

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Franklin National Bank of Minneapolis, a  
national banking association,

Court File No. \_\_\_\_\_

Plaintiff,

**COMPLAINT**

v.

Allied Health Care Services, Inc., a New  
Jersey corporation, and Charles K.  
Schwartz, an individual,

Defendants.

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**PARTIES**

1. Plaintiff Franklin National Bank of Minneapolis (“Franklin Bank”) is a national banking association with an office located at 525 Washington Avenue North, Minneapolis, Minnesota 55401.

2. Defendant Allied Health Care Services, Inc. (“Defendant Allied”) is a corporation organized under the laws of the State of New Jersey with its principal place of business located at 89 Main Street, Orange, New Jersey 07051.

3. Defendant Charles K. Schwartz (“Defendant Schwartz”) is an individual residing at 37 Timberline Drive, Sparta, New Jersey 07871.

**JURISDICTION**

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332. The dispute is between citizens of different States and Franklin Bank’s

requested relief involves a matter in controversy in excess of \$75,000, exclusive of interest and costs.

5. Venue is proper in this district pursuant to agreement of the parties and 28 U.S.C. § 1391(a).

### **FACTS**

6. On or about February 22, 2007, Defendant Allied entered into a lease agreement (the "Lease Agreement") with First Premier Capital, LLC ("First Premier"). A true and accurate copy of the Lease Agreement is attached hereto and incorporated herein as **Exhibit 1**.

7. As consideration to induce First Premier to enter into the Lease Agreement and related Lease Schedule with Defendant Allied, Defendant Schwartz entered into an Absolute, Unconditional and Continuing Guaranty Agreement (the "Guaranty") to personally guaranty the payment and performance obligations of Defendant Allied pursuant to the Lease Agreement. A true and accurate copy of Defendant Schwartz's Guaranty is attached hereto and incorporate herein as **Exhibit 2**.

8. On or about May 1, 2008, First Premier entered into a Collateral Assignment of Lease Payments and Equipment with EastBank wherein First Premier collaterally assigned to EastBank the right to all lease payments due or to become due under the terms of the Lease Agreement and also assigned to EastBank all of First Premier's "rights, title, and interest in and to the personal property" subject to the Lease Agreement.

9. On or about July 20, 2009, the Comptroller of the Currency Administrator of National Banks officially certified a merger between EastBank and Franklin Bank whereby Franklin Bank became the surviving entity after merger.

10. Accordingly, Franklin Bank is the successor-in-interest to First Premier and EastBank by assignment, acquisition and merger.

11. The Lease Agreement provides in part:

**Charges**

...Lessee promises to pay Lessor the Charges in accordance with the Lease Schedule(s), and the payments shall be made at Lessor's address indicated thereon. The Monthly Charge shall be paid by Lessor's address indicted thereon. The Monthly Charges shall be paid by Lessee monthly in advance with the first full month's payment due on the Commencement Date. If the Installation Date does not fall on the first day of a month, the Charge for the period from the installation Date to the Commencement Date shall be an amount equal to the Monthly Charges provided by third (30) and multiplied by the number of days from and including the Installation date to the Commencement Date. Charges for taxes made in accordance with Section 4 and charges made under any other provision of this Lease Agreement and payable by Lessee shall be paid to Lessor at Lessor's address specified on the Lease Schedule(s) on the date specified in invoices delivered to Lessee. Lessee agrees that if payment as specified above is not received by Lessor on the due date, Lessee shall, to the extend permitted by law, pay on demand, as a late charge, an amount equal to one and one-half percent ( 1 ½%) or the maximum percentage allowed by law, whichever is less, of the amount then due for each thirty (30) days or portions thereof that said overdue payments are not made.

**Event of Default**

The occurrences of any of the following events shall constitute an event of default under this Lease Agreement and/or any Lease Schedule:

- ...  
(d) Lessee fails to make any payment owed to Lessor hereunder within fifteen (15) days after its due date;  
...

**Remedies**

Should any default occur and be continuing, Lessor may, in order to protect the interests and reasonably expected profits and bargain of Lessor, and with or without notice or demand upon, Lessee, pursue and enforce, successively and/or concurrently, any one or more of the following remedies:

- (a) Without retaking the Equipment
  - (1) recover from Lessee all accrued and unpaid Charges and other amounts then due and owing under the terms hereof,
  - (2) recover from Lessee from time to time all Charges and other amounts as and when becoming due hereunder,
  - (3) accelerate and cause to become immediately due and payable all Charges and other amounts due and/or likely to be come due hereunder and recover from Lessee the then worth to Lessor of such amounts,
  - (4) cause to become immediately due and payable and recover from Lessee (i) the then applicable Unrecovered Investment in the Equipment, plus (ii) the then worth to Lessor of its anticipated remaining loss of bargain;
  
- (b) Retake possession of the Equipment without liability to Lessee therefore which is hereby expressly waived, and
  - (1) terminate the term of this Lease Agreement as to the Equipment,
  - (2) recover from Lessee all accrued and unpaid Charges and other amounts owing under the terms hereof,
  - (3) sell the Equipment at public or private sale, and recover from Lessee the difference, if any, by which the Net Proceeds of sale shall be less than (i) the Lessor's then applicable Unrecovered Investment in the Equipment, plus (ii) the then worth to Lessor of its anticipated remaining loss of bargain,
  - (4) re-lease the Equipment to a third party for the account of Lessee and recover from Lessee

when becoming due any deficiency between the Charges provided herein and those received from such third party,

- (5) re-lease the Equipment to a third party for the account of Lessee and recover from Lessee the then worth to Lessor of any deficiency between the Charges provided herein and those receivable from such third party over the re-leased term,
  - (6) recover from Lessee the then worth to Lessor of the excess of the Charges reserved herein for the balance of the whole term (or any remaining term not covered by any re-lease) over the then reasonable rental value of the Equipment; and
- (c) Pursue any other remedy Lessor may otherwise have, at law, in equity or under any statute and recover such other actual damages as may be incurred by Lessor.

