**Example of an Equipment Lease that would be**

**“Challenging” to Syndicate**

## ELA 2004 Legal Forum New Orleans, LA

**Roundtable Discussion Re: Syndications Daniel E. Murphy, Captive Capital Corp.**

**Philip R. Rosenblatt Nutter, McClennen & Fish, LLP**

**Master Equipment Lease Agreement No. 2004-007**

THIS MASTER EQUIPMENT LEASE (“Master Lease”) is executed and delivered as of this day of , 2004, between Easy Credit Finance, a division of Desperate For Sales LTD (“Lessor”) and Acme, Inc., a Delaware corporation (“Lessee”), whose principal place of business is located at . Lessor and Lessee hereby agree as follows:

* **Non-Cancelable Lease**. Upon our acceptance of this Agreement, and upon the execution and delivery from time to time by Lessor and Lessee of Equipment Schedules incorporating by reference the terms of this Master Lease, we agree to lease to you, and you agree to lease from us, the personal property described in such Schedules, including any attachments hereto or thereto (the “Equipment”), together with any replacements, additions, repairs, now or hereafter incorporated therein or affixed or attached thereto. **YOU ACKNOWLEDGE THAT WE SHALL NOT BECOME CONTRACTUALLY BOUND BY THIS AGREEMENT OR BY ANY EQUIPMENT SCHEDULE UNTIL IT IS ACCEPTED BY US AT OUR HOME OFFICE.**
* **Assignment of Purchase Agreement**. You assign to us and we accept assignment of all rights in the Purchase Agreement between you and the Vendor identified on an Equipment Schedule as it relates to the Equipment. The rights assigned include: (i) the right to be the purchaser and owner of the Equipment; (ii) the right to receive all amounts due to you under the Purchase Agreement; and (iii) the right to take any action with respect to and to enforce the Purchase Agreement and all warranty or other claims with respect to the Equipment. This assignment is effective as of the day of your Acceptance of the Equipment. You represent that:

(i) the Purchase Agreement is enforceable by us; is in effect, and has not been ended, changed, or broken by you or Vendor; and (ii) no other person or entity has the right to purchase the Equipment under the Purchase Agreement. You further agree that we are not taking over your obligations under the Purchase Agreement (except the obligation to pay for the Equipment once it is accepted by you under Equipment Schedule). You also agree that if a Default is declared under Section 14 of this Agreement, we automatically withdraw our acceptance of this

assignment of the Purchase Agreement, and you will remain liable to Vendor to honor all of your obligations under the Purchase Agreement.

* **Delivery and Acceptance of Equipment. YOU AGREE TO ACCEPT THE EQUIPMENT UPON SATISFACTORY DELIVERY AND INSTALLATION. UNLESS YOU HAVE TOLD US OTHERWISE WITHIN FIFTEEN (15) DAYS AFTER THE DATE OF VENDOR’S INVOICE, WE MAY, AND YOU UNDERSTAND THAT WE WILL, CONCLUSIVELY ASSUME THAT SATISFACTORY DELIVERY AND INSTALLATION OCCURRED ON THE DATE OF DELIVERY AND THAT SUCH EQUIPMENT HAS BEEN ACCEPTED BY YOU. ACCEPTANCE OF THE EQUIPMENT MEANS THAT THE EQUIPMENT HAS BEEN DELIVERED AND HAS BEEN ACCEPTED BY YOU FOR ALL PURPOSES OF THIS AGREEMENT. YOU CANNOT LIMIT OR REVOKE YOUR ACCEPTANCE AT ANY LATER DATE. THE LEASE TERM WILL BEGIN UPON YOUR ACCEPTANCE. AFTER YOUR ACCEPTANCE OF THE EQUIPMENT, YOU MAY NOT CANCEL THIS AGREEMENT DURING THE LEASE TERM.**
* **Term and Rent**. You agree to pay us the Advance Rental Payment(s) and the Documentation and Administration Fee in the amount set forth in Part III of each Equipment Schedule when you sign each such Equipment Schedule. You agree that the Advance Rental Payment(s) and the Documentation and Administration Fee shall not be refunded if the lease/Lease Term does not commence for any reason, may be commingled, and shall not earn interest. You agree to pay us Rental Payments for the use of the Equipment in the amounts, number and frequency set forth in Part III of each Equipment Schedule, at such place as we may designate, commencing on the day of your Acceptance of the Equipment, and on the same day of each succeeding month (or the last day of a month that has fewer days than said day). The term of this Agreement shall continue until all your and any guarantor’s obligations have been fully paid, performed and discharged hereunder and under any Equipment Schedule incorporating the terms hereof. You authorize us to change the Rent Payment by not more than fifteen percent (15%) in the event of changes in the initial price of the Equipment. The Rental Payments are due whether or not you receive an invoice from us. If you fail to pay us the entire amount of any Rental Payment when due, you shall pay to us on demand a late charge of ten percent (10%) of the total amount of said Rental Payment, plus any expenses of any collection agency, service or attorney employed by us to collect said Rental Payment (“Late Charge”), but in no event shall the total amount of the Late Charge exceed the amount permitted by law. **IF ANY AMOUNT AGREED TO, CHARGED OR RECEIVED UNDER THIS AGREEMENT WOULD, BUT FOR THIS SECTION, EXCEED THE MAXIMUM LAWFUL AMOUNT ALLOWED BY ANY USURY OR OTHER APPLICABLE LAW, SUCH AMOUNT SHALL BE AUTOMATICALLY AND STRICTLY LIMITED TO THE AMOUNT ALLOWED BY APPLICABLE LAW. IF ANY AMOUNT IN EXCESS OF THE LAWFUL AMOUNT IS RECEIVED, IT WILL BE CREDITED TO AMOUNTS THAT ARE LAWFULLY DUE AND OWING BY YOU OR WILL BE REFUNDED TO YOU**.
* **Net Lease**. Subject to our compliance with the Manufacturer’s Agreement applicable to any Equipment, each lease is a net lease and you acknowledge and agree that your obligation to pay all rental and other sums payable hereunder, and our rights in and to such payments, shall be absolute and unconditional and shall not be subject to any abatement, reduction, setoff, counterclaim or other defense for any reason whatsoever.
* **Warranties. THE EQUIPMENT IS BEING LEASED TO YOU IN AS-IS CONDITION**. You agree that we make only those warranties contained in the Manufacturer’s Agreement of even date herewith. **WE HAVE NOT MADE AND DO NOT MAKE ANY OTHER WARRANTIES OR**

**REPRESENTATIONS OF ANY KIND, DIRECT OR INDIRECT, EXPRESS OR IMPLIED, AS TO SUITABILITY, DURABILITY, DESIGN, COMPLIANCE WITH SPECIFICATIONS, QUALITY OF MATERIALS OR WORKMANSHIP, OPERATION, OR CONDITION OF THE EQUIPMENT, THE MERCHANTABILITY, FITNESS FOR USE FOR A PARTICULAR PURPOSE OF THE EQUIPMENT, OR OTHERWISE. NOTHING IN THIS MASTER AGREEMENT SHALL MODIFY, AMEND, LIMIT OR OTHERWISE RELIEVE US FROM ANY OF OUR OBLIGATIONS UNDER THE TERMS AND CONDITIONS OF SALE OF ANY EQUIPMENT THAT IS MANUFACTURED OR SOLD BY US, INCLUDING WITHOUT LIMITATION SERVICE, WARRANTY AND INDEMNITY OBLIGATIONS**. So long as no Default

has occurred under this Agreement you may enforce all such warranty rights (including those contained in the Purchase Agreement.)

* **Title; Security Interest**. The Equipment is and remains our sole property. No right, title or interest in the Equipment shall pass to you other than the right to maintain possession and use of the Equipment during and for the full Lease Term identified in Part III of the applicable Equipment Schedule, unless you are in Default. Notwithstanding the foregoing, you grant us a security interest in (i) the Equipment, (ii) anything attached or added to the Equipment at any time, (iii) any money or property from the sale of the Equipment, and (iv) any money from an insurance claim if the Equipment is damaged. The security interest secures your obligations to us under this Agreement. You agree that the security interest will not be affected if this Agreement is changed in any way. You shall have the right to sublease the Equipment without the consent of, but upon written notice to, us, subject to Section 11 hereof. No assignment shall relieve you of your obligations hereunder. You will not attach any of the Equipment to any real estate. Upon our reasonable request and at your cost, you will obtain from each person with an interest in the real estate where the Equipment is located a waiver of any rights they may have in the Equipment. You herby authorize us to file financing statements naming you as debtor in order for us to publicly record our security interest.
* **Taxes**. You agree to pay when due all taxes, fines, interest and penalties relating to this Agreement and the Equipment, (excluding taxes based on our net income), and, if we ask, you will provide us with proof of payment. Sales, use or other taxes measured by sales or receipts are not included in the Rent Payments, but will be added to your invoice, if applicable. We do not have to contest any tax on the Equipment or this Agreement. You will not permit a tax lien to attach to any of the Equipment. Without in any way limiting your obligation to pay such taxes, and without creating any obligation on our part to pay such taxes, you will promptly reimburse us for any personal property taxes we have paid or pay, plus interest at the rate of one percent (1.0%) per month, or the highest legal rate if less. If you receive personal property tax bills for Equipment, you will promptly send a copy to our address.
* **Indemnity**. We are not responsible for any injuries, damages, penalties, claims or losses, including but not limited to legal costs and expenses, incurred by you or any other person caused by the transportation, installation, manufacture, selection, purchase, lease, ownership, possession, repair, storage, modification, maintenance, condition, use, return or disposition of the Equipment. You agree to indemnify, defend (only upon request by us) and hold us harmless from and against any and all liabilities, losses, damages, penalties, claims, actions, suits, costs and expenses, including court costs and attorneys’ fees imposed on, incurred by or asserted against us that in any way relate to or arise from the transportation, installation, manufacture, selection, purchase, lease, ownership, possession, repair, storage, modification, maintenance, condition, use, return or disposition of the Equipment, including without limitation, any claim alleging latent or other defects whether or not discoverable by you or us, and any claim arising out of strict liability in tort. This indemnity continues even after this Agreement has terminated.
* **Tax Indemnity**. You agree to pay us for the loss by us of any income tax benefits caused by your actions, your failure to act, or your breach of any representations, warranties, covenants or agreements hereunder. You will not do anything, nor will you refrain from doing anything, that we determine may adversely affect the availability to us of “accelerated cost recovery deduction” with respect to the Equipment as permitted by the Internal Revenue Code of 1986, as amended (the “Tax Code”). You agree that the Advance Rent and Rent Payments due under this Agreement reflect the benefits of our ownership of the Equipment, which are provided by the Tax Code. Should an increase in the federal corporate income tax rate adversely affect our after-tax earnings or cash flows, you agree that we may increase the Rent Payments and other amounts due under this Agreement to off-set any such adverse effect.
* **Use, Maintenance and Repair; Alteration of Equipment**. You shall use the Equipment only in the manner for which it was intended, solely for your business purposes, in accordance with all applicable manuals and instructions and in compliance with all applicable laws and regulations, and in conformity with the terms and conditions of any insurance policy obtained thereon. At your own cost and expense, you shall keep the Equipment in good repair, condition and working order, ordinary wear and tear only excepted, and you shall furnish all parts, maintenance and service required. You shall not alter or modify the Equipment in any way that would impair the value or originally intended use. You agree that all additions, replacement parts and upgrades to the Equipment shall become our property unless they can be easily removed without damage to the original Equipment. Without our written permission in advance, you shall not move the Equipment from the Equipment Location listed in Part I of the applicable Equipment Schedule, or if blank, then Lessee’s address listed in Part I of the applicable Equipment Schedule. In no event shall you move the Equipment outside of the continental United States. You shall have the right to alter the Equipment and add parts, components, accessories and upgrades that are compatible with the Equipment, without notifying us or obtaining our consent. You may remove any such part, component, accessory or upgrade prior to returning the Equipment to us; provided that any such part, component, accessory or upgrade that remains on the Equipment upon return to us shall become our property.
* **Insurance**. You agree to keep the Equipment fully insured against theft and all risks of loss or destruction of or damage to the Equipment from every cause whatsoever for not less than the replacement cost of the Equipment, with us named as loss payee, until you have met all of your obligations under this Agreement. You agree to obtain a general public liability insurance policy, with a limit if liability of not less than $300,000 per occurrence (or such other amount as we may require, covering both personal injury and property damage arising from or in connection with the Equipment.. You may maintain deductibles and/or self-insured retentions relating to these policies in accordance with your normal practices. The policies shall be obtained by you from a company that is rated “B” or better by A.M. Best Co., Inc. in Best’s Key Rating Guide. Upon our request, you agree to provide us with certificates or other evidence of insurance acceptable to us. If you do not provide us with evidence of proper insurance within ten (10) days of our request, we may (but we are not obligated to) obtain insurance on our interest in the Equipment at your expense. You agree to pay all premiums and related charges, including interest at up to one percent (1.0%) per month, or the highest legal rate, if less. We are under no duty to tell you whether your insurance coverage is adequate.
* **Loss or Damage**. You hereby assume and agree to bear the entire risk of loss, destruction or theft of or damage to the Equipment from any cause whatsoever, whether or not insured, until the Equipment is returned to us. No such loss or damage shall relieve you from any obligation under this Agreement. If any item of Equipment is lost, destroyed, stolen or damaged, you will

promptly notify us in writing of such event. We will require you, at your option, to promptly do one of the following: (i) repair the Equipment so that it is in good condition and working order and enter into a maintenance agreement with respect to the repaired Equipment; or (ii) Pay to us (a) all Rent Payments due but unpaid on the date of any loss of the Equipment or Default, including all Late Charges, plus (b) all other amounts due under the terms of this Agreement but unpaid on the date of any loss of the Equipment or Default, plus (c) all future Rent Payments to become due under this Agreement and the applicable Equipment Schedule reduced to their present value by applying a discount rate of one percent (1%) above the then current Discount Rate of the Federal Reserve Bank of Philadelphia, plus (d) the estimated fair market value of the Equipment at the end of the originally scheduled lease term. If you have satisfied your obligations under this Section 13 of this Agreement, we will forward to you any insurance proceeds that we receive for lost, damaged or destroyed Equipment. If you are in default of your obligations under this Agreement (including the obligation to promptly comply with this Section 13), we will apply any insurance proceeds to reduce your obligations under Section 15 of this Agreement.

* **Default**. Any one or more of the following events or conditions shall constitute a Default hereunder: (i) you fail to pay any Rental Payment or other sum due us within ten (10) days after the date said payment is due hereunder; (ii) you fail to observe or perform any other obligation required to be observed or performed by you hereunder and such failure continues unremedied for a period of thirty (30) days after your receipt of written notice from us, or, if more than thirty

(30) days are reasonably required to cure such default, you fail to commence such cure within such thirty day period and you fail to diligently pursue such cure to completion; (iii) a writ of attachment or execution is levied upon the Equipment and is not released or satisfied within ten

(10) days; (iii) a petition is filed by or against you or any of your guarantors under any bankruptcy or insolvency law; (iv) you or any of your guarantors become insolvent, are liquidated or dissolved, merge, transfer substantially all stock or assets, stop doing business, or assign rights or property for the benefit of creditors; (v) any representation, warranty or signature made by you or any of your guarantors herein or in any document delivered to us in connection with this lease shall prove to have been false or misleading in any material respect when made; (vi) you engage in any criminal conduct that subjects the Equipment to seizure and/or confiscation by governmental authorities; (vii) you use or permit use of the Equipment in a fashion not covered by the required insurance policies; or (viii) you shall suffer an adverse material change in your financial condition from the date hereof and, as a result, we deem ourselves or our Equipment to be insecure.

* **Remedies**. Immediately upon the occurrence of a Default, you shall pay us (i) all Rent Payments due but unpaid on the date of any loss of the Equipment or Default including all Late Charges, plus (ii) all other amounts due under the terms of this Agreement and the applicable Equipment Schedule, but unpaid on the date of any loss of the Equipment or Default, plus (iii) all future Rent Payments to become due under this Agreement and the applicable Equipment Schedule reduced to their present value by applying a discount rate of one percent (1%) above the then current Discount Rate of the Federal Reserve Bank of the State of Euphoria, plus (iv) the estimated fair market value of the Equipment at the end of the originally scheduled lease term. **If you fail to immediately pay us such amount, you shall return the Equipment to us as provided in Section 16 of this Agreement**. If you do not return the Equipment as required, you shall permit us to peacefully repossess the Equipment, without a court order, and you shall not make any claims against us for trespass damage or any other reason. After we have obtained possession of the Equipment, we shall use reasonable efforts to sell the Equipment at a publicly held sale or privately negotiated sale in an as-is condition without representation or warranty. You agree that we only need to give you ten (10) days advance notice of any sale and

no notice of advertising. If we sell the Equipment, we shall apply the proceeds to pay the costs of repossession, storage and sale. The remaining proceeds shall be applied to your obligations under this section. Should the sale processed be insufficient to repay our costs and satisfy your obligations under this section, you shall immediately pay us any amounts still owing. If you fail to so do, we will pursue all other remedies legally available to us. You agree to pay all our costs of enforcing our rights against you, including attorney’s fees and expenses. You agree that we will preserve all of our rights against you even if we do not choose to enforce them at the time of Default.

