters covered. Debtor authorizes Creditor to inset Equipment identification information above and to correct any patent errors, including omissions and clerical errors, such as incorrect Debtor name or Equipment descriptions and missing or incorrect dates in this agreement and any related document.

Dated as of

Creditor:

PRINT LEGAL NAME OF DEBTOR ABOVE

By: _____

Title

By: _____

Title

By: _____

Title