#### **Costs and Attorneys' Fees**

In addition to all other sums which Lessee may be called upon to pay under the provisions of this Lease Agreement, Lessee will pay to Lessor its reasonable costs of collection or other out-of-pocket costs and expenses and attorney's fees on account of this Lease Agreement.

#### **Miscellaneous**

This Lease Agreement, the Lease Schedule(s), attached riders, and any documents or instruments issued or executed pursuant hereto shall be governed by the laws of the State of Minnesota and constitute the entire Lease Agreement between Lessor and Lessee with respect to the Equipment superseding all prior correspondence between the parties...

The parties hereto submit to the jurisdiction of the courts of the State of Minnesota and Lessee hereby waive local venue with respect to claims arising out of this Lease Agreement...

THE LESSEE AND ANY GUARANTORS OF THE LESSEE'S OBLIGATIONS UNDER THIS LEASE AGREEMENT HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN

TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS LEASE AGREEMENT AND THE LEASE SCHEDULES OR THE RELATIONSHIP ESTABLISHED HEREUNDER.

12. The Guaranty provides in part:

Guaranty. Guarantor absolutely, unconditionally, and irrevocably guarantees to Lessor the due and punctual payment, observance and performance by Lessee of all of the obligations and liabilities of Lessee under the Lease, both present and future, and any and all subsequent renewals, continuations, modifications, supplements and amendments. If Lessee fail duly and punctually to pay, observe and perform any or all of the Obligations, Guarantor shall, upon demand by Lessor, immediately pay, perform and observe such Obligations strictly and in accordance with the terms of the Lease. This Guaranty shall be effective immediately and shall remain in full force and effect until all of the Obligations are paid, performed and observed in full.

Strict Observance. Guarantor agrees that the Obligations will be paid, performed, and observed strictly and in accordance with their terms, regardless of any rights of Lessee against Lessor. The obligations of Guarantor hereunder are without regard to the obligations of any other person or entity, and shall not be affected by any circumstances, including without limitation: (i) any act or omission by Lessor, which act or omission is hereby agreed to; (ii) any lack of enforcement or retention of rights against Lessee, Guarantor or any other person or entity or any property; ... (v) any failure, omission or delay on the part of Lessee or any other person or entity to comply with any term of the Lease; ... (vii) any voluntary or involuntary bankruptcy, insolvency, reorganization, composition, receivership or similar proceedings with respect to Lessee, Guarantor, or any other person or entity or any properties or creditors, or any taken by any court, trustee or receiver in any such proceeding; ... (x) any merger or consolidation of Lessee or Guarantor into or with any other corporation or entity, or any sale, lease or transfer of any of the assets of Lessee or Guarantor to any person or entity; (xi) any change in the ownership of Lessee, or any change in or termination of any relationship between Lessee and Guarantor...

Waivers of Notice, Etc. Guarantor waives diligence, presentment, demand, protest, or notice of any kind whatsoever with respect to this Guaranty or the Obligations, including without limitation ... (ii) any right to the enforcement, assertion or exercise of any right, power, privilege or remedy conferred in the Lease or otherwise, (iii) any requirement to exhaust any remedies or to mitigate damages resulting from a default under the Lease...

Guaranty of Performance, Etc This Guaranty is a guaranty of payment and performance .... Guarantor shall pay to Lessor all reasonable attorneys' fees and other reasonable expenses incurred by Lessor in protecting its interests hereunder or in exercising its rights and remedies provided hereunder, together with interest on such sums at the lesser of .05% per day or the maximum rate permitted by law, from the date which such expenses are incurred.

Acceleration. Guarantor agrees that if any Event of Default as defined in the Lease occurs, then any and all Obligations of the undersigned under this Guaranty or otherwise shall, at the Lessor's option and without notice, forthwith become due and payable by Guarantor.

Miscellaneous. This Guaranty shall be governed by the laws of the State of Minnesota. The Guarantor and Lessor hereby consent to the jurisdiction of any Federal or State Court located in Hennepin County for a determination of any dispute ... as to any matters whatsoever arising out of or in any way connected with this Guaranty and authorize service of process on the Guarantor by certified mail sent to the Guarantor at the address for the Guarantor as set forth herein below.

13. On or about May 1, 2008, Defendant Allied entered into Lease Schedule No. 016 pursuant to the terms and conditions of the Lease Agreement for purposes of leasing 50 LifeCare PLV 102 ventilators (the "Ventilators"). A true and accurate copy of Lease Schedule 016 is attached hereto and incorporated herein as **Exhibit 3**.

14. Pursuant to the Lease Agreement and Lease Schedule 016, Defendant Allied was required to pay \$6,000 per month for 60 consecutive months commencing on May 1, 2008. Defendant Schwartz guaranteed these payments.

15. The Defendants have defaulted on their obligations arising from the Lease Agreement, Lease Schedule 016 and the Guaranty for, among other things, failing to make payments as they came due.

16. Despite demand, Defendants have failed and refused to cure the defaults and they continue to possess and control the Ventilators described in Lease Schedule 016.

17. Pursuant to the terms of the Lease Agreement and Guaranty, Franklin Bank is entitled to attorneys' fees in the enforcement of the Lease Agreement and Guaranty.

18. The total amount presently due and owing from Defendants to Franklin Bank is \$216,000 plus interest, late fees, attorneys' fees, and costs, and applicable taxes all of which continue to accrue.