* **Return of Equipment**. Upon expiration of the Lease Term identified in Part III of an applicable Equipment Schedule (the “Initial Term”), and any extension thereof, you may purchase, or renew this Agreement with respect to, all or part of the Equipment provided that no Default then exists hereunder. Upon written notice from you to us at least sixty (60) days prior to the expiration of the Initial Term or at least sixty (60) days prior to the expiration of any extension thereof, you shall have the option of (i) renewing this Agreement at the then Fair Market Value, or (ii) purchasing the Equipment at the then Fair Market Value. “Fair Market Value,” when used with respect to the Equipment means the purchase price, as applicable, that would be obtained in an arm’s length transaction as of the date of determination, between informed and willing parties under no compulsion to buy, sell or lease. In the event we and you cannot agree upon Fair Market Value, such amount shall be determined by an independent appraiser selected by us and satisfactory to you, with the fees and expenses of the appraiser being borne equally by us and you. If you elect not to exercise such option, you shall immediately return the Equipment to us to the location we designate, in good repair, condition and working order, maintained in accordance with Section 11 of this Agreement, properly crated and shipped in accordance with manufacturer’s recommendations at your sole expense, together with all instruction manuals and software, freight prepaid and insured by you. You agree to continue to make Rent Payments to us in the amount and frequency set forth in Part III of each applicable Equipment Schedule, on the due dates set forth in Section 4 of this Agreement, until the Equipment is received by us in accordance with the terms of this Agreement. Your payment and our acceptance of such payments from you shall not be deemed a waiver by us of any of our rights in this Agreement. You shall have the option to terminate this Agreement with respect to the Equipment or any part thereof at any time and return the Equipment to us provided that no Default then exists hereunder. In return for exercising such option, you shall pay an amount mutually agreed between us and you not to exceed the present value of the remaining monthly rental payments due with respect to the terminated Equipment hereunder, discounted to the date of termination at the prime rate as reported as of such date by The Wall Street Journal, less 80 basis points.
* **Limited Power of Attorney**. You hereby irrevocably appoint us as your attorney-in-fact for the following limited purposes: (i) to sign and file or record on your behalf and in your name any document we deem necessary to perfect or protect our interest in the Equipment pursuant to the Uniform Commercial Code; and (ii) to sign, endorse and/or negotiate, on your behalf and in your name, for our benefit, any instrument representing proceeds from any policy of insurance covering the Equipment.
* **Warrant of Attorney; Cognovit Judgment. YOU HEREBY IRREVOCABLY AUTHORIZE AND EMPOWER ANY ATTORNEY, PROTHONOTARY OR CLERK OF ANY COURT, UPON THE OCCURRENCE OF A DEFAULT AS DEFINED IN SECTION 14 OF THIS AGREEMENT, TO APPEAR FOR AND ENTER AND CONFESS JUDGMENT AGAINST YOU, AT ANY TIME AND FROM TIME TO TIME FOR SUCH AMOUNT AS MAY BE OWING BY YOU UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO LEASE PAYMENTS AND THE**

**RESIDUAL PAYMENT, IF ANY, WITH OR WITHOUT DECLARATION, PLUS COSTS OF SUIT AND ATTORNEYS FEES, WITHOUT NOTICE OR STAY OF EXECUTION. YOU RELEASE ALL ERRORS IN CONNECTION WITH SUCH ACTION AND YOU WAIVE ALL RIGHTS OF APPEAL. NO SINGLE EXERCISE OR ATTEMPTED EXERCISE OF THIS FOREGOING WARRANT AND POWER TO CONFESS JUDGMENT SHALL BE DEEMED TO EXHAUST THE POWER, WHETHER OR NOT ANY SUCH EXERCISE SHAL BE HELD TO BE INVALID, VOIDABLE OR VOID, BUT THE POWER SHALL CONTINUE UNDIMINISHED AND MAY BE EXERCISED FROM TIME TO TIME AS OFTEN AS WE ELECT UNTIL ALL OBLIGATIONS OF YOU TO US PURSUANT TO THE PROVISIONS OF THIS AGREEMENT OR ON ACCOUNT OF THE EQUIPMENT HAVE BEEN PAID IN FULL. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, WE AGREE NOT TO LEVY, EXECUTE OR GARNISH ANY RESIDENTIAL REAL PROPERTY OF YOU OR ANY GUARANTOR AS MAY BE PROHIBITED BY LAW.**

* **Your Representations**. You state for our benefit that as of the date of this Agreement: (i) if you are a registered organization, you remain in good standing in the jurisdiction where you are registered; (ii) you have the lawful power and authority to enter into this Agreement; (iii) the individuals signing this Agreement have been duly authorized to do so on your behalf; (iv) by entering this Agreement, you will not violate any law or other agreement to which you are a party; (v) you are not aware of anything that will have a material negative effect on your ability to satisfy this Agreement; and (vi) all financial information you have provided us is true and accurate and provides a good representation of your financial condition.
* **Your Promises**. In addition to the other provisions of this Agreement, you agree that during the term of this Agreement: (i) you will promptly notify us in writing if you move your principal place of business, if you change the name of your business, if you incorporate or reincorporate (or, if applicable, you otherwise change your jurisdiction of organization), or if there is a change in your ownership; (ii) you will provide to us such financial information as we may reasonably request; and (iii) you will take any action we reasonably request to protect our interests in the Equipment and to carry out this Agreement.
* **Release of Information; Assignment**. You agree that we may, without notifying you, release all information that we possess about you and this Agreement to any prospective investor, participant or purchaser of this Agreement, the Equipment or any Equipment Schedule executed and delivered hereunder. We may, from time to time and with your consent, which consent shall not be unreasonably withheld, conditioned or delayed, sell, assign or transfer this Agreement and our interests in the Equipment or any Equipment Schedule executed and delivered hereunder.. You agree that if we do so, the new owner will have the same rights and benefits that we now have, but we shall not be relieved of any of our obligations hereunder. You agree that the rights of the new owner will not be subject to any claims, defenses or set-offs that you may have against us. If you are given notice of and consent to a new owner, you agree to respond to any requests about this Agreement and, if directed, all Rent Payments and other amounts due under this Agreement shall be paid to such address and in such manner as you are instructed by us or by such new owner. You shall have the right to sublease your interest in this Agreement and the Equipment with our prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, except that no consent of, or notice to, us, shall be required in connection with any merger (including without limitation a reincorporation merger), consolidation, reorganization, stock exchange, sale of stock or sale of substantially all of your assets or other similar or related transaction in which you are the surviving entity or, if you are not the surviving entity, the surviving entity continues to conduct the business conducted by you prior to consummation of the transaction.
* **Acts on Your Behalf**. You agree that we can, but do not have to, take on your behalf any action which you fail to take to comply with this Agreement, and you will reimburse us for our expenses with your next Rent Payment.
* **Choice-of-Law; Venue; Integration**. **YOU AGREE THAT THIS AGREEMENT SHALL BE DEEMED TO HAVE BEEN MADE IN THE STATE OF EUPHORIA AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF EUPHORIA. You hereby knowingly and voluntarily consent and submit to the jurisdiction of the federal and state courts of Euphoria for purposes of adjudicating the rights and liabilities of the parties pursuant to this Agreement**. This Agreement contains our entire agreement and supersedes any conflicting provision of equipment purchase orders or any other agreement. **TIME IS OF THE ESSENCE IN THIS AGREEMENT**. If a court finds any provision of this Agreement to be unenforceable, the remaining terms of this Agreement shall remain in full force and effect. This Agreement may only be amended by a writing signed by you and us.
* **Notices**. All our and your written notices must be sent by certified mail or recognized overnight delivery service, postage prepaid. Our notices to you must be sent to you at your address as set forth in Part I of the applicable Equipment Lease. Your notices to us must be sent to us at our address as set forth in the Signature Block in Part V of the applicable Equipment Lease. At any time after this Agreement is signed, you or we may change an address or facsimile telephone number by giving notice to the other of the change.
* **Waivers. WE AND YOU EACH AGREE TO WAIVE AND TO TAKE ALL REQUIRED STEPS TO WAIVE ALL RIGHTS TO A JURY TRIAL**. To the extent you are permitted to by law, you waive any rights you now or later may have under any statute or otherwise which require us to provide you with notice of default, intent to accelerate amounts becoming due or acceleration of amounts becoming due, or which may otherwise limit or modify any of our rights or remedies. **ANY ACTION YOU TAKE AGAINST US FOR ANY DEFAULT, INCLUDING BREACH OF WARRANTY OR INDEMNITY, MUST BE STARTED WITHIN ONE (1) YEAR AFTER THE EVENT WHICH CAUSED IT**. We will not be liable for specific performance of this Agreement or for any losses, damages, delay or failure to deliver the Equipment. **THIS AGREEMENT IS A “FINANCE LEASE” AS DEFINED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE**. To the extent you are permitted to by law, you will waive all rights and remedies you may have under Article 2A (Sections 508-522) of the Uniform Commercial Code, including but note limited to your rights to: (i) cancel or repudiate this Agreement; (ii) reject or revoke acceptance of the Equipment; (iii) recover damages from us for any breach of warranty or for any other reason; and (iv) grant a security interest in any equipment in your possession.
* **Warranty of Business Purpose**. You hereby warrant and represent that the Equipment will be used only for your business purposes, and you acknowledge that we have relied upon this representation in entering into this Agreement.
* **Facsimile**. You agree that a facsimile copy of this Agreement will be treated as an original and will be admissible as evidence of this Agreement**.**

***Lessor:***

**Easy Credit Finance, a division of Desperate for Sales Ltd.**

***Lessee:***

**Acme Inc.**

By (Name): By (Name):

Title: Title:

Signature: Signature:

Date: Date:

**Unconditional Personal and/or Corporate Guarantee**

In order to induce Lessor to enter into the above Equipment Lease Agreement and Equipment Schedules from time to time as contemplated by such Equipment Lease Agreement (collectively, the “Agreement”), and in consideration for Lessor entering into the Agreement, the undersigned, together and separately, unconditionally and irrevocably guarantee to Lessor, its successors and assigns, the prompt payment and performance of all obligation under the Agreement. We agree that (a) this is a guarantee of payment and performance and not of collection, and that Lessor can proceed directly against us without disposing of any security or seeking to collect from the Lessee under the Agreement, (b) we waive all defenses and notices, including those of protest, presentment and demand, (c) Lessor may renew, extend or otherwise change the terms of the Agreement without notice to us and we will be bound by such changes, and (d) we will pay all of Lessor’s costs of enforcement and collection. This guarantee survives the bankruptcy of the Lessee and binds our administrators, successors and assigns. Our obligation under this agreement continues even if the Lessee becomes insolvent or bankrupt or is discharged from bankruptcy and we agree not to be repaid by the Lessee in the event we must pay Lessor hereunder until all obligations under the Agreement have been fully paid and performed. **THIS GUARANTEE WILL BE GOVERNED BY THE LAWS OF THE STATE OF EUPHORIA. WE AGREE TO JURISDICTION AND VENUE IN THE STATE OF EUPHORIA,**

**COUNTY OF MIRTH.** Each of the undersigned hereby authorizes Lessor to conduct an investigation of his/her/its credit history and directs his/her/its creditors (including, without limitation, banks leasing companies and trade suppliers) to release any information regarding his/her/its credit and accounts maintained with such creditors to Lessor, its agents and designees. Each of the undersigned agrees to hold harmless his/her/its creditors from any reference or information provided to Lessor, its agents and designees. Each of the undersigned

hereby authorizes Lessor to release all information that it may possess about him/her/it to any prospective investor, participant or purchaser of the Agreement.

|  |  |  |
| --- | --- | --- |
| Signature: | Date: | Signature: Date: |
| Name (please type or print): |  | Name (please type or print): |
| Address: |  | Address: |
| Social Security Number: |  | Social Security Number: |
| Witness Signature: |  | Witness Signature: |
| Witness Name: |  | Witness Name: |

Equipment Schedule No. 1 to

Master Equipment Lease Agreement No. 2004-007

This Equipment Schedule (this “Schedule”) is executed and delivered between Easy Credit Finance, a division of Desperate for Sales Ltd. (“Lessor”) and Acme Inc. (“Lessee”), pursuant to, and hereby incorporating herein the terms of, that certain Master Equipment Lease Agreement No. 2004-007 (the “Master Lease”). Unless otherwise defined herein, capitalized terms shall have the meaning set forth in the Master Lease. By execution of this Schedule, Lessor and Lessee confirm that all of the terms of the Master Lease are applicable to this Schedule except to the extent modified hereby.

***Part I: Lessee***

## Name: Acme Inc. Address:

**City, State, ZIP:**

**County:**

**Contact Name:**

**Contact Telephone**

***Vendor:***

## Name: Desperate for Sales Ltd. Address:

**City, State, ZIP:**

**County:**

**Contact Name:**

**Contact Telephone**

***Part II: Equipment Description & Location***

**Quantity** **Equipment Make, Model & Description** **Serial Number**

See attached Schedule A for additional equipment

Equipment Location (complete only if equipment will be located at an address other than the Lessee’s address set forth in Part I above):

Address:

City:

State:

County:

ZIP:

***Part III: Schedule of Rental Payments***

Lease Term (in months):

Total Number of Rental Payments Amount of Each Rental Payment\* Number of Advance Rental Payments Documentation and Administration Fee Total Amount of First Payment\*

\*Plus any applicable taxes

***Part IV: Terms and Conditions: (Please Read Carefully Before Signing)***

**THIS LEASE, THE TERMS OF WHICH HAVE BEEN FREELY NEGOTIATED BY EACH PARTY, IS SUBJECT TO THE TERMS AND CONDITIONS OF THE MASTER LEASE, THIS SCHEDULE, AND ON ALL ATTACHMENTS TO THIS SCHEDULE, WHICH ARE MADE A PART HEREOF AND WHICH YOU ACKNOWLEDGE HAVING READ AND ACCEPTED.**

**THIS IS AN IRREVOCABLE/NON-CANCELABLE LEASE. ONCE ACCEPTED BY THE LESSOR, THIS LEASE CANNOT BE CANCELLED OR TERMINATED BY LESSEE FOR ANY REASON WHATSOEVER.**

LESSOR: LESSEE:

EASY CREDIT FINANCE, a division of Desperate ACME Inc. for Sales Ltd.

By: By: Name: Name:

Title: Title:

Date: Date:

[Guarantor Acknowledgement appears on next page]

The undersigned Guarantor hereby acknowledges the execution and delivery of the foregoing Equipment Schedule and hereby confirms its Guaranty of such Equipment Schedule.

GUARANTOR:

By: Name:

Title: Date:

Schedule A

**Equipment Lease Agreement Lease No.**

***Part II: Equipment Description & Location (continued)***

**Quantity** **Equipment Make, Model & Description** **Serial Number**

1307532.4

# Example Of An Indemnification Letter In An Equipment Lease Syndication Transaction

### ELA 2004 Legal Forum New Orleans, LA

**Roundtable Discussion Re: Syndications Daniel E. Murphy, Captive Capital Corp.**

**Philip R. Rosenblatt, Nutter McClennen & Fish LLP**

, 2004

Prudent Investor LLC

Dear Sir or Madam :

Reference is made to that certain Assignment and Specification of Assigned Lease Schedule, dated , 2004 (the “Specification”) issued pursuant to that certain Master Assignment Agreement, dated , 2004 (the “Master Agreement”) between Easy Credit Finance, a division of Desperate for Sales Ltd. (“Assignor”) and Prudent Investor LLC (“Assignee”). Capitalized terms used but not otherwise defined herein shall have the meanings given such terms in the Specification.

In connection with the Interest, Assignor agrees to indemnify Assignee for and hold Assignee harmless from, any diminution in the economic return Assignee would receive if the Interest were fully received in accordance with the terms of the Transaction Documents, and reasonable attorneys’ fees incurred or suffered by Assignee, arising out of:

* 1. the failure of the Lessee to (a) insure the Equipment for casualty loss under policies with sufficient limits, or (b) name Assignor (and its successors and assigns) as the sole loss payee on insurance policies covering the Equipment against casualty loss;
  2. Any refusal by Guarantor to make full payment under its Unconditional Personal and/or Corporate Guarantee, dated as of , 2004 (the “Guarantee”) in favor of Assignor (the “Unlimited Guaranty”), where such refusal is

based upon an assertion that the Lease , the documents executed in connection with the Lease, and Lessee’s payment and performance obligations thereunder are not guaranteed by Guarantor under the Guarantee; and

* 1. The reduction, if any, in the computation of “present value” (as described in Section 13 and 15 of the Lease) arising out of the use of (a) the discount rate of “one percent above the then current Discount Rate of the Federal Reserve Bank of Philadelphia” as the applicable discount rate, rather than using (b) the rate of interest used in determining Assignee’s anticipated economic return in connection with its purchase of the Interest as the applicable discount rate;

Sincerely yours,

Easy Credit Finance, a division of Desperate for Sales Ltd

By: Name: Title:

Prudent Investor LLC

By: Name: Title:

1306360.1

**Purchaser’s Comments Re:** **Syndication of “Challenging” Lease**

### ELA 2004 Legal Form New Orleans, LA

**Roundtable Discussion Re: Syndication Daniel E. Murphy, Captive Capital Corp.**

**Philip R. Rosenblatt, Nutter, McClennen & Fish, LLP**

[Counsel for Prudent Investor LLC]

, 2004

99970-31

Counsel for

Easy Credit Finance, a division of Desperate for Sales Ltd.

Re: Comments on Equipment Lease Agreement No. XXXX Dear \_:

We represent Prudent Investor LLC (“PILL” or “Buyer”) in connection with the proposed acquisition by PILL of Equipment Lease Agreement No. XXXX, between Acme, Inc. (“Lessee”) and Easy Credit Finance, a division of Desperate for Sales Ltd. (“Lessor” or “Seller”), along with all of the Equipment leased pursuant thereto.

From PILL’s perspective, my initial reaction to this Agreement is that it is not in a form typically required by a buyer in a syndication transaction. In addition, it would appear that the vendor made a number of concessions in negotiating the Agreement with the Lessee that are not necessarily consistent with a typical “hell or high water” lease required for a syndication to PILL. More specifically, in connection with this proposed acquisition, we have the following comments on behalf of PILL:

1. Our first observation is important to put on the table right up front since we will need to get signatures from third parties in order to satisfy PILL’s requirements. Under Section 21 of the Lease, the Seller is not permitted to syndicate the transaction to PILL unless the Lessee consents to the assignment. Accordingly, the Lessee will absolutely need to execute and deliver a Notice & Acknowledgement consenting to this transaction.

While we are at it, we will also be requiring the Guarantor to sign the Notice and Acknowledgement. As noted below, this document will also prove useful in resolving a number of other concerns PILL has with the Lease.

Counsel for Easy Credit Finance

, 2004

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1. Part I of the Agreement provides certain identifying information regarding the Lessee. As you know, under Revised Article 9 of the Uniform Commercial Code, the jurisdiction in which the Lessee is organized has become a crucial piece of information in order to properly file UCC financing statements. Also, proper filing of UCC financing statements typically requires the Lessee’s federal identification number and, where available, a state identification number. Since none of this information is provided in the Agreement, it will be important to obtain this information from the Lessee. We can include in the Notice & Acknowledgement a statement from the Lessee setting forth its jurisdiction of organization, federal identification number and, if applicable, state identification number.
2. Since Part III (Schedule of Rental Payments) does not clearly indicate the precise date on which rental payments are to begin, it will be useful to obtain from the Lessee in the Notice & Acknowledgement a statement verifying when payments are due and how many lease payments remain to be made. Since the “date of acceptance” is ambiguous under Section 3, and this form of Agreement does not require a Certificate of Acceptance, this information is particularly important in this case.

Note: if Rental Payments under the Equipment Lease have already commenced, then it may be less important to have the Lessee verify this information (although still desirable).

1. Since the preamble before Section 1 of the Agreement identifies the Lessor in this document as “we”, “us”, and “our”, the Lessee and Guarantor should agree in the Notice & Acknowledgement that these references will be to PILL as the Lessor’s assignee following syndication. On the other hand, since this Agreement creates obligations on the part of the Lessor that are unacceptable in a syndicatable equipment lease, it will be important for the Lessee and Guarantor to also acknowledge that PILL, as assignee, is obtaining all of the rights and benefits of the Lessor, but is not undertaking any of the Lessor’s obligations by virtue of this syndication.
2. Section 3 of this Agreement sets forth a mechanism for the Lessee’s acceptance of the Equipment via the first to occur of either (i) the Lessee providing notice to the Lessor that it has accepted the Equipment or (ii) merely the passage of 15 days after the date of Vendor’s invoice. In order for this transaction to by syndicatable to PILL, PILL will require that the Lessee acknowledge in the Notice & Acknowledgement that the Lessee has accepted the Equipment for all purposes under the Lease, including without limitation, for purposes of commencing Rental Payments.
3. Since Section 4 sets forth a mechanism through which the Lessor can change the amount of each Rental Payment by up to 15 percent in the event of changes in the initial price of the Equipment, it will be especially important for the Lessee to verify in the Notice & Acknowledgement the precise amount of each Rental Payment. Again, if Rental Payments have already commenced, this verification will be less important.

Counsel for Easy Credit Finance

, 2004

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1. As you know, PILL requires any lease that it purchases in a syndication to set forth a clear and unambiguous “HELL OR HIGH WATER” obligation on the part of the Lessee to pay rent and other charges under the Lease. Since Section 5 of the Agreement makes the absolute and unconditional obligation to pay rent “subject to [the Lessor’s] compliance with the Manufacturer’s Agreement…”, there is an unacceptable ambiguity in the hell or high water obligation.

Accordingly, PILL would like the lessee and guarantor to agree in the Notice & Acknowledgment that PILL is undertaking none of the vendor’s obligations under the Manufacturer’s Agreement or otherwise.

In addition, PILL will require satisfaction of two conditions prior to agreeing to purchase this Agreement and Equipment: (i) the Vendor and the Lessor (the same entity in this transaction) will need to agree contractually with PILL to indemnify PILL and hold PILL harmless from any loss or liability arising out of the Manufacturer’s Agreement; and (ii) PILL will need to be satisfied that the Vendor/Lessor is sufficiently creditworthy to undertake this contractual obligation.

1. We note that Section 4 provides for a 10 percent “Late Charge” for any Rental Payments that are not made on time. A Late Charge like this is required by PILL in a syndication transaction and we are glad to see this Agreement provides for such a Late Charge.
2. In Section 6, the Lessor makes “those warranties contained in the Manufacturer’s Agreement.” As you know, this is unacceptable to PILL in a syndication. See Item 7 above.
3. We are glad to see that the second to last sentence of Section 7 indicates that the Lessee is obligated to obtain landlord or mortgagee waivers. Depending upon the nature of the Equipment and the creditworthiness of the Lessee, obtaining landlord or mortgagee waivers could be an important consideration for PILL.
4. PILL greatly appreciates the last sentence of the “Tax Indemnity” set forth in Section 10! We applaud your obtaining from the Lessee protection against economic loss because of an increase in the federal corporate income tax rate!
5. We have several concerns regarding the insurance provision set forth in Section

12:

* 1. PILL typically requires that they be named as additional insured on the

Lessee’s liability insurance policy. Depending upon a number of factors, such as the nature of the Equipment (and the extent to which it poses a liability risk) and the creditworthiness of the Lessor, PILL may require either that (i) the Lessee agree in the Notice & Acknowledgement to name PILL as an additional insured and provide PILL with an endorsement to the liability

Counsel for Easy Credit Finance

, 2004

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policy, or (ii) PILL may be willing to rely upon an indemnification from the Seller (assuming Seller is creditworthy) for failure to name PILL as an additional insured.

* 1. We note that the liability policy maximum is set at $300,000. PILL typically requires coverage of at least $1,000,000, although they may be willing to waive this requirement depending upon the nature of the Equipment (and the extent to which the Equipment poses a liability risk).
  2. The Lessee’s insurer should agree to provide PILL with written notice prior to any cancellation, termination or refusal to renew any of the Lessee’s insurance policies. In this regard, PILL will require insurance certificates on ACORD form 27, rather than ACORD form 24.

1. Sections 13 and 15 call for calculating the present value of the remaining future Rental Payments in the event of a casualty or Default. The discount rate called for is “one percent above the then current Discount Rate of the Federal Reserve Bank of Philadelphia.” Since it is impossible to determine today whether this discount rate will be greater or less than the interest rate implicit in the Rental Payments being purchased by PILL in this syndication transaction, PILL will require that the Seller indemnify it for any diminution of PILL’s economic return resulting from the application of such discount rate.
2. Section 13 also calls for the Lessee to pay an “estimated fair market value” in the event of a casualty. Depending upon PILL’s business understanding with the Seller, PILL may require that the Seller indemnify it for any diminution in its economic return resulting from a calculation of the estimated fair market value of the Equipment in the event of a casualty.
3. Determination of “Fair Market Value” could also be a problem under Section 16, “Return of Equipment.” In this context, Fair Market Value is defined but could still give rise to economic risk that PILL may be unwilling to accept.
4. The cure periods provided in Section 14 with respect to certain Defaults are not acceptable to PILL. Either the Lessee must agree to amend the Agreement to change these cure periods, or (assuming PILL finds the Seller to be creditworthy) the Seller will need to indemnify PILL for any loss suffered because of these cure periods. In particular, the problematic cure periods are as follows:
   1. In the event of a nonpayment default, the Lessee is given an unlimited cure period as long as it commences a cure within 30 days and pursues the cure to completion (regardless of how long it takes to get to completion). This provision could result in a nonpayment default never clearly resulting in a Default under the Lease.

Counsel for Easy Credit Finance

, 2004

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* 1. Depending upon the extent to which PILL is relying on the collateral value of the Equipment, the fact that there is any cure period at all (let alone an open-ended cure period) for a failure to insure the Equipment may be a serious problem for PILL.
  2. We note that there is no Default that arises if the Lessee is in default under any obligations under any other contracts with PILL or with any other third party. We will need to confirm with PILL whether such a cross-default provision is required in this transaction. If so, either the Lessee will need to amend the Default provisions in Section 14 or (again, assuming the Seller is sufficiently creditworthy) the Seller will need to indemnify PILL.
  3. Similarly, change in ownership of the Lessee is not a Default under Section 14. In fact, Section 21 expressly permits the Lessee to sell its business and assign the Lease to a third party. We will need to confirm with PILL whether this is acceptable in this transaction.

1. Finally, under Section 14 (Default), we applaud your success in providing that it is a Default if any adverse material change in [the Lessee’s] financial condition results in the Lessor deeming itself or the Equipment to be insecure.
2. We note that the purchase and renewal option set forth in Section 16 of the Lease permits the Lessee to “cherry pick” which portions of the Equipment it would like to purchase and which portions it will return. Depending on the extent to which PILL is relying on the collateral value of the Equipment, this may not be acceptable to PILL. If it is not acceptable, PILL will either require that the Lessee agree to amend the Lease or (assuming the Seller is creditworthy) the Seller may need to indemnify PILL for this risk.
3. The early termination option provided to the Lessee in the last two sentences of Section 16 raise several ambiguities that are unacceptable to PILL. Either the Lessee will need to agree to eliminate this early termination option or (assuming the Seller is creditworthy) the Seller will need to indemnify PILL.
4. We applaud your successfully getting the Lessee to agree to the “confession of judgment” clause in Section 18 of the Lease. Is it enforceable?
5. Section 21 also provides that the Lessee can sublease or assign its interests in the Equipment and under the Lease in connection with a sale of its business. This may or may not be acceptable to PILL.
6. The Notice & Acknowledgement should include notice from the Seller and acknowledgement from the Lessee that all notices under Section 24 of the Lease intended for the Lessor should be directed to PILL as assignee of the Lessor’s rights.

Counsel for Easy Credit Finance

, 2004

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1. Section 25 of the Lease (by stating that any action commenced by Lessee because of a default by the Lessor, including breach of warranty or indemnity, must be started within one year after the event which caused it) implicitly acknowledges that the Lessor makes warranties and has contractual obligations under this Lease. This provision makes it even more important to PILL that (i) the Lessee and guarantor acknowledge PILL has not assumed any of the vendor’s or Lessor’s obligations, and (ii) PILL obtain the necessary indemnifications from the Vendor and Lessor with respect to obligations under the Manufacturer’s Agreement, etc.
2. Regarding the Unconditional Personal and/or Corporate Guaranty, we note the following:
   1. The Guaranty does not set forth a waiver of jury trial. PILL will need to make a business decision as to whether this omission is acceptable in this transaction.
   2. Since the Guaranty does not set forth certain representations from the Guarantor, the Notice & Acknowledgement should be executed and delivered by the Guarantor (as well as the Lessee) and should include representations from the Guarantor regarding its relationship to the Lessee. Hopefully, the Guarantor will be able to verify that it owns 100 percent of the equity of the Lessee. If it turns out the Guaranty is an “upstream guaranty” rather than a “downstream guaranty,” PILL may have serious concerns about the Guaranty’s enforceability. This could have a significant impact on PILL’s willingness to consummate this transaction.

Please let me know when you would like to discuss our comments so that we can attempt to resolve open issues in order to close this transaction.

Very truly yours,

Counsel for PILL

PRR:jac Enclosure

1307641.1

# Example Of A Master Loan And Security Agreement For Equipment Lease Syndications

### ELA 2004 Legal Form New Orleans, LA

**Round Table Discussion Re: Syndications Daniel E. Murphy, Capital Corp.**

**Philip R. Rosenblatt, Nutter, McClennen & Fish, LLP**

**LOAN AND SECURITY AGREEMENT**

THIS LOAN AND SECURITY AGREEMENT (this "Agreement") is made as of the \_ day of \_, 2004, between Prudent Investor LLC its successors and permitted assigns ("Lender"), and Easy Credit Finance, a division of Desperate For Sales Ltd., its successors and permitted assigns ("Borrower").

Borrower has heretofore entered into, or hereafter will enter into, certain equipment leases and certain schedules executed pursuant to equipment leases described on Schedule A now or hereafter executed pursuant hereto (each such equipment lease, or schedule incorporating the terms and conditions of the equipment lease pursuant to which such schedule was executed, in each such case, as extended, renewed, supplemented and amended, from time to time, being referred to as a "Lease" and being collectively referred to as "Leases") with the lessees specified on Schedule A (each being referred to as a "Lessee" and being collectively referred to as "Lessees"), with respect to the items of equipment described therein (the "Equipment"). Borrower is desirous of obtaining a loan from Lender and Lender is willing to make the loan to Borrower upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the sum of Ten Dollars ($10.00) in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. **ADVANCE OF LOAN**.
   1. Term of Loan. On the terms and conditions hereinafter set forth, the parties agree that Lender shall lend to Borrower certain sums (each advance hereunder being referred to as an "Advance" and all Advances hereunder being referred to as the "Loan") on the terms specified in that certain **[proposal/commitment]** letter, duly executed and delivered by a responsible officer of each of Lender and Borrower, pursuant to which Lender has made a binding commitment to make such Loan (subject to any conditions specified herein and therein) and shall] terminate (at Lender's option) upon the occurrence of any Borrower Default (as such term is defined in Section 6.1).
   2. Promissory Note. The obligation to repay the Loan shall be evidenced by one or more promissory notes payable by Borrower to the order of Lender in substantially the form attached hereto as Exhibit No. 1 (each being referred to as a "Promissory Note" and being collectively referred to as the "Promissory Notes"). The Promissory Notes shall bear interest, be payable and mature as set forth in Exhibit No. 1. Time is of the essence. Each Promissory Note shall have a Schedule A attached thereto describing the Lease and Equipment to which the Advance to be repaid under that Promissory Note relates.
2. **PAYMENTS AND SECURITY**.
   1. Non-Recourse. Subject to the second sentence of this Section 2.1, (a) the Loan is expressly non-recourse to Borrower and all payments to be made under each Promissory Note shall be made only from the income and proceeds from the Allocated Collateral (as such term is defined in Section 2.5) relating to such Promissory Note and only to the extent that there shall be sufficient income and proceeds from such Allocated Collateral to make such payments, and (b) Borrower shall not be personally liable to Lender for any amounts payable under any of the Promissory Notes. The foregoing limitation of recourse shall not (a) limit, restrict or impair the rights of Lender to accelerate the maturity of the Promissory Notes upon a default thereunder, to bring suit and obtain a judgment against Borrower on the

Promissory Notes or to exercise all rights and remedies provided under this Agreement, in each such case, if and to the extent necessary to foreclose against and dispose of the Collateral (as such term is defined in Section 2.4); and (b) be deemed to bar or prohibit Lender from asserting a claim against, exercising remedies with respect to, or proceeding against Borrower for any actual damages incurred by Lender as a result of any Borrower's Default (as defined in Section 6).

* 1. Application of Payments. The rents and other sums received by Lender pursuant to Section 2.3 of this Agreement shall be retained by Lender as part of the Collateral and applied, as follows, against Borrower's obligation to pay the principal, interest and other amounts due under the Promissory Note secured by such Collateral:
     1. Rents. The amounts from time to time received by Lender which constitute payment of rent under the Leases shall be applied: first, to any unpaid out-of-pocket costs or expenses of Lender reasonably incurred pursuant to such Promissory Note; second, to unpaid late charges payable pursuant to such Promissory Note; third, to interest then due and payable on such Promissory Note; fourth, to principal in accordance with such Promissory Note; and fifth, any excess then remaining promptly shall be remitted to Borrower (provided, however, that in the event that an instrument making a rent payment is subsequently dishonored, or any payment is disgorged, Borrower promptly shall refund to Lender the amount of any such excess payment).
     2. Payments upon Equipment Casualty or Early Termination. The amounts received by Lender which constitute payment by Lessee as a result of the loss, destruction or irreparable damage of or to any Equipment or early termination of the Lease constituting Allocated Collateral with respect to such Promissory Note shall be applied to the Loan in the manner provided in clauses first, second and third of Section 2.2.1, and thereafter in prepayment (in whole or in part, as applicable) of the principal of such Promissory Note, and the corresponding Promissory Note payments shall thereafter be reduced and reamortized accordingly. Notwithstanding the foregoing, the proceeds of any casualty insurance payable as a result of loss of or damage to the Equipment shall be applied, toward the replacement, restoration or repair of the Equipment which may be lost, stolen, destroyed or damaged, whether by direct payment or reimbursement, in each such case, if and to the extent and in the manner required by the related Lease; and any proceeds then remaining after such application shall be applied in accordance with the first sentence of this Section 2.2.2.
  2. Granting Clause. As security for the payment as and when due of the indebtedness of Borrower to Lender hereunder and under each Promissory Note (and any renewals, extensions and modifications thereof) (the "Indebtedness"), Borrower hereby assigns, transfers, and conveys to Lender for collateral security purposes, and grants a security interest to Lender in, all of the following:
     1. Equipment Collateral. All of Borrower's rights, title and interests in and to the Equipment and all replacements, substitutions and alternatives therefor and thereof and accessions thereto, to the extent now owned or hereafter acquired, and all proceeds (cash and non-cash) thereof, including all payments or proceeds of any property insurance policies, or with respect to the sale, lease or other disposition of any item of Equipment (the "Equipment Collateral"); and
     2. Borrower's Leasehold Interest. All of the right, title and interest of Borrower in, to and under the Leases (but excluding all Exclusions, as defined below; collectively “Borrower's Leasehold Interest”), including without limitation, (a) all amounts of rent, all payments attributable to a casualty to any item of Equipment, or the exercise of any option or remedy, and any and all other payments due thereunder, whether due, payable or paid prior to or after the expiration, termination or cancellation of any Lease, but excluding, in each such case any Excluded Payments (as defined below), and (b) all of Borrower's other rights and entitlements under the Leases, which include, among other things, the right to receive notices and financial information, to give or withhold consents or waivers, to exercise all remedies thereunder and to take any and all other actions associated with the Leases, except for any Excluded Rights (as defined below) any such rights and entitlements, it being the intent and purpose hereof that the assignment and transfer to Lender of said rent and other sums due and to become due under the Leases, to the extent constituting Borrower's Leasehold Interest, shall be effective and operative immediately upon execution of the applicable Promissory Note and shall continue in full force and effect and Lender shall have the right to collect and receive said rents and other sums for application in accordance with the provisions hereof at all times during the period from and after the date of this Agreement until the Indebtedness to which such Allocated Collateral relates has been fully paid and discharged. The Equipment Collateral and Borrower's Leasehold Interest are sometimes hereinafter collectively referred to as the “Collateral”. For the purposes hereof: (a) “Excluded Rights” shall mean all of Borrower’s rights and entitlements under the Leases (i) on an exclusive basis, (A) to take any action with respect to any Excluded Payments or Excluded Rights,

(B) to take any action relating to (1) an option available to a Lessee upon expiration of any Lease, (2) the

right to calculate fair market rental or sale value or any upward rental adjustments, (3) the manner or condition in which any Equipment is to be returned or (4) any action, event or circumstances that might result in the risk of the imposition of civil or criminal liability against Borrower or (C) to make any other modification, amendment or supplement, or give any consent waiver with respect to any of the provisions of any master lease, guaranty or other document relating to any Lease, but solely with respect to any lease or item or items of equipment or other property not constituting a part of the Collateral or (ii) on a non-exclusive basis with Lender, (A) so long as no Default is then existing under the Promissory Note to which such Collateral relates, to have and/or exercise all such rights and entitlements under the related Lease either (1) with Lender's consent (which consent will not be unreasonably withheld or delayed), if the exercise of such right or entitlement is likely (in Lender's reasonable discretion), to materially impair Lender's rights and interests relating to such Collateral or (2) without Lender's consent, if the exercise of such right or entitlement is unlikely (in Lender's reasonable discretion), if exercised, to materially impair Lender's rights and interests relating to such Collateral or (B) whether or not a Default has occurred and is continuing, the right to receive all notices and financial information and to inspect the Equipment and related records; (b) “Excluded Payments” shall mean any amounts payable to Borrower pursuant to (i) any tax or other indemnity provisions in the Leases, (ii) any provisions entitling Borrower to a reimbursement or similar compensation, (iii) any assignment, sale or other disposition by Borrower of any Collateral pursuant to Section 10 of this Agreement or any public liability insurance policies required under the Leases; and (c) “Exclusions” shall mean, collectively, the Excluded Rights and the Excluded Payments.