## **COUNT I**

### **Breach of Contract (Against Defendant Allied)**

19. Franklin Bank incorporates paragraphs 1 through 18 above as though set forth herein.

20. The parties' Lease Agreement and Lease Schedule 016 are enforceable contracts.

21. Pursuant to the contracts, the Ventilators were leased to Defendant Allied.



22. Defendant Allied breached the contracts by failing and refusing to remit payment for the leased Ventilators.

23. As a direct and proximate result, Franklin Bank has been damaged in an amount of \$216,000 plus interest, late fees, attorneys' fees, and costs, and applicable taxes all of which continue to accrue.

## **COUNT II**

### **Breach of Contract (Against Defendant Schwartz)**

24. Franklin Bank incorporates paragraphs 1 through 23 above as though set forth herein.

25. The Guaranty constitutes an enforceable contract.

26. Pursuant to the contracts, Franklin Bank leased the Ventilators to Defendant Allied and Defendant Schwartz guaranteed payment and performance.

27. Defendant Schwartz breached the Guaranty by failing and refusing to remit payment for the Ventilators.

28. As a direct and proximate result, Franklin Bank has been damaged in an amount of \$216,000 plus interest, late fees, attorneys' fees, and costs, and applicable taxes payable during the lease period.

WHEREFORE, Plaintiff Franklin Bank demands judgment jointly and severally against Defendants as follows:

1. Awarding Franklin Bank \$216,000, plus interest, late fees, attorneys' fees, and costs, and applicable taxes all of which continue to accrue.

2. For any and all incidental damages.
3. For such other relief as the Court shall deem just and equitable.

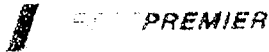
MESSERLI & KRAMER P.A.

Dated: July 30, 2010

s/ Benjamin J. Court  
John Harper III (#41397)  
Benjamin J. Court (#319016)  
1400 Fifth Street Towers  
100 South Fifth Street  
Minneapolis, Minnesota 55402  
(612) 672-3600

ATTORNEYS FOR PLAINTIFF

849770.1



5201 Eden Ave.  
Suite 180  
Edina, MN 55436  
(952)224-2450

Lease Agreement Number: ALL022207

## LEASE AGREEMENT

This Lease Agreement, dated as of the 22<sup>nd</sup> day of February, 2007, between FIRST PREMIER CAPITAL LLC

(the "Lessor") and Allied Health Care Services, Inc. (the "Lessee")  
(Lessee Legal Name)  
89 Main Street  
(Lessee Address)  
Orange, NJ 07051

Lessor has agreed to provide certain Equipment to Lessee subject to the terms of this Lease Agreement. Each item of Equipment and the financial terms applicable to it will be described in one or more Lease Schedules to be attached to this Lease Agreement. Each Lease Schedule shall constitute a separate, distinct, and independent lease and contractual obligation of Lessee. Each Lease Schedule shall incorporate this Lease Agreement by reference and shall be governed by the terms and conditions of this Lease Agreement as well as the terms and conditions in the Lease Schedule.

### 1. Term

This Lease Agreement is effective from the date it is executed by both parties. The term of this Lease Agreement as to all Equipment designated on any particular Lease Schedule shall commence on the Installation Date for all Equipment on such Lease Schedule and shall continue for an initial period ending that number of months from the Commencement Date as set forth in such Lease Schedule, (the "Initial Term") and shall continue from year to year thereafter until terminated. The term of this Lease Agreement as to all Equipment designated on any particular Lease Schedule may be terminated without cause at the end of the Initial Term or any anniversary date thereafter by either party mailing written notice of its termination to the other party not less than one hundred twenty (120) days prior to such termination date.

### 2. Commencement Date

The Installation Date for each item of Equipment shall be the day following the date said item of Equipment is delivered to the location of Installation and is ready for use. The Commencement Date for any Lease Schedule is the first of the month following Installation of all the Equipment on any Lease Schedule, unless the latest Installation Date for any Equipment on the Lease Schedule falls on the first day of the month, in which case that is the Commencement Date. If Lessor does not receive a Certificate of Acceptance which Lessee agrees to provide upon Installation of any item of Equipment or written notification of Lessee's dissatisfaction within seven days after receipt of any item of Equipment, Lessor will assume that Lessee is satisfied and accepts the Equipment.

### 3. Charges

The Charges for the Equipment delivered pursuant to this Lease Agreement shall be the aggregate Charges set forth on each and every Lease Schedule executed pursuant hereto. Lessee promises to pay Lessor the Charges in accordance with the Lease Schedule(s), and the payments shall be made at Lessor's address indicated thereon. The Monthly Charge shall be paid by Lessee monthly in advance with the first full month's payment due on the Commencement Date. If the Installation Date does not fall on the first day of a month, the Charge for the period from the Installation Date to the Commencement Date shall be an amount equal to the Monthly Charges divided by thirty (30) and multiplied by the number of days from and including the Installation date to the Commencement Date. Charges for taxes made in accordance with Section 4 and charges made under any other provision of this Lease Agreement and payable by Lessee shall be paid to Lessor at Lessor's address specified on the Lease Schedule(s) on the date specified in invoices delivered to Lessee. Lessee agrees that if payment as specified above is not received by Lessor on the due date, Lessee shall, to the extent permitted by law, pay on demand, as a late charge, an amount equal to one and one-half percent (1 1/2%) or the maximum percentage allowed by law, whichever is less, of the amount then due for each thirty (30) days or portions thereof that said overdue payments are not made.