* 1. Rights Regarding Collateral. The parties acknowledge and agree that the Equipment is now or is intended to be subject to the Leases. Except for the rights and interests of Lessees under the Leases, and the rights of the Lender hereunder, Borrower may not sell, collaterally or otherwise assign or grant a security interest in or against any of the Collateral without the prior written consent of Lender, or as otherwise provided in Section 10 of this Agreement, notwithstanding the fact that proceeds constitute a part of the Collateral.
  2. Allocating Collateral. The Indebtedness arising under each Promissory Note and (solely with respect to said Promissory Note) hereunder shall be secured by the Collateral relating to the Equipment and Lease described in the Schedule A attached to said Promissory Note (the "Allocated Collateral"). The Allocated Collateral allocable to a Promissory Note shall not be deemed to secure the other Promissory Notes and (as it relates to the other Promissory Notes) this Agreement, except with respect to an exercise of remedies by Lender pursuant to Section 7 after the occurrence of a Borrower Default (as defined in Section 6.1). With respect to each Promissory Note, the terms "Lease," "Lessee" and "Equipment" (as used herein) shall mean, respectively, the Lease, Lessee and Equipment described in the Schedule A attached to such Promissory Note.
  3. Fiscal Agency.
     1. Extent of Agency. Notwithstanding the collateral assignment provided herein, it is the intent and purpose of the parties that Borrower, on behalf of the Lender, and (with respect to any Exclusions) on its own behalf, shall bill for, collect and receive the rentals and other sums payable under each Lease and shall exercise all rights, powers and privileges of the lessor under each Lease, and generally shall be responsible for the administration of each Lease, in each such case, subject to Section 2.6.6. Borrower shall provide to the Lender a copy of all notices of any Lessee's default under a Lease and all other material notices which Borrower is required to provide to a Lessee or any obligor with respect to the Collateral and any guarantor of the obligations of any Lessee. The mere failure to provide any such notice to the Lender shall not be a breach of this Agreement, except if and to the extent such failure may have a material adverse impact on Lender.
     2. Appointment. In furtherance of the parties' intent, Lender hereby appoints Borrower its fiscal agent on the express terms set forth herein, and Borrower accepts such appointment. Borrower shall act as the fiscal agent for the Lender hereunder without compensation except as herein provided. Borrower shall monitor and administer Lessee's performance under each Lease, in the same manner as it would for leases held solely for its own account. The parties agree from time to time to execute and deliver such notices, directions and other instruments as may be necessary or appropriate to cause all monies, credits or other property to be paid, distributed or delivered by Lessee to Borrower or as may be desirable in obtaining the full benefits of this Agreement and the rights and powers herein granted.
     3. Payments. All monies received by Borrower as fiscal agent for the Lender under or pursuant to any provision of this Agreement shall be held by Borrower in trust as fiscal agent for the Lender for the purpose for which they were paid, but need not be segregated in any manner from any other monies of Borrower and may be deposited by Borrower in any general account maintained by it. Unless Borrower becomes aware that such monies received by Borrower due the Lender hereunder do not constitute good collected funds, within two (2) business days of receipt of such monies by Borrower as fiscal agent for the Lender, Borrower shall make such monies available to the Lender by wire transfer to the following account (or to such other account as the Lender shall have specified in writing to Borrower not less than three (3) business days prior thereto):

Prudent Investor LLC

ABA No.: \_

Acct. No.: \_ Attention: \_ Re:

* + 1. Limitations of Agency. Subject to Section 2.6.9, without the Lender's prior written consent and subject to the other terms of this Agreement, Borrower shall not (a) consent to a reduction or other modification of any of the Lessee's payment obligations with respect to any Lease, (b) postpone or modify any date fixed for any payment of rents or other sums under any Lease or agree to any extension of the term thereof with respect to the Equipment, (c) release, subordinate or substitute any Collateral, or (d) otherwise materially modify any Lease or related Lease Documents unless, in Lender's reasonable discretion, such modification would not have a material adverse effect on the interest of the Lender granted hereunder and Lender consents thereto in writing.
    2. Action Upon Default. If either party has actual knowledge of any Lease Default (as defined in Section 6.1), it shall promptly notify the other party thereof in writing. As used in this Agreement, "actual knowledge" shall mean the actual knowledge of the President, any Senior Vice President, or any Vice President. Thereupon, the parties shall consult in good faith as to the action to be taken as a result of the occurrence of the Lease Default. Following the occurrence of any Lease Default, the Lender shall determine the action(s) to be taken. If Borrower shall not have received instructions to take action by the Lender within ten (10) Business Days after the mailing of notice or a request for instructions by Borrower to the Lender, Borrower shall send a second notice to the Lender and if Borrower shall not have received instructions to take action by the Lender within five (5) Business Days after the giving of such second notice, Borrower until instructed otherwise by the Lender may, but shall be under no duty to, take or refrain from taking such action as it shall deem to be advisable in the best interests of the Lender. After the occurrence of any Lease Default, all proceeds realized as a result of the exercise of remedies under the Lease or otherwise with respect to the Equipment and/or the Collateral shall be applied as follows:
       1. first, to the costs incurred pursuant to Section 2.6.7; and
       2. second, to the Lender.
    3. Limitations of Liability. (a) Borrower undertakes to perform as fiscal agent on behalf of Lender such duties and only such duties as are specifically set forth herein and no implied covenants or obligations shall be read into this Agreement against Borrower. (b) Except as otherwise provided in this Agreement, Borrower is entitled to use its discretion in respect to exercising or refraining from exercising any rights, or taking or refraining from taking any action which may be vested in Borrower under any Lease, or which Borrower may be entitled to take or assert under any Lease, or other agreements or instruments, and Borrower shall not be liable to the Lender for any action taken or omitted to be taken by it hereunder or pursuant hereto, except for the failure to make available promptly (after receipt and final collection) to the Lender such sums as are required to be remitted to the Lender pursuant to Section 2.6.3 or for the gross negligence or willful misconduct of Borrower, or for its material breach of the express terms of this Agreement. (c) In acting in the future as fiscal agent for the Lender hereunder, Borrower may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties; and Borrower shall not be bound to make any investigation into the facts or matters stated in any such resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document. (d) Borrower may exercise its powers and perform its duties by or through such attorneys, agents and servants as it shall appoint, and it shall be entitled to the advice of counsel in anything done or omitted to be done in accordance with such advice; and Borrower shall not be required to take any action nor

shall any provision herein set forth be deemed to impose a duty on Borrower to take any action, if Borrower shall have been advised by counsel that such action is contrary to the terms of the Lease or is otherwise contrary to law.

* + 1. Costs. No provisions hereof shall require Borrower to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties as fiscal agent for the Lender hereunder except only for all normal billing, collection and overhead costs of Borrower under or in relation to each Lease and incurred in the ordinary course of business, which shall be solely at Borrower's expense (collectively, “Borrower’s Expenses”). Any reasonable expenses incurred by Borrower in connection with the collection of the unpaid rentals or other sums due under a Lease other than Borrower’s Expenses shall be borne by the Lender. The Lender shall reimburse Borrower for any out-of-pocket costs and expenses (including court costs and attorneys' fees) incurred by Borrower after any Lease Default in connection with action taken by Borrower with respect to a Lease, the other Lease Documents, the Equipment or the Collateral other than Borrower’s Expenses.
    2. Refunds to Borrower. If Borrower shall pay any amount to the Lender pursuant hereto under the belief or expectation that a related payment has been or will be received or collected in connection with any Lease and such related payment is not received or collected by Borrower in good funds, then, upon Borrower’s request received by Lender within thirty days of such payment, the Lender will promptly (and in any event on the second Business Day) after demand by Borrower return such amount to Borrower (provided Lender’s right, including its ability to sue, have not been impaired by such delay). If Borrower determines at any time that any amount received or collected by Borrower in respect of any Lease or pursuant to any other Lease Document must be returned to a Lessee or paid to any other person or entity pursuant to any federal or state insolvency law, then notwithstanding any other provision of this Agreement, Borrower shall not be required to distribute any portion thereof to the Lender, and the Lender will promptly (but in any event on the second business day) after demand by Borrower upon Borrower’s request received by Lender within thirty days of such payment, repay any portion thereof that Borrower shall have distributed to the Lender, together with interest thereon at such rate, if any, as Borrower shall be legally required to pay to Lessee or such other person or entity with respect thereto (provided Lender’s rights, including its ability to sue, have not been impaired by such delay).
    3. Exclusions. Notwithstanding any provision of this Section 2.6 to the contrary, nothing herein is intended to waive or limit any of Borrower's rights, title or interests with respect to any Exclusions.
    4. Termination of Fiscal Agency. Notwithstanding anything to the contrary contained herein, Lender may elect to terminate the fiscal agency created hereunder with respect to any or all transactions assigned pursuant hereto, on the following conditions: (1) if Borrower materially and repeatedly fails to perform its obligations as fiscal agent hereunder, Lender shall provide written notice thereof to Borrower and may terminate the fiscal agency created hereunder by a second written notice after fifteen (15) days if such material and repeated failures are not remedied to Lender's reasonable satisfaction in a timely fashion; or (2) upon the occurrence of any Event of Default Borrower shall have the right to terminate the fiscal agency upon written notice to Lender. No such termination shall constitute a waiver of or a release of any accrued rights or responsibilities of either party with respect to such fiscal agency. Upon the termination of the fiscal agency hereunder in accordance with the preceding conditions, the parties fully shall cooperate to effect the termination of such fiscal agency, including (without limitation) informing each Lessee thereof and instructing each such Lessee to make all future payments becoming due under the related Lease Documents directly to Lender as instructed in writing by Lender from time to time.
    5. Indemnity by the Lender. The Lender agrees to indemnify Borrower for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, or disbursements of any kind and nature whatsoever that may be imposed on, incurred by or asserted against Borrower in any way connected with, relating to or arising out of the Lease, the Lease Documents, or the transactions contemplated by such agreements or the enforcement of any of the terms of such agreements in each such case, to the extent arising in connection with the fiscal agency created hereby; provided that the Lender shall not be liable for any of the foregoing to the extent they arise from Borrower's gross negligence or willful misconduct, any Borrower's Default or other material breach by Borrower of the express terms of this Agreement. This indemnity shall survive termination of this Agreement.

1. **CONDITIONS PRECEDENT TO LENDER'S OBLIGATION**. The obligation of Lender to make each Loan as set forth in Section 1 hereof is expressly conditioned upon fulfillment, to the reasonable satisfaction of Lender and its counsel, of the following conditions precedent:
   1. Closing Documents. On or prior to each date on which Lender is to make an Advance hereunder, Borrower shall cause to be done or provided to Lender, as the case may be, the following:
      1. Secretary’s Certificate. A certificate executed by an authorized officer of

the Borrower, certifying that the representations and warranties of Borrower contained herein remain true and correct as of such date; that no Borrower Default, has then occurred; and that no Event of Default (as such term is defined in the applicable Lease) resulting from Lessee's failure to pay rent, or, to the best of Lessee's knowledge, no other Event of Default, has then occurred under the Lease to which such Advance relates.

* + 1. Promissory Note. A Non-Recourse Promissory Note in the applicable amount of the Loan to be advanced on such date, duly executed on behalf of Borrower, pursuant to Section 1.1 hereof.
    2. Notice and Acknowledgment. A Notice and Acknowledgment of Assignment in substantially the form attached hereto as Exhibit No. 2 or 3, as applicable, duly executed by Borrower and the Lessee with respect to the Lease to which such Advance relates (the “Notice”).
    3. Schedule A. A Schedule A describing the Lease to which such Advance relates,

duly executed by Borrower.

* + 1. Insurance. Evidence satisfactory to Lender as to due compliance with the insurance provisions of the Lease to which such Advance relates.
    2. UCCs. Uniform Commercial Code Financing Statements, Statements of Amendment and Statements of Assignment (as required by Lender), duly executed on behalf of Borrower.
    3. Original Lease. The only executed “chattel paper” original of the equipment schedule or similar document constituting the Lease (but not the related master lease agreement) to which such Advance relates, duly executed by Borrower.
  1. Additional Conditions. On or prior to the date on which Lender is to make an Advance hereunder, the following conditions must be satisfied:
     1. No Material Adverse Change. There shall have occurred no material adverse change in the business, operations or financial condition of Borrower or the Lessee since the respective dates of the most recent audited financial statements furnished by each of them to Lender.
     2. Commitment Letter. Any and all other conditions to making such Advance, if and to the extent set forth in any commitment letter between Lender and Borrower with respect to such Advance shall have been fully satisfied.
     3. Events of Default. No Borrower Default or Lease Default has occurred and is then existing and there exists no Unmatured Lease Default.

1. **REPRESENTATIONS AND WARRANTIES.** Borrower hereby represents and warrants that:
   1. Corporate Status. Borrower is a corporation duly organized, and validly existing in good standing under the laws of the state of its incorporation and in good standing in each state in which the nature of its business and/or the performance of its obligations under the Loan Documents may require.
   2. Power and Authority. The execution, delivery and performance of the Leases, this Agreement and all related instruments and documents (this Agreement, all of the Promissory Notes and all related documents, instruments and agreements, collectively, the "Loan Documents"), (a) have been duly authorized by all necessary corporate action on the part of Borrower; and (b) do not and will not contravene any articles of incorporation or by-laws of Borrower.
   3. Enforceability. This Agreement constitutes, and all of the other Loan Documents when entered into will constitute, the legal, valid and binding obligation of Borrower enforceable against Borrower in accordance with the terms hereof and thereof, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or affecting the enforcement of creditors' rights generally, and by applicable laws (including any applicable common law and equity) and judicial decisions which may affect the remedies provided herein and therein.
   4. Additional Representations and Warranties Regarding Borrower. (a) There is no action, suit or proceeding pending against Borrower before or by any court, administrative agency or other governmental

authority which brings into question the validity of, or might in any way impair, the execution, delivery or performance by Borrower of this Agreement, the Promissory Note or any other document to which Borrower is a party contemplated by this Agreement (the “Assignment Documents”). (b) No approval of, or consent from, any governmental authority is required for the execution, delivery or performance by Borrower of any of the Assignment Documents. (c) The execution, delivery and performance by Borrower of the Assignment Documents and the consummation of the transactions contemplated hereby and thereby (I) do not contravene any provision of law applicable to the Borrower, and (ii) do not conflict and are not inconsistent with, and will not result (with or without the giving of notice or passage of time or both) in the breach of or constitute a default or require any consent under, or result In the creation of any lien, charge or encumbrance upon the Collateral under any credit agreement, indenture, mortgage, purchase agreement, deed of trust, security agreement, lease, guaranty or other instrument to which Borrower is a party, by which Borrower may be bound, or to which Borrower or its property (including, without limitation, the Collateral) may be subject.

* 1. The Leases. (a) Each of the Leases has been duly executed on behalf of Borrower (or its predecessor-in-interest) and constitutes the legal, valid and binding obligation of the Borrower enforceable against Borrower in accordance with the terms thereof, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar law or equitable principles relating to or affecting the enforcement of creditors' and/or lessors' rights generally, and by applicable laws (including any applicable common law and equity) and judicial decisions which may affect the remedies provided therein. (b) There are no agreements or understandings respecting any of the Leases or the Equipment, verbal or written, between Borrower and any Lessee other than those expressed in the Leases. (c) Borrower has not heretofore alienated, assigned, granted a security interest in, or otherwise disposed of any interest in the Leases, or the Equipment, other than the Lessee's rights and interests under the Lease and the Lender's interest hereunder (d) Attached to each Schedule A is a true, correct and complete copy of each of the Leases described on such Schedule A. (e) No rentals or monies due under the Leases have been prepaid and no deposits have been made by Lessees, except as otherwise disclosed to Lender or specified in the Lease. (f) All taxes collected by Borrower from the Lessees with respect to the Leases have been, or when collected in good and indefeasible funds will be, paid by Borrower to the appropriate tax authorities in a timely fashion.
  2. Additional Representations and Warranties Regarding the Leases. (a) There is in existence no breach or default of the Lease by Borrower, or, to Borrower’s knowledge, by Lessee, and no event has occurred that is the subject of a written notice previously given by Borrower to Lessee which with the lapse of time will become an Event of Default under the Lease. (b) The purchase price for the Equipment Collateral has been paid in full. (c) Borrower is the lawful owner and holder of, and is granting a security interest to Assignee in, all of its right and title to and interest in the Lease and the Equipment, free and clear of all liens and encumbrances, except for the interest of Lessee pursuant to the Lease. (d) All rentals due as of the date of the execution of any Promissory Note under the related Lease have been paid in full. (e) Borrower is delivering to Assignee the only executed original of the Lease constituting Chattel Paper (as defined under the applicable version of Article 9 of the Uniform Commercial Code). (f) As of the date of the execution and delivery of any Promissory Note, the Lease will be in full force and effect as against Borrower and, to Borrower’s knowledge, as against Lessee. On such date, the Lessee’s obligations under the Lease will be without any defenses or offsets, claims, counterclaims or right to terminate or cancel (except any termination rights set forth in the Lease). (g) To the Borrower’s knowledge, each of the documents comprising the Lease to which the Lessee is party has been duly and validly authorized, executed and delivered by the Lessee, is in full force and effect with respect to the Lessee and constitutes the legal, valid and binding obligation of the Lessee, enforceable against the Lessee in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws affecting the enforcement of creditors’ rights and remedies generally and by applicable laws (including any applicable common law and equity) and judicial decisions which may effect the remedies provided therein. (h) All of the Equipment has been accepted by the Lessee under the terms of the Lease and, to Borrower’s knowledge, conforms to the terms of the Lease. (I) All sales, use, property and other taxes, licenses, tolls, inspection or other fees, bonds, permits or certificates which were or may be required to paid or obtained in connection with Borrower’s or its predecessors’ acquisition of the Equipment have been, or will when due be, paid in full or obtained.
  3. Borrower’s Knowledge.

With respect to any representation or warranty in this Section 4 that is qualified by the words “to Borrower’s knowledge,” Assignee acknowledges that it understands those qualifying words to mean that no responsible officer of Borrower has any actual knowledge that the matter being so represented or warranted is incorrect. Borrower hereby represents and warrants that it has undertaken such due diligence and other inquiry for the purpose of making such representation or warranty to Assignee as may be reasonable.

1. **COVENANTS** **OF** **BORROWER.** Borrower covenants and agrees as follows:
   1. Further Assurances and Notices. Borrower shall promptly and duly execute and deliver to Lender such further documents, instruments and assurances and take such further action as Lender may from time to time reasonably request, at Borrower’s sole cost and expense, in order to carry out the intent and purpose of this Agreement and to establish and protect the rights and remedies created or intended to be created in favor of Lender hereunder; including, without limitation, the execution and delivery of any Uniform Commercial Code Financing Statement or other document reasonably required by Lender. Borrower shall furnish Lender, at Lender's request, promptly after receipt thereof by Borrower, all financial statements and/or notices, requests and other material documents received by Borrower from Lessee.
   2. Lease Undertakings. Without the prior written consent of Lender, Borrower shall not consent to, approve or otherwise acquiesce in any modification of the terms of the Leases, or waive any term or condition of the Leases, or take any action whatsoever with respect to the Leases, except to the extent constituting or relating to any Exclusions. Promptly upon receipt of any rentals or other payments constituting Collateral, Borrower shall remit such payment to Lender.
2. **DEFAULT.**
   1. Events of Default. Borrower shall be deemed to be in default hereunder ("Default") if (a) Borrower shall fail to make any payment of the Indebtedness as and when due (unless attributable to a Lease Default or an Unmatured Lease Default (as defined in clause (e) below), and such failure shall continue unremedied for a period of ten (10) business days after the same shall have become due; or (b) Borrower shall fail to perform or observe in timely fashion any other covenant, condition or agreement to be performed or observed by it hereunder or under the Promissory Note (unless attributable to a Lease Default or an Unmatured Lease Default) and such failure shall continue unremedied for a period of thirty (30) days after written notice thereof to Borrower by Lender; or (c) Borrower shall (1) be generally not paying its debts as they become due, (2) take action for the purpose of invoking the protection of any bankruptcy or insolvency law, or any such law is invoked against or with respect to Borrower or its property, and any such petition filed against Borrower is not dismissed within sixty (60) days; or (d) there are any inaccuracies, misrepresentations or breaches of warranty contained in this Agreement or any other Loan Documents or any certificates, statements or other documents delivered by Borrower in connection herewith or therewith and such inaccuracy, misrepresentation or breach of warranty is material, and (to the extent such inaccuracy, misrepresentation or breach of warranty and the consequences thereof, may be remedied by reasonable means), such inaccuracy, representation or breach of warranty and the consequences thereof are not cured within thirty (30) days of the date after written notice thereof to Borrower from Lender; or (e) the occurrence of a default under any of the Leases and with respect to which the Lessee thereunder has received any required notice and failed to cure such default within any applicable grace or cure period provided in such Lease, thereby entitling the “lessor” named therein to declare the Lessee to be in default of such Lease (any such default, a "Lease Default"; and any act, omission or other circumstances or event which with the giving of notice or passage of time or both would constitute a Lease Default shall be referred to as an “Unmatured Lease Default”, other than any failure by a Lessee to pay to Borrower any Excluded Payment or failure to perform or observe any obligation relating to any Exclusion; provided, however, that Borrower shall have the right, but not the obligation, to cure any Lease Default by either (i) paying, performing or taking such other appropriate action to effectuate such cure within ten (10) days after receiving Lender's written notice of its occurrence**]**; or (ii) paying the Indebtedness under or with respect to the related Promissory Note. Any such prepayment will be without premium or other penalty. For the purposes hereof, a “Borrower Default” shall mean any Default under clauses (a) through (d) of the first sentence of this Section 6.1.
   2. Exercise Independently. The occurrence of a Borrower Default with respect to any Promissory Note shall, at the sole discretion of Lender, constitute a Default with respect to any or all of the other Promissory Notes. In all other circumstances, Lender’s rights and remedies upon the occurrence of a Default under a Promissory Note or hereunder (to the extent relating to such Promissory Note) shall not result in any cross-default with respect to any other Promissory Note, nor shall the Indebtedness thereunder be cross-collateralized by any Collateral other than the Allocated Collateral relating thereto.
3. **REMEDIES.** Upon the occurrence of a Default hereunder, Lender may, at its option, declare this Agreement to be in default with respect to any or all of the Promissory Notes, and at any time thereafter may do any one or more of the following, all of which are hereby authorized by Borrower, subject to the limitations set forth in Section 7.5; provided, however, that if the only Default then existing is a Lease Default, Lender may only declare this Agreement to be in default with respect to the Promissory Note to which such Lease Default relates, and exercise the remedies enumerated below with respect to such Promissory Note and the Allocated Collateral relating thereto; provided, further, that without the consent of Borrower, such exercise of remedies shall not occur until after the latest date on which

Borrower may cure the related Default pursuant to Section 6.1.

* 1. UCC and Repossession Remedies. Exercise any and all rights and remedies of a secured party under the Uniform Commercial Code (the “UCC”), including without limitation, the right to recover any Allocated Collateral to which such Default relates; provided, however, (a) if Lender shall proceed to foreclose its Lien pursuant to this Agreement, it shall substantially simultaneously therewith proceed to declare the related Lease in default and commence the exercise in good faith of one or more significant remedies thereunder for the purpose of recovering the Equipment leased thereunder; and (b) Lender acknowledges and agrees that its right to repossess any Equipment constituting Collateral shall be subject to the rights of any Lessee leasing such Equipment under a Lease.
  2. Disposition and Application of Proceeds. Subject to the other provisions hereof, sell, lease or otherwise dispose of any or all of the Collateral in a commercially reasonable manner at public or private sale with notice to Borrower (the parties agreeing that five (5) days' prior written notice shall constitute adequate notice of such sale) at such price as it may deem best, for cash, credit, or otherwise, with the right of Lender to purchase and apply the proceeds: first, to the payment of all expenses and charges, including the expenses of any sale, lease or other disposition, the expenses of any taking, attorneys' fees, court costs and any other expenses incurred or advances made by Lender in the protection of its rights or pursuing of its remedies against such Collateral; second, to the payment of the Indebtedness to which such Collateral relates; and third, to the payment of any surplus thereafter remaining to Borrower or to Lessee, whosoever may be entitled thereto; and in the event that the proceeds are insufficient to pay the amounts specified in clauses "First" and "Second" above, Lender may collect such deficiency from Borrower, but in all cases, subject to Section 7.5 hereof.
  3. Other Remedies. Subject to the other provisions hereof, Lender may exercise any other right or remedy available to it under this Agreement, the Promissory Note or applicable law, or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof or to rescind this Agreement in whole or in part with respect to any and all defaulted Promissory Notes.
  4. Additional Remedy Provisions. In addition, subject to Section 7.5 hereof, Borrower shall be liable for any and all unpaid additional sums due hereunder or under the Promissory Note, before, after or during the exercise of any of the foregoing remedies; for all reasonable legal fees and other reasonable costs and expenses incurred by reason of any default or of the exercise of Lender's remedies with respect thereto. No remedy referred to in this Section is intended to be exclusive, but each shall be cumulative, and, subject to the other provisions hereof, shall be in addition to any other remedy referred to above or otherwise available at law or in equity, and may be exercised concurrently or separately from time to time. The failure of Lender to exercise, or delay in the exercise of, the rights granted hereunder upon any Default by Borrower or under a Lease shall not constitute a waiver of any such right upon the continuation or recurrence of any such Default. Lender may take or release other security; may release any party primarily or secondarily liable for the Indebtedness; may grant extensions, renewals or indulgences with respect to the Indebtedness and may apply any other security therefor held by it to the satisfaction of the Indebtedness without prejudice to any of its rights hereunder.
  5. Non-Recourse. Notwithstanding anything in this Agreement to the contrary, but subject to the second sentence of Section 2.1 hereof, Lender acknowledges and agrees that the Loan is expressly non-recourse to Borrower and all payments to be made under such Promissory Note or hereunder (to the extent relating to each Promissory Note) shall be made only from the income and proceeds from the Allocated Collateral relating thereto and only to the extent that Borrower shall have sufficient gross proceeds from such Allocated Collateral to make such payments in accordance with the terms of such Promissory Note or this Agreement. Subject to the second sentence of Section 2.1 hereof, Lender agrees that it will look solely to the income and proceeds from the Collateral, and without recourse against Borrower and that Borrower shall not be personally liable to Lender, for any amounts payable under the Promissory Note or under this Agreement.

1. **NOTICES**. All notices (excluding billings and communications in the ordinary course of business) hereunder shall be in writing, personally delivered, sent by overnight courier service, sent by facsimile transmission, or sent by certified mail, return receipt requested, addressed to the other party at its respective address stated below the signature of such parties or at such other addresses as such parties shall from time to time designate in writing to the other parties; and shall be effective from the date of receipt.
2. **LENDER'S RIGHT TO PERFORM FOR BORROWER.** If Borrower fails to perform or comply with any of its agreements contained herein, Lender shall have the right, but shall not be obligated, to effect such performance or compliance, and the amount of any out-of-pocket expenses and other reasonable expenses of Lender thereby incurred, together with interest thereon at the Late Charge Rate (as defined in the Promissory Note), shall

be due and payable by Borrower upon demand.

1. **SUCCESSORS AND ASSIGNS.** This Agreement shall inure to the benefit of and be binding upon Lender, its successors and assigns. This Agreement may not be assigned by either party without the express written consent of the other party, which consent shall not be unreasonably withheld.
2. **LAW GOVERNS.**
   1. **GOVERNING LAW. THIS AGREEMENT AND ALL OTHER RELATED INSTRUMENTS AND DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL, IN ALL RESPECTS, BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF**  **(WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH STATE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, REGARDLESS OF THE LOCATION OF THE COLLATERAL.**
   2. Jurisdiction. The parties agree that any action or proceeding arising out of or relating to this Agreement may be commenced in any state or Federal court of competent jurisdiction in the State of

, and each party submits to the jurisdiction of such court and agrees that a summons and complaint commencing an action or proceeding in any such court shall be properly served and shall confer personal jurisdiction if served personally or by certified mail to it at its address designated pursuant hereto, or as otherwise provided under the laws of the State of .

* 1. **JURY TRIAL WAIVER. EACH OF THE PARTIES HERETO HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH BORROWER AND LENDER MAY BE PARTIES, ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS AGREEMENT OR THE PROMISSORY NOTE. IT IS HEREBY AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY EACH PARTY AND EACH PARTY HEREBY ACKNOWLEDGES THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. BORROWER FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND THE PROMISSORY NOTE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.**

1. **MISCELLANEOUS.**
   1. Entire Agreement. This Agreement, the Promissory Note all other related instruments and documents executed pursuant hereto, collectively constitute the entire agreement between the parties with respect to the subject matter hereof and shall not be amended or altered in any manner except by a document in writing executed by both parties.
   2. Survival. All representations, warranties, and covenants of the parties contained herein or made pursuant hereto shall survive closing and continue throughout the term hereof and until the Indebtedness is satisfied in full, except that any indemnifications provided herein also shall survive such full satisfaction.
   3. Other. Any provision of this Agreement or of any instrument or document executed pursuant hereto which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. The captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties hereto have caused this Loan and Security Agreement to be duly executed, under seal, as of the day and year first above written.

**EASY CREDIT FINANCE, a division of** **PRUDENT INVESTOR LLC**

**Desperate For Sales Ltd.** Lender

Borrower

By: By: Name: Name: Title: Title: Address: Address:

Facsimile:

Facsimile:

SCHEDULE A

No. \_

Name of Lessee: .

Equipment Lease dated: . Rentals Due as of the date hereof: \_( )

monthly/quarterly installments, each in the amount of $

(plus applicable taxes), payable in advance/arrears on the first/last day of the month/quarter.

Aggregate outstanding rentals: $ . Description of Equipment:

Quantity Make/Model Serial Number

Attached is a true, correct and complete copy of the Lease.

Date: , 20\_

**EASY CREDIT FINANCE, a division of Desperate for Sales Ltd.**

Borrower

By: Name: Title:

EXHIBIT NO. 1

LIMITED-RECOURSE PROMISSORY NOTE NO.

$ [City], [State]

, 2004

FOR VALUE RECEIVED, EASY CREDIT FINANCE, a division of Desperate for Sales Ltd. (the “Borrower”) hereby promises to pay to the order of PRUDENT INVESTOR LLC (“Lender”), in lawful money of the United States of America and in immediately available funds the principal amount of

\_

Dollars ($ \_) on \_, with interest at the rate of

percent ( \_%) per annum (computed on the basis of a 360-day year, 30 day month and actual days elapsed) (the “Interest Rate”).

This Promissory Note is one of the series of promissory notes issued pursuant to a Loan and

Security Agreement dated as of , 2004 (the “Agreement”), between the Borrower and

Lender. Any capitalized terms used but not defined herein shall have the definitions provided for such terms in the Agreement. This Promissory Note is secured by the Allocated Collateral and (to the extent provided in Section 2.5 of the Agreement) the other Collateral described in Section 2.3 of the Agreement. For the purposes of determining what constitutes Allocated Collateral and a Lease Default with respect to this Promissory Note, a Assignment Schedule has been attached hereto as Schedule A and made a part hereof describing the Lease and Equipment that are the subject of the Advance to be repaid pursuant to this Promissory Note.

Principal and interest due hereunder shall be payable in consecutive monthly/quarterly installments of principal and interest (at the Interest Rate) as set forth on Schedule B attached hereto and made a part hereof payable in [arrears][advance], on the [first] day of each calendar month/quarter during

the term hereof, commencing January 1, 200 . Interest on any overdue payment shall be due and

payable at the rate of interest applicable to late payments under the Lease until paid (the “Late Charge

Rate”).

This Promissory Note may be prepaid (i) to the extent of payments made pursuant to any provisions of the Lease requiring payment of stipulated loss, casualty or similar value, early termination value or liquidated damages or any other amount constituting an acceleration of the rents payable under the Lease with respect to all or part of the Equipment or (ii) by Borrower pursuant to Sections 6 and 7 of the Agreement; provided, however, such prepayment shall result in payments to Lender in an amount at least equal to the then present value of remaining rental payments under the Lease discounted at the Interest Rate. Prepayments shall be applied as specified in Section 2.2.2 of the Agreement.

Subject to the second sentence of Section 2.1 of the Agreement, (a) the Loan to be repaid pursuant to this Promissory Note is expressly non-recourse to Borrower and all payments of principal and interest to be made by Borrower hereunder shall be made only from the income and proceeds from the Allocated Collateral relating to this Promissory Note and only to the extent that Borrower shall have sufficient income and proceeds from such Allocated Collateral to make such payments in accordance with the terms of this Promissory Note and (b) Borrower shall not be personally liable to Lender for any amounts payable under this Promissory Note.

Except as otherwise contemplated under the Agreement, payments of principal and interest shall be made by check to Prudent Investor LLC, or such other addresses the holder hereof shall have designated to the Borrower in writing; and shall be effective upon receipt.

In the event of the declaration by Lender of a default pursuant to Section 7 of the Agreement as the result of a Lease Default related hereto or a Borrower Default, whether or not related hereto, and the expiration of any cure period provided in Section 6.1 without such Default having been cured, then this Promissory Note shall be in default and the balance of the principal sum then due hereunder, together with all accrued interest thereon, shall become immediately due and payable, and Lender shall also have all the remedies described in Section 7 of the Agreement, in each such case, subject to the limitations on recourse set forth herein and therein.

The remedies of Lender as provided herein and in the Agreement shall be cumulative and concurrent and may be pursued singly, successively or together, at the sole discretion of Lender, and may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH STATE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. Venue

for any action hereunder or related hereto shall be in any state or federal court of competent jurisdiction in the State of .

IN WITNESS WHEREOF, the Borrower has caused this Promissory Note to be signed as of the

day of , 200 .

Borrower:

EASY CREDIT FINANCE, a division of Desperate for Sales Ltd.

By: Name: \_ Title:

Schedule A

To Limited Recourse Promissory Note Dated , 2004

**Name of Lessee**:

**Date of Equipment Schedule**:

**Rentals Due as of the date hereof**:

**Aggregate outstanding rentals**:

Description of Equipment:

Attached is a true, correct and complete copy of the Lease.

|  |  |  |
| --- | --- | --- |
| Date: | , 2004 | Borrower:  EASY CREDIT FINANCE, a division of |
|  | | Desperate for Sales Ltd. |
| By: Name: Title: |

Schedule B

To Limited Recourse Promissory Note Dated: , 2004

Payment

Date Payment Interest Principal Balance

EXHIBIT NO. 2

NOTICE AND ACKNOWLEDGMENT OF ASSIGNMENT

Reference is hereby made to those certain [Lease Schedules] executed and delivered pursuant to that certain [Master Lease Agreement], specified on Schedule A attached hereto (collectively, the “Lease”), between Easy Credit Finance, a division of Desperate for Sales Ltd. (“Lessor”) and Acme Inc. (“Lessee”).

Lessor hereby gives Lessee notice and Lessee hereby acknowledges receipt of notice that Lessor has assigned for collateral security purposes and granted a security interest to Prudent Investor LLC, whose offices are at (“Assignee”), all of its rights, title and interest (but not its obligations) in and to the Lease and the equipment leased thereunder (the “Equipment”), except as otherwise agreed to between Lessor and Assignee, and Lessee agrees to make payment of any and all monies due or to become due thereunder to Assignee at

, and will continue to make all payments to such address until such time as Lessee receives written notice from Assignee to the contrary.

In recognition of Assignee’s reliance upon this Notice and Acknowledgment of Assignment in entering into the transaction with Lessor, Lessee certifies, confirms and agrees as follows:

1. (a) That attached hereto is a true, correct and complete copy of the Lease. (b) The Lease: (i) has been duly authorized, executed and delivered; (ii) constitutes the legal, valid and binding obligation of Lessee, enforceable in accordance with the terms thereof; and (iii) is in full force and effect and there are no modifications, amendments or supplements thereto. (c) Any future modification, termination, amendment or supplement thereto or settlement of amounts due thereunder shall be ineffective without Assignee’s prior written consent.
2. That Lessee currently does not have and will not assert against Assignee any defense, claim, counterclaim, recoupment, setoff or right to cancel or terminate the Lease. Lessee agrees to pay to Assignee all monies due or to become due under the Lease without regard to any such defense, claim, counterclaim, recoupment, setoff or right whether arising under the Lease or any other transaction or otherwise and will not seek to recover any part of the same from Assignee, except that Lessee retains, to the extent provided in the Lease, any rights it may have against Lessor in connection with any breach by Lessor of any of its express obligations under the Lease.
3. That the Equipment is in Lessee’s possession at the address specified in the Lease; and has been delivered to and accepted by Lessee as the Equipment under the Lease, and found to be in good working order, and no casualty has occurred with respect to the Equipment.
4. That neither Lessee nor Lessor has breached the Lease in any respect and that payments of any and all monies due under the Lease have been and will continue to be paid in strict accordance with the terms thereof. There has been no prepayment of rent and no security deposit has been paid. As of the date hereof, there are such number of successive monthly rental payments due under the Lease as is specified on Schedule A, each in the amount specified on Schedule A.
5. That Lessee acknowledges notice of the collateral assignment of the Lease to Assignee and further acknowledges and agrees that (a) Lessee will deliver copies of all notices and other communications given or made by Lessee to Assignee at the address specified above, and (b) Lessee will execute such other instruments and take such actions as Assignee reasonably may require to further confirm the vesting of rights under the Lease in Assignee.
6. That Lessee has not received notice of a prior sale, transfer, assignment, hypothecation or pledge of the Lease, the rents reserved thereunder or the Equipment.
7. That Lessee is aware of no claim of any kind or nature in or to the Equipment, or of any lien thereon other than Lessor’s interest, Assignee’s interest and Lessee’s rights thereto under the Lease; and Lessee will keep the Lease and the Equipment free and clear of all liens and encumbrances (other than Assignee’s security interest).
8. That all representations and duties of Lessor intended to induce Lessee to enter into the Lease, whether required by the Lease or otherwise, have been fulfilled.
9. That in connection with Lessor’s collateral assignment to Assignee (which assignment is acknowledged hereby), each of Lessor and Assignee shall be deemed an indemnitee under any and all indemnification provisions contained in the Lease (other than any income tax indemnification provision), for all purposes, and as if each of Lessor and Assignee was separately identified as an indemnitee therein.
10. That all of the names, addresses, signatures, amounts and other facts contained in the Lease are correct.
11. That Lessee shall promptly add Assignee as a loss payee and as an additional insured under each casualty and liability insurance policy maintained by Lessee as may be required under the Lease and shall furnish to Assignee evidence of such insurance coverage not later than 20 days from the date hereof.
12. That Lessee will execute such other instruments and take such further actions as Assignee reasonably may require to further confirm Assignee’s rights with respect to the Lease as contemplated hereby.
13. That Lessee has executed one (1) original of each of the Lease Schedules included in the Lease, has delivered such original to Lessor, and currently has no original in its possession. In furtherance of the foregoing, Lessee hereby authorizes Assignee to mark on each such Lease Schedule and on all Riders and Amendments thereto that such Lease Schedule and such Riders and Amendments are the sole executed original thereof and constitute chattel paper.