### 4. Taxes

In addition to the Charges set forth in Section 3, Lessee shall be responsible for the timely payment and discharge of all license or registration fees, assessments, sales and use taxes, rental taxes, gross receipts taxes, personal property taxes and other taxes now or hereafter imposed by any federal, state or local government upon the Equipment, the Charges or upon

the ownership, leasing, renting, purchase, possession or use of the Equipment (whether the same be assessed to Lessor or Lessee). Lessee shall be responsible for the negotiating and filing of property taxes on the Equipment and shall indemnify Lessor to the extent of any such unpaid property taxes (including penalties and interest) and costs of Lessor associated therewith. Except as otherwise required by law or except as otherwise directed from time to time by Lessor, Lessee shall pay and discharge at least ten days before delinquency any and all such fees, assessments and taxes directly to the proper levying authority. Nothing herein shall be deemed to prevent Lessor from itself paying and discharging any such taxes, fees or assessments and Lessee shall pay to Lessor the amount of any such taxes, fees, or assessments remitted by Lessor within ten days of notice thereof. Lessee, upon notice to Lessor, may, in Lessee's own name, contest or protest any such taxes, except when in Lessor's sole opinion such contest is futile or will cause a levy or lien to arise on the Equipment or cloud Lessor's title thereto. Lessee shall, in addition, be responsible to Lessor for the payment and discharge of any penalties or interest. Nothing herein shall be construed to require Lessee to be responsible for any federal or state taxes or payments in lieu thereof, imposed upon or measured by the net income of Lessor, or state franchise taxes of Lessor.

### 5. Return to Lessor

Upon the termination of this Lease Agreement as to the Equipment on any Lease Schedule, Lessee shall prepare the Equipment for shipping and deliver and pay for such delivery of the Equipment to a destination of Lessor's choice. Lessee will bear the risk of loss until delivery of the Equipment to Lessor.

### 6. Maintenance

Lessee will keep the Equipment in good working order in accordance with the provision of the manufacturer's maintenance agreement and make all necessary adjustments and repairs to the Equipment so that upon the termination of this Lease Agreement, the Equipment shall be eligible for the manufacturer's standard maintenance agreement.

### 7. Location, Ownership and Use

Lessee acknowledges and agrees that (a) it does not have any title, property right or interest in the Equipment, except solely in the capacity of Lessee hereunder, (b) Lessor or its agents shall have the right to inspect the Equipment from time to time during reasonable business hours at its then-current location, (c) Lessee shall keep the Equipment at all times free and clear from all claims, levies, liens, encumbrances and process, (d) Lessee shall give Lessor immediate notice of any such attachment or other judicial process affecting any of the Equipment, and (e) Lessee shall not pledge, lend, create a security interest in, sublet or part with possession of the Equipment or any part thereof, or attempt in any manner to dispose thereof, or remove the Equipment or any part thereof, from the Location of Installation as specified in the appropriate Lease Schedule(s) without Lessor's written permission.

### 8. Financing Statement

Lessor is hereby authorized by Lessee to cause this Lease Agreement or other instruments, including Uniform Commercial Code Financing Statements, to be filed or recorded for the purposes of showing Lessor's interest in the Equipment. Lessee agrees to execute any such instruments as Lessor may request from time to time.

# EXHIBIT 1

Lessee agrees that if Article 2A-Leases of the Uniform Commercial Code applies to this Lease Agreement and any and all Lease Schedules to this Lease Agreement, the Lease Agreement and Lease Schedules shall be considered a "Finance Lease" as that term is defined in Article 2A. By signing this Lease Agreement and any Lease Schedules, Lessee agrees that either (a) Lessee has reviewed, approved and received a copy of the supply contract or (b) that Lessor has informed Lessee of the identity of the supplier, that Lessee may have rights under the supply contract, and that Lessee may contact the supplier for a description of those rights. TO THE EXTENT PERMITTED BY APPLICABLE LAW, LESSEE WAIVES ANY AND ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE BY ARTICLE 2A.

#### 9. Loss and Damage

Lessee assumes and shall bear the entire risk of loss, theft, destruction or damage of or to the Equipment (herein "loss or damage") from any cause, whether or not covered by insurance, and no such loss shall release Lessee of its obligation hereunder. In the event of loss or damage, Lessee shall restore the Equipment to, or, at the option of Lessor, replace it with like equipment in good condition and repair with clear title to Lessor, reasonable wear and tear excepted. Lessee shall give Lessor prompt notice of any damage to, or loss of, the Equipment or any part thereof.

#### 10. Insurance

Commencing upon delivery of the Equipment to Lessee and continuing thereafter, until Lessee has delivered possession of the Equipment to Lessor, Lessee, at its expense, shall keep the Equipment adequately insured with responsible insurers satisfactory to Lessor, and said insurance shall protect all interests of Lessor and be for such risks including the liability of Lessor for public liability and property damage and be in such amounts as Lessor may require. Said insurance shall be primary insurance and shall cover the interest of both the Lessor and Lessee in the Equipment, and shall protect both the Lessor and Lessee in respect to all risks arising out of the condition, delivery, installation, maintenance, use or operation of the Equipment. All such insurance shall provide for thirty (30) days prior written notice to Lessor of cancellation, restriction or reduction of coverage. Copies of all policies or certificates of insurance shall be delivered to Lessor by Lessee. In no event shall loss or damage insurance on the Equipment be in an amount less than (i) the then fair market value of the Equipment, (ii) replacement value of the Equipment or (iii) Lessor's Unrecovered Investment in the Equipment which ever is greater. For purposes of this Agreement, "Unrecovered Investment" shall mean those values which shall be assigned to an item or items of Equipment upon the disposition, loss, theft or destruction thereof, and shall be that value which, as of the date for its calculation and payment, will result (after provision for the recapture and payment of all applicable taxes) in no loss to the Lessor. Unrecovered Investment shall include, but is not limited to, rent, unearned income, residuals, and any costs, expenses and attorneys fees incurred to collect any amounts due and owing by Lessee hereunder.