Accepted and agreed to on this th day of , 2004.

**EASY CREDIT FINANCE, a division of** **ACME INC.**

**Desperate for Sales Ltd.** Lessee

Lessor

By: By: Name: Name: Title: Title:

**[Add any Guarantor as a party, if applicable]**

Schedule A

To Notice and Acknowledgment of Assignment Dated , 2004

Equipment Schedules No.

**Name of Lessee**:

**Date of Equipment Schedule**:

**Rentals Due as of the following**:

Schedule : monthly installments, each such installments in the amount of $ (plus applicable taxes), payable with the first of such installments due on

1, 2004, and the remaining installments due on the first day of each month thereafter.

**Aggregate outstanding rentals**:

Date: , 2004 **ACME INC.**

Lessee

By: Name: Title:

1308234.2

**EXAMPLE OF A MASTER ASSIGNMENT AGREEMENT FOR EQUIPMENT LEASE SYNDICATIONS**

### ELA 2004 Legal Forum New Orleans, LA

**Round Table Discussion Re: Syndications Daniel E. Murphy, Captive Corp.**

**Philip R. Rosenblatt, Nutter, McClennen & Fish, LLP**

**This Master Assignment Agreement has been highlighted to reflect comments from the buyer’s perspective in an Equipment Lease Syndication relationship. The original form of this document presents an example of a Master Assignment Agreement as originally prepared from the Seller’s perspective.**

MASTER ASSIGNMENT AGREEMENT

THIS MASTER ASSIGNMENT AGREEMENT (“Agreement”) is made as of the day of , 2004, between EASY CREDIT FINANCE, a division of Desperate for Sales Ltd. (“Assignor”) and PRUDENT INVESTOR LLC (“Assignee”).

From time to time Assignor shall enter into master equipment lease agreements of various dates (collectively the “Leases”, and individually a “Lease”) with various lessees (collectively the “Lessees”, and individually a “Lessee”), pursuant to which Assignor shall have the right and obligation to acquire items of equipment from various vendors or the Lessees (collectively the “Vendors”, and individually a “Vendor”) and lease such equipment to the Lessees pursuant to the Leases. The Leases shall contemplate the execution of lease schedules incorporating by reference the terms of the Lease and specifying the lease term and rental with respect to the described equipment.

Assignor desires to sell and assign to Assignee from time to time, and Assignee desires to purchase from Assignor from time to time, certain of Assignor’s rights, remedies, benefits, obligations, liabilities, title and interest in and to (i) items of equipment acquired by Assignor from a Vendor and leased by Assignor to a Lessee pursuant to and on the terms of a Lease, and (ii) the lessor’s position under and pursuant to such Lease.

Assignor is willing to sell and assign and Assignee is willing to purchase said rights, remedies, benefits, obligations, liabilities, title and interests on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the sum of Ten Dollars ($10.00) in hand paid, the mutual promises made herein, and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Conveyance; Purchase Price.
   1. Conveyance. In exchange for Assignee’s full and final payment to Assignor of the Consideration (as defined in part (b) of this Section), and all of Assignee’s other agreements hereunder, Assignor hereby agrees to sell, assign, delegate, transfer and set over to Assignee, without recourse (except pursuant to the terms of this Assignment, any Specification (as defined below) or any other agreement, document or instrument contemplated hereby or executed and delivered in connection herewith (collectively, the “Assignment Documents”)), all of Assignor’s rights, remedies, benefits, obligations, liabilities, title and interests, and Assignee agrees fully to accept and assume same, in, under and to: (i) those certain lease schedules executed pursuant to Leases (such lease schedules, incorporating by reference the terms and conditions of the Leases, solely to the extent related to said lease schedules, being individually referred to as the “Lease Schedule” and collectively as the “Lease Schedules”) each more specifically described on an Assignment and Specification of Assigned Lease Schedule (in substantially the form attached hereto as Exhibit No. 1) which shall be executed from time to time by Assignor and Assignee pursuant to the terms hereof (collectively, the “Specifications”, and individually, a “Specification”), including the right to receive any and all sums payable pursuant to, or recoverable in connection with, such Lease Schedules, including, but not limited to, all rental payments and other payments payable pursuant to the Lease Schedules on or after the date of execution of the Specification with respect thereto, all monies due or to become due in connection with the exercise by Lessee of any option to purchase, return or extend the lease with respect to the Equipment (as such term is hereinafter defined), all monies, including insurance proceeds, payable upon the theft, loss, damage, destruction or condemnation of the Equipment, and all monies payable or recoverable following a default by Lessee; (ii) the equipment described in and leased under each such Lease Schedule listed on Schedule A to the Specification (the “Equipment”), including, but not limited to, the residual value of the Equipment at the expiration, cancellation or termination of the related Lease Schedule; (iii) those certain guaranties (if any) solely as they relate to said Lease Schedules (such guaranties being individually referred to as the “Guaranty” and collectively as the “Guaranties”) and the additional documents more specifically described on the Specifications (and together with the Lease Schedules being collectively referred to as the “Lease Documents”); (iv) those certain agreements with the Vendors (if any), including (without limitation) all manufacturers’ and/or vendors’ warranties with respect to the Equipment, solely as such agreements relate to the Equipment (such agreements being collectively referred to as the “Vendor Agreements”; and together with the Lease Documents being collectively referred to as the “Transaction Documents”) more specifically described on the Specifications; and

(v) all of Assignor’s rights and remedies under the Transaction Documents, including, but not

limited to, the right to initiate and conclude any and all proceedings, legal, equitable or otherwise, that Assignor might otherwise take, save for this Agreement (all such rights, remedies, benefits, obligations, liabilities, title and interests, collectively, the “Interest”). The sale, assignment, delegation, transfer and setting over by Assignor to Assignee under each Specification shall (1)

hereinafter be referred to as a “Conveyance” and (2) be evidenced by, and effective upon and after, the execution and delivery by both parties of such Specification and Assignor’s receipt of the related C~~c~~onsideration, and the date of each such sale, assignment, delegation, transfer and setting over by Assignor is sometimes hereinafter referred to as a “Closing Date.”

* 1. Consideration. In exchange for each Conveyance by Assignor pursuant to a Specification, Assignee shall pay to Assignor, in cash, the full amount of the Consideration specified on such Specification (the “Consideration”).
  2. Acceptance. Upon its execution and delivery of each Specification, subject to and in reliance on Assignor’s representations, warranties, covenants and agreements hereunder and under the other Assignment Documents, Assignee shall be deemed to have accepted and assumed exclusive responsibility with respect to the Conveyance to it of the Interest being conveyed in connection with such Specification.
  3. Excluded Rights and Obligations. ~~Notwithstanding any provision of this Agreement or any Specification to the contrary~~Except as may be specifically provided for in a Specification or other Assignment Document, the Interest conveyed pursuant to each Specification shall expressly exclude any and all of the obligations, liabilities, rights, remedies and/or benefits under or with respect to any of the Transaction Documents or Equipment described in each such Lease Schedule listed on Schedule A to such Specification, to the extent the same arose, accrued or were payable during, or were attributable to, the period prior to the Conveyance evidenced thereby becoming effective; provided, however, with respect to any indemnifications or other provisions of the Transaction Documents that are and remain exercisable or otherwise for the benefit of both Assignor and Assignee after giving effect to the Conveyance, each of Assignor and Assignee shall be entitled to the non-exclusive rights and benefits of the same to the extent such indemnifications or other provisions relate to such party (e.g., a claim against or harm suffered by either such party for which an indemnification is available under the Transaction Documents); provided, further, in no event shall Assignor have any rights to cancel or terminate any of the Lease Documents, or demand any rent or liquidated damages, or take any action with respect to the Equipment or the Lease Schedule after consummating the Conveyance. All such excluded obligations, liabilities, rights, remedies and benefits (the “Retained Interest”) shall be so retained by Assignor.

Notwithstanding the reservation of rights or any other agreements contained herein, or otherwise, with regard to any matter and/or Retained Interest as between Assignor and Assignee, such reservation of Retained Interest or any other agreements contained herein, or otherwise, shall not be, and is not intended to be, evidence of any liability on the part of the Assignor for any matter and/or Retained Interest as to any other party, person or entity of any kind whatsoever, including, without limitation, the Lessee. Without limiting the generality of the foregoing or any other terms of this Agreement, the agreements contained in this Agreement are solely for the benefit of Assignor and Assignee (except as otherwise provided in this Agreement) and shall not benefit in any way whatsoever any other party, person or entity of any kind whatsoever, including, without limitation, the Lessee, and, except as expressly conveyed, transferred or assigned to Assignee pursuant to this Agreement or any other Assignment Documents, nothing contained herein or otherwise shall affect,

limit or in any way diminish the claims, rights, remedies and/or recourses of Assignor against any other party, person or entity of any kind whatsoever, including, without limitation, the Lessee, with regard to any matter and/or the Retained Interest, all of which claims, rights, remedies and/or recourses are expressly reserved by Assignor.

1. Assignor’s Warranties and Representations; Disclaimer.
   1. Warranties and Representations. With respect to each Specification, Assignor hereby warrants and represents that, effective on the date on which Assignor executes such Specification:

(i)(A) Assignor is a corporation duly organized, validly existing and in good standing under the laws of its state of organization; and has full power and authority, and all licenses necessary, to own its properties, to carry on its business as now being conducted and has full power and authority to enter into this Agreement and to carry out the terms and conditions contained therein; and (B) each of the Transaction Documents to which Assignor is a party which is the subject thereof: (1)has been duly and validly authorized, executed and delivered by Assignor; (2)is in full force and effect with respect to Assignor; and (3) constitutes legal, valid and binding obligations of Assignor, enforceable against Assignor in accordance with their terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors’ rights generally, and by applicable laws (including any applicable common law and equity) and judicial decisions which may affect the remedies provided therein;

(ii) (A)~~to Assignor’s knowledge:~~ (1) no material Event of Default (as such term is defined in the subject Lease), and, to Assignor’s knowledge, no other Event of Default, has occurred and is continuing under the Lease Documents and (2) no event which (x) is the subject of a written notice previously given by Assignor to Lessee and (y) with the lapse of time will become an Event of Default, has occurred and is continuing under such Lease Documents; and (B) to Assignor’s knowledge, no event has occurred and is continuing which constitutes a casualty with respect to the Equipment or any item comprising the Equipment;

(iii)(A) the information set forth on the Specification is true and correct, and the Transaction Documents described on the Specification and its attached Schedule A constitute all of the documents executed or delivered to or by Assignor in connection with the Lease Schedule or the Equipment; and (B) such documents constitute the entire agreement of the parties with respect to the transaction evidenced thereby;

1. Assignor has not heretofore assigned or pledged the Interest assigned under the Specification;
2. the purchase price for the Equipment described in the Lease Schedule described on such Specification has been paid in full;

(vi)(A) Assignor is the lawful owner and holder of the Lease Schedule described on such Specification; and (B) to the extent (1) conveyed to Assignor by the transferor thereof, and (2) retained by Assignor after giving effect to the Lease Schedule, Assignor has and is conveying to Assignee whatever such title to the Equipment described in the Lease Schedule as was so conveyed and retained by Assignor, free and clear of all liens and encumbrances arising through or created by Assignor, except for the interest of Lessee pursuant to the Lease Schedule;

(vii) all rentals due as of the date of execution of the Specification under the Lease Schedule described in such Specification have been paid in full;

(viii)(A) there has been no prepayment of rent and the aggregate of unpaid rentals for the Lease Schedule described in such Specification as shown in the Specification is correct; and (B)rentals are due in scheduled payments following the date on which Assignor executes the Specification in accordance with the terms of such Lease Schedule;

1. Assignor is delivering to Assignee the only executed original of the Lease Schedule constituting the chattel paper thereof (as defined under the applicable version of Article 9 of the Uniform Commercial Code);
2. the execution by Assignor of such Specification, this Agreement, the Bill of Sale and Notice (each as defined in Section 4) and all of the other documents and instruments delivered by Assignor pursuant to Section 4 (such Specification, this Agreement as it relates thereto, the related Bill of Sale, Notice and such other documents and instruments, collectively, included among the Assignment Documents as defined above), and of the Transaction Documents to which it is a party, and its participation in the transaction specified herein is in its ordinary course of business and within the scope of its existing corporate authority;
3. there is no action, suit or proceeding pending against Assignor before or by any court, administrative agency or other governmental authority which brings into question the validity of, or might in any way impair, the execution, delivery or performance by Assignor of such Specification or any of the other Assignment Documents or any of the related Transaction Documents to which Assignor is a party;
4. no approval of, or consent from, any governmental authority is requir- ed for the execution, delivery or performance by Assignor of such Specification or any of the other Assignment Documents or any of the related Transaction Documents to which Assignor is a party;
5. the execution, delivery and performance by Assignor of such Specification and each of the other Assignment Documents and the related Transaction Documents to which Assignor is a party and the transactions contemplated hereby and thereby (A) do not contravene any provisions of law applicable to Assignor, and (B) do not conflict and are not incon- sistent with, and will not result (with or without the giving of notice or passage of time or both) in the breach of or constitute a default or require any consent under, or result in the creation of any lien, charge or encumbrance upon the Equipment or the Lease Schedule under any credit agreement,

indenture, mortgage, purchase agreement, deed of trust, security agreement, lease, guarantee or other instrument to which Assignor is a party, by which Assignor may be bound, to which Assignor or its property (including, without limitation, the Equipment and the Lease Schedule) may be subject, or Assignor’s charter or by-laws; and

1. such Specification and all of the other Assignment Documents constitute the legal, valid and binding obligations of Assignor, enforceable against Assignor in accordance with their respective terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors’ rights generally, and by applicable laws (including any applicable common law and equity) and judicial decisions which may affect the remedies provided therein.
2. On the Closing Date, the Lease Schedule will be in full force and effect as against Assignor and, to Assignor’s knowledge, as against Lessee, without any defenses or offsets, claims, counterclaims or right to terminate or cancel arising from any act or omission of Assignor or known to Assignor.
3. To Assignor’s knowledge: each of the documents comprising the Lease Schedule to which the Lessee is party, has been duly and validly authorized, executed and delivered by the Lessee; is in full force and effect with respect to the Lessee and constitutes the legal, valid and binding obligation of the Lessee, enforceable against the Lessee in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws affecting the enforcement of creditors’ rights and remedies generally and by applicable laws (including any applicable common law and equity) and judicial decisions which may affect the remedies provided therein.
4. Either all taxes required to be paid in connection with the Lease Schedule on or prior to the Closing Date have been collected by Assignor from the Lessee or paid by Lessee as and when due and have been remitted by Assignor or Lessee to the appropriate taxing authorities in timely fashion or Lessee has provided Assignor with an indemnification therefrom.
5. All of the Equipment has been accepted by Lessee under the terms of the Lease Schedule and, to Assignor’s knowledge, conforms to the terms of the Lease Schedule.
6. All sales, use, property and other taxes, licenses, tolls, inspection or other fees, bonds, permits or certificates which were or may be required to be paid or obtained in connection with Assignor’s or its predecessors’ acquisition of the Equipment have been, or will when due be, paid in full or obtained and the purchase price for the Equipment has been paid in full.

With respect to any representation or warranty in this Section 2(a) that is qualified by the words “to Assignor’s knowledge”, Assignee acknowledges that it understands those qualifying words to mean that no responsible officer of Assignor has any actual knowledge that the matter being so represented or warranted is incorrect ~~in any material respect~~. ~~, and that~~ Assignor hereby represents and warrants that it has ~~not~~ undertaken~~, nor is it obligated to undertake, any~~ such due diligence and~~or~~ other inquiry for the purpose of making such representation or warranty to Assignee as may be reasonable.

* 1. Disclaimer. Except as set forth in this Section 2 or expressly provided in any of the other Assignment Documents: (i) Assignor has not heretofore made, nor does it make by this Agreement or any Specification entered into in connection herewith, any representations or warranties; (ii) with respect to the Equipment included in the Interest conveyed pursuant hereto, ASSIGNOR CONVEYS THE SAME WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF TITLE (OTHER THAN TO THE EXTENT SET FORTH IN SECTION 2(a)(vi) HEREOF), MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR FREEDOM FROM CLAIMS OF COPYRIGHT OR PATENT INFRINGEMENT; and (iii) Assignor makes no representation or warranty in connection with, and assumes no responsibility with respect to, the solvency, financial condition or statements of the Obligor (as defined in Section 4(c)), or with respect to the performance or observance by the Obligor of its obligations under the Lease Schedule described on a Specification or the Transaction Documents related thereto, after the date of execution of the Specification.