#### 11. Warranties, Disclaimers and Indemnity

THE EQUIPMENT IS PROVIDED BY LESSOR "AS IS." LESSOR DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE EQUIPMENT, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR FREEDOM FROM INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY. LESSEE ACKNOWLEDGES THAT IT IS NOT RELYING ON LESSOR'S SKILL OR JUDGMENT TO SELECT OR FURNISH GOODS SUITABLE FOR ANY PARTICULAR PURPOSE AND THAT THERE ARE NO WARRANTIES WHICH ARE NOT CONTAINED IN THIS LEASE AGREEMENT. LESSOR SHALL NOT BE LIABLE FOR DAMAGES, INCLUDING SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE EQUIPMENT OR ITS USE BY LESSEE. Lessee shall be entitled to the benefit of any warranties provided by the manufacturer of the Equipment or additional warranties or service as defined on any Lease Schedule.

Lessee agrees that Lessor shall not be liable to Lessee for, and Lessee shall indemnify and hold Lessor harmless with respect to, any claim from a third party for any liability, claim, loss, damage or expense of any kind or nature caused, directly or indirectly, by: (1) the inadequacy of any Equipment for any purpose; (2) any deficiency or defect in any Equipment; (3) the use or performance of any Equipment; (4) any interruption or loss of service, use or performance of any Equipment; or (5) any loss of business or other special incidental or consequential damages whether or not resulting from any of the foregoing.

#### 12. Event of Default

The occurrences of any of the following events shall constitute an event of default under this Lease Agreement and/or any Lease Schedule:

- (a) Lessee fails to perform or observe any condition, covenant, representation or warranty under this Lease Agreement and fails to cure such default within fifteen (15) days after Lessor has sent Lessee notice of such default;
- (b) A receiver is appointed for Lessee, Lessee makes an assignment for the benefit of creditors, or a petition in bankruptcy is filed by or against Lessee;
- (c) Lessee becomes insolvent or fails generally to pay its debts as they become due, or any items of Equipment are levied against or seized, or a bulk sale of Lessee's inventory or assets is about to take place;
- (d) Lessee fails to make any payment owed to Lessor hereunder within fifteen (15) days after its due date;
- (e) Any representation or warranty made by Lessee hereunder or in any other document provided to Lessor proves to have been incorrect in any material respect when made; or
- (f) Lessee voluntarily dissolves or is dissolved or its existence is otherwise terminated.

#### 13. Remedies

Should any default occur and be continuing, Lessor may, in order to protect the interests and reasonably expected profits and bargain of Lessor, and with or without notice or demand upon, Lessee, pursue and enforce, successively and/or concurrently, any one or more of the following remedies:

- (a) Without retaking the Equipment
  - (1) recover from Lessee all accrued and unpaid Charges and other amounts then due and owing under the terms hereof,
  - (2) recover from Lessee from time to time all Charges and other amounts as and when becoming due hereunder,
  - (3) accelerate and cause to become immediately due and payable all Charges and other amounts due and/or likely to be come due hereunder and recover from Lessee the then worth to Lessor of such amounts,
  - (4) cause to become immediately due and payable and recover from Lessee (i) the then applicable Unrecovered Investment in the Equipment, plus (ii) the then worth to Lessor of its anticipated remaining loss of bargain;
- (b) Retake possession of the Equipment without liability to Lessee therefore which is hereby expressly waived, and
  - (1) terminate the term of this Lease Agreement as to the Equipment,
  - (2) recover from Lessee all accrued and unpaid Charges and other amounts owing under the terms hereof,
  - (3) sell the Equipment at public or private sale, and recover from Lessee the difference, if any, by which the Net Proceeds of sale shall be less than (i) the Lessor's then applicable Unrecovered Investment in the Equipment, plus (ii) the then worth to Lessor of its anticipated remaining loss of bargain,
  - (4) re-lease the Equipment to a third party for the account of Lessee and recover from Lessee when becoming due any deficiency between the Charges provided herein and those received from such third party,
  - (5) re-lease the Equipment to a third party for the account of Lessee and recover from Lessee the then worth to Lessor of any deficiency between the Charges provided herein and those receivable from such third party over the re-leased term,
  - (6) recover from Lessee the then worth to Lessor of the excess of the Charges reserved herein for the balance of the whole term (or any remaining term not covered by any re-lease) over the then reasonable rental value of the Equipment; and
- (c) Pursue any other remedy Lessor may otherwise have, at law, in equity or under any statute and recover such other actual damages as may be incurred by Lessor.

"Net Proceeds" shall mean the amount received in cash upon the sale of the Equipment, less all expenses incurred by or for Lessor in connection with such sale, including reconditioning and removal expenses, repair costs, commissions, reasonable attorney's fees and less all sums accrued and unpaid to Lessor pursuant to this Lease Agreement to the date of such sale. Lessor's pursuit and enforcement of any one or more remedies shall not be deemed an election or waiver by Lessor of any other remedy. Lessor shall attempt in good faith to mitigate its damages, but Lessor shall not be obligated to sell or re-lease the Equipment. Any sale or re-lease may be held at such place or places as are selected by Lessor, with or without having the Equipment present. Any such sale or re-lease, may be at wholesale or retail, in bulk or in parcels. For purposes of determining the worth to Lessor of any amounts, said amounts shall be discounted at a rate of five percent (5%) per annum. Time and exactitude at each of the terms and conditions of the Lease Agreement are hereby declared to be of the essence. Lessor may accept past due payments

without modifying the terms of this Lease Agreement and without waiving any further rights of Lessor hereunder. Except as expressly provided herein, neither Lessee nor Lessor shall be liable to the other for any consequential or incidental damages.

**14. Costs and Attorneys' Fees**

In addition to all other sums which Lessee may be called upon to pay under the provisions of this Lease Agreement, Lessee will pay to Lessor its reasonable costs of collection or other out-of-pocket costs and expenses and attorney's fees on account of this Lease Agreement.

**15. Assignments**

This Lease Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Lessee, however, shall not assign this Lease Agreement or sublet any of the Equipment without first obtaining the prior written consent of Lessor. Lessee acknowledges that the terms and conditions of this Lease Agreement have been fixed in anticipation of the possible assignment of Lessor's rights under this Lease Agreement and in and to the Equipment as collateral security to a third party ("Assignee") which will rely upon and be entitled to the benefit of this Lease Agreement. Lessee agrees with Lessor and such Assignee to recognize in writing any such assignment within fifteen (15) days after receipt of written notice thereof and to pay thereafter all sums due to Lessor hereunder directly to such Assignee as directed by it, notwithstanding any defense, set-off or counterclaim whatsoever (whether arising from a breach of this Lease Agreement or not) that Lessee may from time to time have against Lessor. Upon such assignment, the Lessor shall remain obligated to perform any obligations it may have under the Lease Agreement and the Assignee shall (unless otherwise expressly agreed to in writing by the Assignee) have no obligation to perform such obligations. Any such assignment shall be subject to Lessee's rights to the use and possession of the Equipment so long as Lessee is not in default hereunder.

**16. Miscellaneous**

This Lease Agreement, the Lease Schedule(s), attached riders, and any documents or instruments issued or executed pursuant hereto shall be governed by the laws of the State of Minnesota and constitute the entire Lease Agreement between Lessor and Lessee with respect to the Equipment superseding all prior correspondence between the parties. No provision of this Lease Agreement shall be deemed waived, amended or modified by either party unless such waiver, amendment or modification is in writing and signed by each of the parties hereto.

Upon request, Lessee agrees to provide Lessor, and any assignee or potential assignee of Lessor, Lessee's most recent annual financial statement (audited, if available) and its most current interim financial statements along with any additional information Lessor may require on any guarantors if applicable.

The parties hereto submit to the jurisdiction of the courts of the State of Minnesota and Lessee hereby waives local venue with respect to claims arising out of this Lease Agreement.

Any notice provided for herein shall be in writing and sent by certified or registered mail to the parties at the addresses stated on page 1 of the Lease Agreement.

Accepted by:

FIRST PREMIER CAPITAL LLC

By: [Signature]  
(Signature)

Name: Stephen V. Alpeter  
(please type or print)

Title: Partner

Date: 3/5/07

Lease Agreement No: ALL022207

This Lease Agreement shall not become effective until delivered to Lessor at its offices at Edina, Minnesota and there executed by Lessor.

This Lease Agreement is made subject to the terms and conditions included herein and Lessee's acceptance is effective only to the extent that such terms and conditions are consistent with the terms and conditions herein. Any acceptance which contains terms and conditions which are in addition or inconsistent with the terms and conditions herein will be a counter-offer and will not be binding unless agreed to in writing by Lessor.

The parties hereto covenant and warrant that the persons executing this Lease Agreement and each Lease Schedule on their behalf have been duly authorized to so execute this Agreement, and this Agreement constitutes a valid and binding obligation of the parties hereto.

The terms used in this Lease Agreement, unless otherwise defined, shall have the meanings ascribed to them in the Lease Schedule(s).

THE LESSEE AND ANY GUARANTORS OF THE LESSEE'S OBLIGATIONS UNDER THIS LEASE AGREEMENT HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS LEASE AGREEMENT AND THE LEASE SCHEDULES OR THE RELATIONSHIPS ESTABLISHED HEREUNDER.

If any of the terms of this Lease Agreement are in conflict with any rule of law or statutory provision or otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms will be deemed stricken from this Lease Agreement, but such invalidity or unenforceability will not invalidate any of the other terms of this Lease Agreement and this Lease Agreement will continue in force, unless the invalid or unenforceable provisions comprise an integral part of, or are otherwise inseparable from, the remainder of this Lease Agreement.

**17. Net Lease Agreement**

This Lease Agreement is a net Lease Agreement and Lessee's obligation to pay all Charges and other amounts payable hereunder shall be absolute and unconditional and, except as expressly provided herein, shall not be subject to any abatement, reduction, defense, counterclaim, set-off, or recoupment, including any present or future claim against Lessor or the manufacturer of the Equipment. Except as expressly provided herein, this Lease Agreement shall not terminate for any reason, including any defect in the Equipment or Lessor's title thereto or any destruction or loss of use of any item of Equipment. LESSEE ACKNOWLEDGES THAT IT HAS RECEIVED A COPY OF LESSOR'S CONTRACT, IF ANY, FOR PURCHASE OF ALL EQUIPMENT EXISTING ON THE DATE OF THIS LEASE AGREEMENT AND THAT IT HAS THE RIGHT TO RECEIVE A COPY OF THE CONTRACT OF PURCHASE FOR ALL FUTURE EQUIPMENT UNDER THIS LEASE AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be signed by their respective duly authorized representative.

Accepted by:

ALLIED HEALTH CARE SERVICES, INC.

By: [Signature]  
(Signature)

Name: CHARLES K. SCHWARTZ  
(please type or print)

Title: PROS

Date: 2/27/07

**ABSOLUTE, UNCONDITIONAL  
AND  
CONTINUING GUARANTY AGREEMENT**

**THIS AGREEMENT**, made and entered into by and between **First Premier Capital LLC** ("Lessor") and **Charles K. Schwartz** ("Guarantor").