1. Assignee’s Warranties and Representations. With respect to each Specification entered into in connection herewith, Assignee hereby warrants and represents that effective on the date on which Assignee executes such Specification:

(a)(i) Assignee (A) is a corporation duly organized, validly existing and in good standing under the laws of its state ofr organization, and (B) has full power, and all licenses necessary, to own its properties to carry on its business as now being conducted and has full power to enter into this Agreement and to carry out the terms and conditions contained herein; and (ii) the execution of such Specification and this Agreement on its behalf and its participation in the transaction specified herein and therein is in its ordinary course of business and within the scope of its existing corporate authority;

1. there is no action, suit or proceeding pending against Assignee before or by any court, administrative agency or other governmental authority which brings into question the validity of, or might in any way impair, the execution, delivery or performance by Assignee of such Specification or this Agreement or the performance by Assignee under any of the Lease Documents;
2. no approval of, or consent from, any governmental authority is required for the execution, delivery or performance by Assignee of such Specification or this Agreement or the performance by Assignee under any of the Transaction Documents;
3. the execution, delivery and performance by Assignee of such Specification and this Agreement and the performance by Assignee under the Transaction Documents and the transactions contemplated hereby and thereby, (i) do not contravene any provisions of law applicable to Assignee, and (ii) do not conflict and are not inconsistent with, and will not result (with or without the giving of notice or passage of time or both) in the breach of or constitute a default or require any consent under any credit agreement, indenture, mortgage, purchase agreement, deed of trust, security agreement, lease, guarantee or other instrument to which Assignee is a party, by which Assignee may be bound, to which Assignee or its property may be subject, or Assignee’s charter or by-laws;
4. this Agreement and such Specification, and the Transaction Documents (to the extent assumed pursuant to the terms hereof and thereof) constitute the legal, valid and binding obligations of Assignee, enforceable against Assignee in accordance with their respective terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors’ rights generally, and by applicable laws (including any applicable common law and equity) and judicial decisions which may affect the remedies provided herein;
5. it understands that the conveyance of the Interest, pursuant to each Specification entered into in connection herewith, to the extent it may involve the sale of a security, is being offered and sold without registration under the Securities Act of 1933, as amended (the “Act”) and applicable state securities laws in reliance upon an exemption from the registration requirements of the Act and applicable state securities laws;
6. it understands that the conveyance of the Interest pursuant to each Specification entered into in connection herewith, to the extent it may involve the sale of a security, is subject to restrictions on transferability and resale except as permitted under the Act and applicable state securities laws and Assignee is acquiring the Interest solely for its own account, for investment, and not with a view to resale;
7. it has independently and without reliance upon Assignor conducted its own credit evaluation, reviewed such information as it has deemed adequate and appropriate and made its own analysis of the Lease Schedule;
8. it has not relied upon any investigation or analysis conducted by, advice or communication from, nor any warranty or representation by, Assignor or any agent or employee of Assignor, express or implied, concerning the financial condition of the Obligor, or the tax or economic benefits of an investment in the Lease Schedule;
9. it has had (or acknowledges by its execution of any Specification, that Assignee will prior thereto have had) access to all financial and other information that it deems necessary to evaluate the merits and risks of an investment in the Lease Schedule including the opportunity to ask questions, receive answers and obtain additional information from Assignor and the Obligor necessary to verify the accuracy of information provided;
10. it acknowledges that Assignor takes no responsibility for any financial information regarding the Obligor furnished to Assignee by Assignor, and it or its authorized representatives acting on its behalf have such knowledge and experience in business and financial matters necessary to evaluate the merits and risks of an investment in the Lease Schedule; and
11. it is experienced in making investments in lease transactions similar to the Lease Schedule and that it is financially able to undertake the risks involved in such an investment; and
12. Assignee does not and shall not have any recourse to Assignor with respect to any defaults by any Obligor under any of the Lease Documents, except to the extent of any breach by Assignor of any representation, warranty, covenant or agreement hereunder or under any of the other Assignment Documents.
13. Delivery of Documents. Assignor shall, prior to or simultaneously with the execution and delivery of each Specification, deliver to Assignee all of the following:
    1. the executed chattel paper original of the Lease Schedule conveyed ~~there~~by such Specification;
    2. certified true and correct photocopies of the related Lease and other Transaction Documents ~~in Assignor’s possession~~as Assignee may reasonably require which directly relate to the subject Lease Schedule and the Equipment;
    3. a Notice and Acknowledgment of Assignment in substantially the form attached hereto as Exhibit No. 2A or 2B (each a “Notice”), as applicable, duly executed by Assignor and the Lessee and/or guarantor thereunder (said Lessee and/or guarantor, as applicable, together with its successors and assigns, as appropriate, being collectively referred to as the “Obligor”);
    4. a bill of sale for the subject Equipment in substantially the form attached hereto as Exhibit No. 3 (each a “Bill of Sale”);
    5. such documents and instruments as reasonably may be required to effect the assignment to Assignee of any and all Uniform Commercial Code and any other filings made by Assignor with respect to the applicable Lease Schedule and the Equipment; and
    6. Uniform Commercial Code Financing Statements and other such filings evidencing the Conveyance of the Interest by Assignor to Assignee.
14. Covenants.
    1. Remittances. Each of the parties covenants and agrees promptly to remit to the other party payments incorrectly received by such party with respect to the Lease Schedules or the Equipment after the execution of a Specification with respect thereto. With respect to any remittance not made within five (5) business days after receipt of any amount required to be remitted pursuant to the provisions hereof, the party failing to timely remit such amounts shall also pay to the other party interest accruing on such remittance at a per annum interest rate equal to the late charge rate set forth in the Lease and/or Lease Schedule relating thereto; and
    2. No Action. Assignor and Assignee (the “Acting Party”) shall not, without the prior written consent of the other (the “Non-Acting Party”), take any action which impairs the rights of the Non-Acting Party (or its assignee or successor) with respect to those Lease Schedules in and to which such Acting Party has no right, title or interest; provided, that the foregoing covenant shall not require an Acting Party to obtain the consent of the Non-Acting Party prior to exercising any of its rights and remedies under any Lease if such exercise relates solely to the Lease Schedule(s) then owned by such Acting Party.
15. Tax and Indemnities.
    1. Transfer Charges. Assignee shall pay any and all taxes that may be imposed ~~by any federal, state or local government authority on the transfer by Assignor of the Interest under each and every Specification entered into pursuant to this Agreement. Further, Assignee shall provide such resale certificates and/or other documentation as Assignor may reasonably request to qualify for any available exemption from, or reduction of, any such taxes;~~

(a~~b~~) Taxes. With respect to each Specification:

* + 1. Assignor shall be solely responsible for, and shall indemnify, protect, defend, save and keep harmless, Assignee and each of its affiliates, and their respective officers, directors, employees and agents (each an “Assignee Indemnitee”), on an after-tax basis, from and against any and all taxes, fees, levies, imposts, duties, charges, assessments and withholdings, of any kind or nature whatsoever (“Taxes”), in each such case, to the extent any of the same are attributable or otherwise assessed with respect to the period prior to the Conveyance, together with any assessments, penalties, fines, additions to tax or interest thereon, which at any time or from time to time may be imposed on, or asserted against, the Equipment (or any part thereof or any interest therein) or any Assignee Indemnitee, by any federal, state, local or foreign government or taxing authority in connection with or relating to the Equipment, the Leases and the other Transaction Documents, and the transactions contemplated hereby and thereby; but only to the extent, if any, that such Assignee Indemnitee is not otherwise indemnified with respect thereto under the Transaction Documents; and
    2. Assignee shall be solely responsible for, and shall indemnify, protect, defend, save and keep harmless, Assignor and each of its affiliates, and their respective officers, directors,

employees and agents (each an “Assignor Indemnitee”), on an after-tax basis, from and against any and all Taxes, in each such case, to the extent any of the same are attributable or otherwise assessed with respect to the period subsequent to the Conveyance, together with any assessments, penalties, fines additions to tax or interest thereon, which at any time or from time to time may be imposed on, or asserted against, the Equipment (or any part thereof or any interest therein) or any Assignor Indemnitee, by any federal, state, local or foreign government or taxing authority in connection with or relating to the Equipment, the Leases and the other Transaction Documents, and the transactions contemplated hereby and thereby; but only to the extent, if any, that such Assignor Indemnitee is not otherwise indemnified with respect thereto under the Transaction Documents.

* 1. Indemnity. With respect to each Specification:
     1. Assignor shall, upon Assignee’s demand, pay and assume liability for, and indemnify, protect, defend, save and keep harmless each Assignee Indemnitee, on an after-tax basis, from and against any and all liabilities, obligations, losses, damages, settlements, claims, actions, suits, penalties, actual costs and expenses (including, without limitation, reasonable fees and expenses of counsel) of whatsoever kind and nature (“Claims”) which shall at any time or from time to time be imposed upon, incurred by such Assignee Indemnitee to the extent caused by, (A) any material inaccuracy or material breach of any representation or warranty made by Assignor hereunder or in any other document, instrument or certificate delivered in connection with this Agreement, or

(B) any failure by Assignor to observe or perform any of its obligations under or in connection with

(1) this Agreement or any Other Document (provided that Assignor’s indemnity obligation hereunder with respect to the fiscal agency described in Section 7 shall be limited as set forth in Section 7(e)), or (2) any of the obligations or liabilities constituting Retained Interests.

* + 1. Assignee shall, upon Assignor’s demand, pay and assume liability for, and indemnify, protect, defend, save and keep harmless each Assignor Indemnitee, on an after-tax basis, from and against any and all Claims, which shall at any time or from time to time be imposed upon, incurred by or asserted against such Assignor Indemnitee to the extent caused by, (A) any material inaccuracy or material breach of any representation or warranty made by Assignee hereunder or in any other document, instrument or certificate delivered in connection with this Agreement, (B) any failure by Assignee to observe or perform any of its obligations under or in connection with (1) this Agreement or any document delivered in connection with this Agreement or (2) any of the obligations or liabilities constituting the Interest (and not the Retained Interest) and assumed pursuant to this Agreement or (C) Assignor’s actions or omissions as fiscal agent pursuant to Section 7, except for the Assignor’s failure to make funds available, gross negligence, or willful breach or willful misconduct, to the extent specified in such Section 7.
  1. Notice of Claims. Each of Assignor and Assignee agrees to notify the other party promptly after becoming aware of any Taxes or Claims, whether pending or threatened that is the subject of indemnification pursuant to this Section 6; provided, however, that the failure by either such party to so notify the indemnifying party will not in any manner affect such indemnifying party’s obligations under this Section 6, except to the extent, if any, the indemnifying party shall have been materially and adversely prejudiced by such failure.

1. Fiscal Agency. The following provision shall apply only to any Specification which indicates that Assignor is to act as Assignee’s fiscal agent for purposes of the Lease Schedules listed on Schedule A to the Specification:
   1. Extent of Agency. It is the intent and purpose of the parties that Assignor, on behalf of Assignee, shall (a) bill for, collect and receive the rentals and other sums payable under each Lease Schedule excluding payments made as a result of a loss or damage to the Equipment and (b) prepare all required tax returns for, and ~~to~~ remit to the appropriate agencies, all sales and use taxes required to be paid in connection with the Lease Schedules, but shall not otherwise exercise any other rights, powers or privileges of the lessor under the Lease Schedules. To the extent that personal property taxes payable with respect to the Lease Schedules and/or the Equipment are received from the Lessee by Assignor, as fiscal agent, such collected taxes will be remitted to Assignee in accordance with the terms of this Agreement. ~~Assignee shall have the obligation to prepare all required tax returns for, and to remit to the appropriate agencies, all personal property taxes required to be paid in connection with the Lease Schedules, and Assignor shall have no responsibility for the performance of such obligations~~. In the event of an Event of Default under and as defined in the Lease or any Lease Schedule or an event which with the giving of notice or passage of time or both would constitute an Event of Default thereunder (any such event, an "Event of Default") or in the event Assignor breaches any of its obligations hereunder, upon written notice by Assignee to Assignor this fiscal agency shall terminate and Assignee shall have the sole right to exercise any and all remedies available to it in connection with each Lease Schedule or any item of Equipment which is the subject of the Event of Default. If either party has actual knowledge of an Event of Default, it shall promptly notify the other party thereof.
   2. Appointment. In furtherance of the parties' intent, Assignee hereby appoints Assignor its fiscal agent and attorney-in-fact on the express terms set forth herein, and Assignor accepts such appointment. Assignor shall act as the fiscal agent for Assignee hereunder without compensation except as herein provided. The parties agree from time to time to execute and deliver such documents, notices, directions and other instruments as may be necessary or appropriate to cause all monies, credit or other property to be paid, distributed or delivered to Assignor or as may be desirable in obtaining the full benefits of this Agreement and the rights and powers herein granted.
   3. Payments. All monies received by Assignor as fiscal agent for Assignee under or pursuant to any provision of this Agreement shall be held by Assignor in trust as fiscal agent for Assignee for the purpose for which they were paid, but need not be segregated in any manner from any other monies of Assignor and may be deposited by Assignor in any general account maintained by it. Within two (2) business days of receipt of such monies by Assignor as fiscal agent for Assignee, Assignor shall make such monies available to Assignee by wire transfer of such monies to Assignee at such account as Assignee may specify in writing from time to time. If any monies received by Assignor from or on behalf of the Obligor are subsequently dishonored or if it is otherwise determined that any such monies received by Assignor do not constitute good funds, then Assignee, promptly upon request from Assignor, will remit to Assignor in good funds such monies that had been remitted by Assignor to Assignee on account of the affected payment.
   4. Limitations of Agency. Without the prior written consent of Assignee, Assignor shall not enter into any agreement or take any action with the intention of directly or indirectly (1) permitting amendment or modification of, or deviation from, any of the terms of any Lease Schedule; or (2) accelerating or otherwise changing the payment terms of any Lease Schedule. Assignor shall not be obligated to institute any legal action on behalf of Assignee. All early termination notices and other material notices (if any) received by Assignor from Obligor shall be directed to Assignee.
   5. Limitations of Liability. (1) Assignor undertakes to perform as fiscal agent on

behalf of Assignee such duties and only such duties as are specifically set forth herein and no implied covenants or obligations shall be read into this agreement against Assignor. (2) Assignor shall not be liable to Assignee for any action taken or omitted to be taken by it hereunder or pursuant hereto, except for Assignor’s negligence, willful misconduct or breach of its obligations hereunder

* 1. Costs. No provisions of this Section 7 shall require Assignor to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties as fiscal agent for Assignee hereunder. Any reasonable out-of-pocket expenses not typically borne by Assignor in the ordinary course of its agency activities incurred by Assignor in connection with its performance of its obligations under this Section 7~~Addendum~~ shall be borne by Assignee and Assignee shall reimburse Assignor for any such out-of-pocket costs and expenses incurred by Assignor. Assignor shall provide prior notice and adequate documentation to Assignee of such costs and expenses.

1. Miscellaneous.
   1. Assignment. Assignor~~Neither party~~ may not assign or delegate its respective rights or obligations hereunder without the prior written consent of Assignee, except Assignor may assign or delegate its respective rights or obligations hereunder to an affiliate upon written notice to Assignee~~the other party which consent shall not be unreasonably withheld~~. Assignee may transfer and assign its rights and obligations hereunder upon notice to Assignor to a third party (a “Transferee”), provided such Transferee agrees in writing to be bound by the terms and conditions hereof. Subject to the foregoing, this Agreement inures to the benefit of, and is binding upon, the successors and permitted assigns of the parties hereto.
   2. Notices. All notices and other communications hereunder shall be in writing, personally delivered or sent by facsimile or certified mail, return receipt requested, addressed to the other party at its respective address stated below the signature of such party or at such other address as such party shall from time to time designate in writing to the other party; and shall be effective from the date of receipt.
   3. GOVERNING LAW. THIS AGREEMENT AND EACH SPECIFICATION AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF EUPHORIA (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH STATE), INCLUDING ALL

MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. VENUE FOR ANY ACTION HEREUNDER OR RELATED HERETO SHALL BE IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF EUPHORIA, AND EACH OF ASSIGNOR AND ASSIGNEE HEREBY SUBMITS TO THE JURISDICTION OF SUCH COURT.

* 1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and shall not be amended or altered in any manner except by a document in writing executed by both parties.
  2. Titles; Severability. Section titles are for convenience of reference only and shall not be of any legal effect. Any provision of this Agreement which is unenforceable in whole or in part in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such unenforceability without invalidating any remaining part or other provision hereof and shall not be affected in any manner by reason of such unenforceability in any other jurisdiction.
  3. Further Assurances. The parties further covenant and agree to do, execute and deliver, or cause to be done, executed and delivered, and covenant and agree to use their respective reasonable best efforts to cause their successors and assigns to do, execute and deliver, or cause to be done, executed and delivered, all such further acts, transfers and assurances, for implementing the intention of the parties under this Agreement, as the parties and their successors and assigns reasonably shall request.
  4. Not an Extension of Credit; Precautionary Security Interest. This Agreement constitutes a sale of 100% ownership of the Equipment and an assignment of all the Assignor's interest under the Lease Schedule, and shall in no way be construed as the extension of credit by Assignee to Assignor. Assignor waives and releases any right, title or interest that it may have (whether pursuant to any "cross collateralization" provision or otherwise) in and to any of the Equipment and/or the Lease Schedule. Notwithstanding the foregoing, in the event that Assignee's right, title and interest in the Equipment is recharacterized as a security interest, Assignor hereby grants to Assignee a security interest in the Equipment securing the Lessee's obligations, including, without limitation, the obligation to pay Rent, under the Lease. In furtherance of such security interest, Assignor agrees to execute, deliver and permit to be filed all applications with respect to all certificates of title or all UCC financing statements and any other documents, agreements or filings reasonably required in order to assure to Assignee all of its right, title and interest in the Equipment.

(hi) Transaction Expenses. Each of Assignor and Assignee shall bear and be responsible for its own costs and expenses incurred in connection with the negotiation, preparation, execution and delivery of this Agreement and any other agreements, documents, certificates and instruments relating hereto, and it shall not have any right of reimbursement or indemnity for such costs and expenses as against the other party.

(ji) Counterparts. With respect to each of this Agreement, any Specification, the Notice and any of the other documents to be delivered pursuant to this Agreement, each such agreement may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.

(j) Survival. The respective representations, warranties, certifications, agreements, covenants, obligations, liabilities, duties and indemnities of Assignor and Assignee contained in this Agreement and the other Assignment Documents shall survive the execution and delivery of each Specification and the consummation of the transfer evidenced thereby.

(lk) Recitals. Both parties agree that all of the recitals are hereby incorporated herein and are acknowledged as being true and correct.

(l) Waiver of Jury Trial. ASSIGNOR AND ASSIGNEE HEREBY

UNCONDITIONALLY WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT, ANY OF THE TRANSACTION DOCUMENTS, ANY DEALINGS BETWEEN ASSIGNOR AND ASSIGNEE RELATING TO THE SUBJECT MATTER HEREOF OR THEREOF, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED BETWEEN ASSIGNOR AND ASSIGNEE. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT (INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS). THIS WAIVER IS IRREVOCABLE MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR THE TRANSACTION DOCUMENTS. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

[Signatures appear on next page]

IN WITNESS WHEREOF, the parties hereto have caused this Master Assignment Agreement to be executed as of the day and year first above written.

EASY CREDIT FINANCE, PRUDENT INVESTOR LLC

a division of Desperate for Sales Ltd.

Assignor Assignee

By: By:

Name: Name:

Title: Title:

Address: Address:

EXHIBIT NO. 1

ASSIGNMENT AND SPECIFICATION OF ASSIGNED LEASE SCHEDULE

This Assignment and Specification of Assigned Lease Schedule (this "Specification") is being entered into as of this day of , 200\_, between Easy Credit Finance, a division of Desperate for Sales Ltd., as assignor ("Assignor"), and Prudent Investor LLC, as assignee ("Assignee").

Assignor and Assignee have entered into a Master Assignment Agreement dated as of

, 2000, (as amended and supplemented, the "Agreement"), pursuant to which Assignor agreed to sell and assign from time to time, and Assignee agreed to purchase from Assignor from time to time, Assignor's rights, remedies, benefits, liabilities, obligations, title and interest in and to certain equipment leases and the items of equipment leased thereunder. This Specification is being entered into pursuant to, and incorporates all of the terms of the Agreement, including all of the pertinent definitions provided therein.