RECITALS:

Allied Health Care Services, Inc. ("Lessee") has requested that Lessor and Lessee enter into a Lease Agreement No. ALL022207 dated February 22, 2007 under and by virtue of which Lessor will purchase and may from time to time in the future purchase, at the request of the Lessee, personal property (the "Equipment") to be leased by Lessor to Lessee pursuant to the terms of such Lease Agreement, together with all Lease Schedules, attachments and riders attached or to be attached thereto (the "Lease"); and

**WHEREAS**, Lessor as a condition precedent to entering into said Lease has requested Guarantor provide security by unconditionally guaranteeing payment to Lessor of all rental and moneys due and to become due to Lessor from Lessee together with all of the obligations and liabilities of Lessee under the Lease (the "Obligations"); and

**WHEREAS**, Guarantor, in furtherance of his business and/or investment objectives is willing to provide such security hereinafter set forth;

**NOW, THEREFORE**, in order to induce Lessor to enter into the Lease and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Guarantor agrees as follows:

1. **Guaranty.** Guarantor absolutely, unconditionally and irrevocably guarantees to Lessor the due and punctual payment, observance and performance by Lessee of all of the obligations and liabilities of Lessee under the Lease, both present and future, and any and all subsequent renewals, continuations, modifications, supplements and amendments. If Lessee fails duly and punctually to pay, observe and perform any or all of the Obligations, Guarantor shall, upon demand by Lessor, immediately pay, perform and observe such Obligations strictly in accordance with the terms of the Lease. This Guaranty shall be effective immediately and shall remain in full force and effect until all of the Obligations are paid, performed and observed in full.

2. **Strict Observance.** Guarantor agrees that the Obligations will be paid, performed, and observed strictly in accordance with their terms, regardless of any rights of Lessee against Lessor. The obligations of Guarantor hereunder are without regard to the obligations of any other person or entity, and shall not be affected by any circumstances, including without limitation: (i) any act or omission by Lessor, which act or omission is hereby agreed to; (ii) any lack of enforcement or retention of rights against Lessee, Guarantor or any other person or entity or any property; (iii) partial or complete illegality, unenforceability or invalidity of the Obligations, or any other guaranty, surety, pledge, assignment or other security for any Obligations; (iv) any termination or amendment of or change in the Lease or any other instrument, or the Equipment or any part thereof, or any leasing, assignment, mortgage or transfer of any thereof or of any interest therein, or any furnishing, acceptance, failure or release of any interest in any such security; (v) any failure, omission or delay on the part of Lessee or any other person or entity to comply with any term of the Lease (vi) any waiver of the payment, performance or observance of any of the Obligations, or any other waiver, consent, extension, indulgence, compromise, settlement or release in respect of the Lease or any obligation or liability of Lessee or Lessor or any exercise or non-exercise of any right, remedy, power or privilege in respect of the Lease or any Obligation; (vii) any voluntary or involuntary bankruptcy, insolvency, reorganization, composition, receivership or similar proceedings with respect to Lessee, Guarantor, or any other person or entity or any properties or creditors, or any taken by any court, trustee or receiver in any such proceeding; (viii) any limitation on the liability or obligations of Lessee or any other person or entity under the Lease or any discharge termination, cancellation or frustration, in whole or in part, of the Lease; (ix) any defect in the title or condition of, or any damage to or loss or destruction of the Equipment, or any portion thereof; (x) any merger or consolidation of Lessee or Guarantor into or with any other corporation or entity, or any sale, lease or transfer of any of the assets of Lessee or Guarantor to any other person or entity; (xi) any change in the ownership of Lessee, or any change in or termination of any relationship between Lessee and Guarantor; or (xii), any other condition circumstances which might otherwise constitute a legal or equitable discharge, release or defense of a surety or Guarantor. No delay in making demand on Guarantor for satisfaction of the obligations of Guarantor hereunder shall prejudice the right of Lessor to enforce the obligations of Guarantor hereunder.

3. **Waivers of Notice, Etc.** Guarantor waives diligence, presentment, demand, protest or notice of any kind whatsoever with respect to this Guaranty or the Obligations, including without limitation (i) notice of acceptance of this Guaranty, notice of nonpayment or nonperformance of any of the Obligations, notice of an Event of Default (as defined in the Lease) or other default and notice of any of the matters described in Paragraph 2 hereof, (ii) any right to the enforcement, assertion or exercise of any right, power, privilege or remedy conferred in the Lease or otherwise, (iii) any requirement to exhaust any remedies or to mitigate damages resulting from a default under the Lease; (iv) any notice of any sale, transfer or other disposition of any right, title to or interest in the Lease, the equipment or any collateral security, or any part thereof, or (v) any requirement of promptness in commencing suit, action or other proceeding and the giving to or making any claim or demand on Guarantor, Lessee or any other person or entity. Guarantor agrees that it shall not be required or have the right to consent to, or to receive any notice of, any supplement to or amendment of, or waiver or modification of, the terms of this Lease. No notice to or demand on Guarantor shall entitle Guarantor to any other or further notice or

demand in the same, similar or other circumstances.

4. Extensions, Etc. Lessor may in its sole discretion, at any time or from time to time, (i) renew, extend, change or modify the time, manner, place or terms of payment, performance or observance of any or all of the Obligations, (ii) apply payments by Lessee or Guarantor to any Obligations or any other Obligations or liability of Lessee or Guarantor to Lessor, (iii) exchange, release or surrender any security or property which may at any time be held by it, (iv) release any surety or guarantor for or of any of the Obligations (v) settle or compromise any or all of the Obligations with Lessee or any other person or entity liable thereon or (vi) subordinate the payment, performance or observance of any other debts or obligations which may be due or owing to Lessor or any other person or entity, all in such manner and upon such terms as Lessor may deem proper, without notice to or further assent from Guarantor.

5. No Waiver. No failure by Lessor to exercise, and no delay in exercising, this Guaranty shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy, of Lessor.

6. Guaranty of Performance, Etc. This Guaranty is a guaranty of payment and performance and not of collection. Guarantor shall pay to Lessor all reasonable attorneys' fees and other reasonable expenses incurred by Lessor in protecting its interests hereunder or in exercising its rights and remedies provided hereunder, together with interest on such sums at the lesser of .05% per day or the maximum rate permitted by law, from the date which such expenses are incurred.