NOW, THEREFORE, in consideration of the foregoing, and such other good and valuable consideration, the receipt and sufficiency of which both parties hereby acknowledge, the Assignor and Assignee hereby agree as follows:

1. **The Conveyance.** Assignor hereby sells, assigns, delegates, transfers and sets over to Assignee, and Assignee hereby fully accepts and assumes, the Interest, in, under and with respect to those certain Transaction Documents and items of Equipment comprised of: (a) the Lease Schedule(s) and the Equipment described in each such Lease Schedule listed on Schedule A (attached hereto and constituting a part hereof); and (b) solely to the extent related to such Lease Schedule(s) and/or such Equipment, the (i) Lease described in Schedule A, together with all related opinions, certificates, Guaranties (if any), and other Lease Documents executed and delivered in connection therewith; and (ii) the Vendor Agreement(s), if any, described in Schedule A (all as described in Schedule A), together with all rights and remedies (relating solely to such Lease Schedule and/or such Equipment) thereunder; but excluding, in all respects, the Retained Interest.
2. **Transfer Charges**. Assignee shall pay any and all taxes that may be imposed by any federal, state or local government authority on the transfer by Assignor of the Interest under each and every Specification entered into pursuant to this Agreement. Further, Assignee shall provide such resale certificates and/or other documentation as Assignor may reasonably request to qualify for any available exemption from, or reduction of, any such taxes.
3. **Personal Property Taxes**. [Assignor or Assignee] shall have the obligation to prepare all required tax returns for, and to remit to the appropriate agencies, all personal property taxes required to be paid in connection with the Lease Schedules, and Assignor shall have no responsibility for the performance of such obligations.
4. **Buy-Back Provisions**. Assignor is in the process of obtaining for delivery to Assignee[DESCRIBE OUTSTANDING ITEMS(S)] (the “Outstanding Document(s)”), which is required pursuant to Section 4 of the Agreement. Notwithstanding anything contained in the Agreement to the contrary, in consideration of Assignee’s payment of the Consideration and acceptance of the conveyance of the Interest as of the date of this Specification, Assignor hereby undertakes, on or before , 200\_ (the “Due Date”), to provide to Assignee such Outstanding Document(s), in a form reasonably satisfactory to Assignee, duly executed and delivered. Assignor hereby agrees to repurchase the Interest from Assignee upon demand if the Outstanding Document(s) are not so provided to Assignee on the Due Date upon terms and conditions reasonably satisfactory to Assignee for a repurchase price equal to (i) the Consideration paid by Assignee for such Interest plus interest on such Consideration from the date hereof to the date of repurchase at the rate of

% per annum, and (ii) all costs and expenses (including without limitation any property or other taxes and reasonable attorneys fees) incurred by Assignee in connection with any of the transactions contemplated hereby. In addition, Assignee shall pay over to Assignor any payments received from Lessee plus interest on such payments at the rate of % per annum from the date of Assignee’ receipt thereof to the date of Assignee’s payment thereof to Assignor.

1. **Entire Agreement.** This Specification, together with the Agreement, and the Bill of Sale collectively constitute the entire agreement of the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties have caused this Specification to be executed by their duly authorized representatives as of the date first above written.

EASY CREDIT FINANCE, a division PRUDENT INVESTOR LLC

of Desperate for Sales Ltd.

Assignor Assignee

By: By:

Name: Name:

Title: Title:

SCHEDULE A TO ASSIGNMENT AND SPECIFICATION OF ASSIGNED LEASE SCHEDULE

Attached to and made a part of Assignment and Specification of Assigned Lease Schedule dated

, 200\_.

In furtherance of the sale, assignment, acceptance and assumption being evidenced by the Specification, and any and all of the provisions of the Agreement in which the following terms are referenced, Assignor hereby certifies as to all of the following for such purposes:

1. Lessee(s):
2. Date of Master Lease Agreement:
3. Lease Schedule No(s).:
4. Remaining rental payments due under the Lease Schedule(s): monthly/quarterly payments in advance/arrears each in the amount of $ .
5. The Total Acquisition Cost is $ (plus tax of $ ) for a Total Cost of

$ .

1. The Consideration referenced in Section 1(b) of the Agreement is: $ .
2. ***(CHOOSE WHICHEVER PARAGRAPH IS APPROPRIATE)***

Assignor and Assignee hereby agree that Assignor shall act as fiscal agent pursuant Section 7 of the Agreement.

Assignor and Assignee hereby agree that Assignor shall not act as fiscal agent and shall direct the Lessee and any Guarantor to remit payment directly to Assignee.

1. The Transaction Documents are those documents certified copies of which were provided to Assignee pursuant to the letter(s) of certification sent by Assignor to Assignee and dated~~as described on the certified letter(s) sent~~ , 200\_.

### [SIGNATURES TO FOLLOW ON NEXT PAGE]

EASY CREDIT FINANCE, a division PRUDENT INVESTOR LLC

of Desperate for Sales Ltd.

Assignor Assignee

By: By:

Name: Name:

Title: Title:

EXHIBIT NO. 3 BILL OF SALE

THIS BILL OF SALE is given by EASY CREDIT FINANCE, a division of Desperate for Sales Ltd.(herein the “Seller”), to PRUDENT INVESTOR LLC (herein the “Buyer”).

WITNESSETH:

THAT FOR TEN DOLLARS ($10.00) AND OTHER GOOD AND VALUABLE

CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, Seller does hereby bargain, sell, assign, transfer and set over to Buyer, its successors and assigns, all of Seller’s right, title and interest in and to the items of equipment listed on the schedule attached hereto (the “Equipment”).

Except as set forth in that certain Master Assignment Agreement, dated , 2000, between Seller and Buyer, t~~T~~he Equipment is sold hereunder AS IS WHERE IS WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF TITLE, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR FREEDOM

FROM CLAIMS OF COPYRIGHT OR PATENT INFRINGEMENT; except that Seller warrants that all of Seller’s title thereto is conveyed, hereby (to the extent (A) conveyed to Seller by the transferor thereof, and (B) retained by Seller after giving effect to Lease Schedule No.

incorporating that certain Master Lease Agreement dated as of

, , between Seller, as lessor, and , as lessee (“Lessee”), free and clear of all claims, liens and encumbrances arising through or created by Seller (other than the interest of Lessee under the Lease).

[TO BE USED ONLY WHERE THE EQUIPMENT CONSISTS OF MOTOR VEHICLES OR OTHER PROPERTY FOR WHICH TITLE IS EVIDENCED BY CERTIFICATES OF TITLE]

Seller hereby acknowledges that from and after the date hereof Seller shall continue to be designated as owner on the certificates of title for the Equipment constituting motor vehicles pursuant to the terms of applicable state law as agent on behalf and for the benefit of Buyer. New certificates of title for such Equipment shall be obtained naming Buyer or Buyer's designee as owner at such time as (i) Buyer exercises its power of attorney from Seller granted on or about the date hereof, or (ii) Seller, at Buyer's request and expense, or at Seller's election and expense, takes such further actions as may be required to accomplish such change.

IN WITNESS WHEREOF, Seller has caused this instrument to be duly executed as of the

day of , 200\_.

EASY CREDIT FINANCE, a division of Desperate for Sales Ltd.

By: Name:

Title:

EXHIBIT NO. 2A

NOTICE AND ACKNOWLEDGMENT OF ASSIGNMENT

Reference is hereby made to that certain Master Lease Agreement dated as of

, 199 (the "Lease"), between EASY CREDIT FINANCE, a division of Desperate for Sales Ltd. ("Assignor"), and ("Lessee").

Assignor hereby gives Lessee notice, and Lessee hereby acknowledges receipt of notice, that effective as of , 200 (the "Effective Date"), Assignor has assigned to PRUDENT INVESTOR LLC, ("Assignee"), whose offices are at

, all rights, obligations, liabilities, title and interests of Assignor to the extent accruing on or after the Effective Date in, under and with respect to (a) Lease Schedule No. executed by Lessee and Assignor pursuant to the Lease, (b) solely to the extent incorporated therein by reference, the Lease (collectively, the “Designated Schedule”) and (c) solely to the extent related to the Designated Schedule, all of the other documents, instruments, agreements, certificates and filings executed and/or delivered to Lessor pursuant to the Lease (together with the Designated Schedule, the “Lease Documents”). From and after the date of this Notice, all payments of rent and other sums now or hereafter becoming due pursuant to the Designated Schedule or with respect to the equipment described on the Designated Schedule (the "Equipment") shall be either (as indicated):

paid to **Assignee** as directed in **Assignee’s invoices**, or

paid to **Assignee** as directed in **Assignor’s invoices**, or

paid to **Assignor as fiscal agent for Assignee or**, upon receipt of notice from Assignee of the termination of such fiscal agency, to **Assignee as directed in Assignee’s invoices**.

In recognition of Assignee's reliance upon this Notice, Lessee certifies, confirms and agrees as follows:

* 1. The Lease, the Designated Schedule and the other Lease Documents have been duly authorized, executed and delivered by Lessee; constitute the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with the terms thereof; are in full force and effect on the date of execution of this notice by Lessee; are not subject to any defenses, set-offs, claims, counterclaims, or any right to cancellation or termination; constitute the entire agreement between Assignor and Lessee regarding the leasing of the Equipment and the terms and conditions of the Lease with respect to the Equipment, and there are no other documents or agreements binding upon or affecting the Equipment; and no default by Assignor or Lessee or event which, with the passage of time or the giving of notice, or both, would constitute a default by Assignor or Lessee under the Lease has occurred. All names, addresses, signatures,

amounts and other facts contained in the Lease, the Designated Schedule and the other Lease Documents are correct.

* 1. There are no modifications, amendments or supplements to the Lease which relate to the Designated Schedule or any of the other Lease Documents; and any future modification, termination, amendment or supplement to the Lease which relates to the Designated Schedule or any of the other Lease Documents, or settlement of amounts due thereunder which relates to the Designated Schedule or any of the other Lease Documents, shall be ineffective without Assignee's prior written consent.
  2. The Equipment has been delivered to and accepted by Lessee and is in good working order and suitable for Lessee's purposes in all respects. The Equipment is in Lessee's possession and is located at the location specified in the Designated Schedule. Lessee agrees that it will not change the installation site of the Equipment as indicated on the Designated Schedule, except as expressly permitted by, and in accordance with, the terms of the Lease. No casualty has occurred with respect to the Equipment.
  3. There has been no prepayment of rent or other sums payable under the Designated Schedule. Payments of any and all monies due under the Lease and the Designated Schedule have been and will continue to be paid in strict accordance with the terms thereof. The Designated Schedule is current in all respects, including, but not limited to, the payment of any applicable sales, use and personal property taxes. As of the date hereof, there are ( ) rental payments, each in the amount of $ , remaining to be paid under the Designated Schedule.
  4. Lessee acknowledges and agrees that (i) Assignee shall be the owner of the Equipment and Assignor shall have no interest or authority of any nature regarding the Equipment or the Designated Schedule, and Assignor shall be released from all obligations and liabilities thereunder and with respect to the other Lease Documents to the extent the same have been assigned to, and accepted and assumed by Assignee,

(ii) Lessee will deal exclusively with respect to the Designated Schedule with Assignee, and Lessee will deliver copies of all notices and other communications given or made by Lessee to Assignee at the address listed above, (iii) so far as enforcement of the Designated Schedule is concerned, notwithstanding the existence of other schedules or supplements thereto, the Designated Schedule is separate and severable and Assignee may take enforcement action independently of other assignees, equipment owners or financing parties having an interest in the Lease and other lease schedules not included in the Designated Schedule, and (iv) Lessee will execute such other instruments and take such actions as Assignee reasonably may require to further confirm the vesting of rights under the Lease in Assignee and Assignee's ownership of the Equipment.

* 1. Lessee has not received any notice of any prior sale, transfer, assignment, hypothecation or pledge of the Equipment, the Designated Schedule or the rents reserved thereunder.
  2. Lessee will keep the Lease, the Designated Schedule and the Equipment free and clear of all liens and encumbrances (other than the interest of Assignor, Assignee or parties claiming by, through or under them).
  3. All representations and duties of Assignor intended to induce Lessee to enter into the Lease, whether required by the Lease or otherwise, have been fulfilled.
  4. ~~Lessee has executed one (1) original each of the Lease and the Designated Schedule (which were delivered to Assignor), and currently has no original of either in its possession.~~

Lessee has executed two (2) original counterparts of the Designated Schedule, one (1) of which is designated as Counterpart No. 1 and chattel paper (which was delivered to Assignor), and currently has in its possession solely Counterpart No. 2.”

* 1. Lessee agrees to promptly send to Assignee such financial statements and other notices as may be required to be sent to Assignee under the terms of the Lease, as assignee of Assignor’s interest under the Lease, directly to:

Prudent Investor LLC

* 1. Pursuant to the terms of the Lease, Lessee hereby agrees to promptly add Assignee as a loss payee and as an additional insured under each casualty an liability insurance policy maintained by Lessee as may be required under the Lease and to furnish to Assignee evidence of such insurance coverage not later than 20 days from the date hereof.

Accepted and agreed to on this day of , 200~~199~~ .

EASY CREDIT FINANCE, a division of Desperate for Sales Ltd.

Assignor Lessee

By: By: Name: Name: Title: Title:

PRUDENT INVESTOR LLC

Assignee

By: Name: Title:

EXHIBIT NO. 2B

NOTICE AND ACKNOWLEDGMENT OF ASSIGNMENT

Reference is hereby made to that certain Master Lease Agreement dated as of

, 199 (the "Lease"), between EASY CREDIT FINANCE, a division of Desperate for Sales Ltd. ("Assignor"), and ("Lessee"); and that certain Equipment Lease Guaranty dated as of , (the "Guaranty"), by ("Guarantor") in favor of .

Assignor hereby gives Lessee and Guarantor notice, and Lessee and Guarantor hereby acknowledge receipt of notice, that effective as of , (the "Effective Date"), Assignor has assigned to PRUDENT INVESTOR LLC ("Assignee"), whose offices are at

,allrights, title, interests and obligations of Assignor accruing on or after the Effective Date in and to (a) Lease Schedule No. executed by Lessee and Assignor pursuant to the Lease, (b) solely to the extent incorporated in the Designated Schedule by reference, the Lease, and (c) solely to the extent related to the Designated Schedule, the Guaranty. As used in this Notice and Acknowledgment of Assignment, the term "Designated Schedule" shall mean, collectively, Lease Schedule No. and, to the extent incorporated therein, the Lease. From and after the date of this Notice, all payments of rent and other sums now or hereafter becoming due pursuant to the Designated Schedule or with respect to the Equipment described on the Designated Schedule (the "Equipment") shall be either (as indicated):

paid to **Assignee** as directed in A**ssignee’s invoices**, or

paid to **Assignee** as directed in **Assignor’s invoices**, or

paid to **Assignor as fiscal agent for Assignee or**, upon receipt of notice from Assignee of the termination of such fiscal agency, to **Assignee as directed in Assignee's invoices**.

Guarantor agrees to make payment of any and all monies now or hereafter becoming due under the Guaranty (solely to the extent related to the Designated Schedule) to Assignor (if Assignor is the fiscal agent and then collecting payments, as indicated above) or Assignee as directed in writing by Assignee.

In recognition of Assignee's reliance upon this Notice, Lessee and Guarantor certify, confirm and agree as follows:

1. The Lease, the Designated Schedule and the Guaranty have been duly authorized, executed and delivered by Lessee or Guarantor, as applicable; constitute the legal, valid and binding obligation of Lessee or Guarantor, as applicable, enforceable against such party in accordance with the terms thereof; are in full force and effect on the date of execution of this notice by such party; are not subject to any defenses, set-offs, claims, counterclaims or any right to cancellation or termination; constitute the entire agreement between Assignor and Lessee regarding the leasing of the Equipment and the terms and conditions of the Lease with respect to the Equipment, and there are no other documents or agreements binding upon or affecting the Equipment; and no default by any party or event which, with the passage of time or the giving of notice, or both, would constitute a default by any party under the Lease or the Guaranty has occurred. All names, addresses, signatures, amounts and other facts contained in the Lease, the Designated Schedule and the Guaranty are correct.
2. There are no modifications, amendments or supplements to the Guaranty or to the Lease which relate to the Designated Schedule; and any future modification, termination, amendment or supplement to the Guaranty or to the Lease which relates to the Designated Schedule, or settlement of amounts due thereunder which relates to the Designated Schedule, shall be ineffective without Assignee's prior written consent.
3. The Equipment has been delivered to and accepted by Lessee and is in good working order and suitable for Lessee's purposes in all respects. The Equipment is in Lessee's possession and is located at the location specified in the Designated Schedule. Lessee agrees that it will not change the installation site of the Equipment as indicated on the Designated Schedule, except as expressly permitted by, and in accordance with, the terms of the Lease. No casualty has occurred with respect to the Equipment.
4. There has been no prepayment of rent or other sums payable under the Designated Schedule. Payments of any and all monies due under the Lease and the Designated Schedule have been and will continue to be paid in strict accordance with the terms thereof. The Designated Schedule is current in all respects, including, but not limited to, the payment of any applicable sales, use and personal property taxes. As of the date hereof, there are ( ) rental payments, each in the amount of $ , remaining to be paid under the Designated Schedule.
5. Lessee and Guarantor acknowledge and agree that (i) Assignee shall be the owner of the Equipment (subject to the rights created in Lessee pursuant to the Designated Schedule) and Assignor shall have no interest or authority of any nature regarding the Equipment or the Designated Schedule, (ii) Lessee will deal exclusively with respect to the Designated Schedule with Assignee, and Lessee and Guarantor will deliver copies of all notices and other communications given or made by Lessee or Guarantor

to Assignee at the address listed above, (iii) so far as enforcement of the Designated Schedule is concerned, notwithstanding the existence of other schedules or supplements thereto, the Designated Schedule is separate and severable and Assignee may take enforcement action with respect to the Designated Schedule and, solely to the extent related to the Designated Schedule, the Guaranty independently of other assignees, equipment owners or financing parties having an interest in the Lease or the Guaranty or other lease schedules not included in the Designated Schedule, and

(iv) Lessee or Guarantor will execute such other instruments and take such actions as Assignee reasonably may require to further confirm the vesting of rights under the Lease in Assignee and Assignee's ownership of the Equipment.

1. Neither Lessee nor Guarantor has received any notice of any prior sale, transfer, assignment, hypothecation or pledge of the Equipment, the Designated Schedule or the rents reserved thereunder.
2. Lessee will keep the Lease, the Designated Schedule and the Equipment free and clear of all liens and encumbrances (other than the interest of Assignor, Assignee or parties claiming by, through or under them and Lessee under the Designated Schedule).
3. All representations and duties of Assignor intended to induce Lessee to enter into the Lease, whether required by the Lease or otherwise, have been fulfilled.
4. ~~Lessee has executed one (1) original each of the Lease and the Designated Schedule (which were delivered to Assignor), and currently has no original of either in its possession.~~ Lessee has executed two (2) original counterparts of the Designated Schedule, one (1) of which is designated as Counterpart No. 1 and chattel paper (which was delivered to Assignor), and currently has in its possession solely Counterpart No. 2.”
5. Lessee agrees to promptly send to Assignee such financial statements and other notices as may be required to be sent to Assignee under the terms of the Lease, as assignee of Assignor’s interest under the Lease, directly to:

Prudent Investor LLC

1. Pursuant to the terms of the Lease, Lessee hereby agrees to promptly add Assignee as a loss payee and as an additional insured under each casualty an liability insurance policy maintained by Lessee as may be required under the Lease and to furnish to Assignee evidence of such insurance coverage not later than 20 days from the date hereof.

12~~0~~. Guarantor acknowledges and agrees that the Guaranty remains in full force and effect notwithstanding the assignment to Assignee.

Accepted and agreed to on this day of , 2000~~199~~ .

EASY CREDIT FINANCE, a division of Desperate for Sales Ltd.

Assignor Lessee

By: By: Name: Name: Title: Title:

PRUDENT INVESTOR LLC

Assignee Guarantor

By: By: Name: Name: Title: Title:

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