7. Bankruptcy Etc. If at any time all or any part of any payment or performance theretofore applied by Lessor to any of the obligations is or must be rescinded or returned by Lessor for any reason whatsoever (including without limitation the insolvency, bankruptcy or reorganization of Lessee), such Obligations shall, for the purposes of this Guaranty, be deemed to have continued to be effective or be reinstated, as the case may be, as to such Obligations, all as though such application by Lessor had not been made. If an event permitting the declaration of default under the Lease occurs and such declaration of default is prevented by reason of any case or proceeding under a bankruptcy or insolvency law, for purposes of this Guaranty and its Obligations hereunder, the Lease shall be deemed to have been declared in default; and Guarantor shall pay the amounts specified by Lessor to be paid thereunder without further notice or demand.

8. Assignment. Lessor may at any time sell, assign, transfer or otherwise dispose of all or any part of its interest in this Guaranty and, in such event, this Guaranty shall inure to the benefit of, and be enforceable by, the successors and assigns of Lessor, assign any interest hereunder or related hereto (including without limitation any claim arising by subrogation).

9. Guarantor's Obligation: No Set-off. Guarantor's obligation hereunder shall be absolute and unconditional and shall not be subject to any right of set-off, recoupment, deduction or other defense which Guarantor or any other person or entity may now or hereafter have against Lessor. All such payments made shall be final, and Guarantor will not seek to recover for any reason whatsoever any such payments made.

10. Limitations on Subrogation. Guarantor shall have no right of subrogation, reimbursement or indemnity whatsoever, and no right of recourse to or with respect to any assets or property of Lessee and waives any right to enforce any remedy which Lessor now has or may hereinafter have against Lessee until all of the Obligations have been paid in full, performed and observed. Any subrogation right to which Guarantor becomes entitled and any other obligation of any kind owing from Lessee to Guarantor shall be subject and subordinate to the rights of Lessor against Lessee under the Lease. No payment or performance hereunder by Guarantor shall give rise to any claim of Guarantor against Lessor.

11. Arbitration. All controversies, claims and disputes arising out of or relating to this Guaranty, the Lease, or the breach of either thereof, except as otherwise provided in this Guaranty or in the Lease, shall be decided by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect; provided, however, this agreement to arbitrate shall not apply to (i) any claim in excess of \$25,000.00, (ii) any claim by Lessor for provisional remedies to obtain or recover possession of the Equipment, or (iii) any disputes if Lessee is a debtor in a proceeding under the Federal Bankruptcy Laws.

12. Acceleration. Guarantor agrees that if any Event of Default as defined in the Lease occurs, then any and all Obligations of the undersigned under this Guaranty or otherwise shall, at the Lessor's option and without notice, forthwith become due and payable by Guarantor.

13. Miscellaneous. This Guaranty shall be governed by the laws of the State of Minnesota. The Guarantor and Lessor hereby consent to the jurisdiction of any Federal or State Court located in Hennepin County for a determination of any dispute, outside of those that are resolved in arbitration, as to any matters whatsoever arising out of or in any way connected with this Guaranty and authorize service of process on the Guarantor by certified mail sent to the Guarantor at the address for the Guarantor as set forth herein below.

14. Severability. Any provision of this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceable, provision without invalidating the remaining provisions hereof, Guarantor and Lessor hereby waive any provisions of law which renders any provision hereof prohibited or unenforceable in any respect.

15. Entire Agreement. This Guaranty constitutes the entire agreement of Guarantor and Lessor with respect to the subject matter

## Redacted

hereof. All prior or contemporaneous understanding or agreements, written or oral, between Guarantor and Lessor with respect to the subject matter hereof are hereby entirely superseded.

IN WITNESS WHEREOF, the Guarantor, intending to be legally bound hereby, has duly executed this Guaranty Agreement to be duly executed this 27th day of Feb, 2007.

INDIVIDUAL GUARANTOR:

By: Charles K. Schuster

Name: Charles K. Schuster

SS: 

Home Address: 37 Timberline Dr.  
Sparta, NJ 07871



**LEASE SCHEDULE NO. 016**

This Lease Schedule is issued pursuant to the Lease Agreement No. ALL022207 and dated as of February 22, 2007 by and between the undersigned.

LESSOR  
 First Premier Capital LLC  
 5201 Eden Ave., Suite 180  
 Edina, MN 55436

LESSEE  
 Allied Health Care Services, Inc.  
 89 Main St.  
 Orange, NJ 07051

All terms and conditions of the above described Lease Agreement are incorporated herein and made part hereof as if such terms and conditions were set forth in this Lease Schedule. The Lessee and Lessor reaffirm all of the terms and conditions of the Lease Agreement except as modified hereby.

Equipment Location: Same as above.

Term of Lease from Commencement Date: 60 months      Commencement Date: 05/01/2008

Monthly Lease Charge:      \$6,000.00

Security Deposit: Lessee shall deliver upon execution of this Lease Schedule by Lessee, a Security Deposit in the amount of \$6,000.00.

Equipment Description:

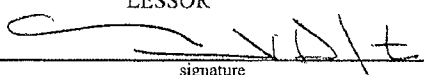
<u>Manufacturer</u>	<u>Qty</u>	<u>Machine/Model</u>	<u>Equipment Description</u>
LifeCare	50	PLV 102	Ventilators as Described in Attached Exhibit A

Lessor reserves the right to discontinue funding on Lease Schedule No. 016 at any time based on any material adverse change in the Lessee's financial condition, a change in the Equipment Configuration or any delay in the delivery and acceptance of the Equipment. The Monthly Lease Charge will be prorated on an interim basis until Lease Commencement. Provided that no Default shall have occurred and be continuing, Lessee shall be entitled, at its option, upon written notice to Lessor at least 120 days prior to the end of the Initial Term, to purchase all but not less than all of the above described Equipment, on an AS-IS WHERE-IS basis, at a purchase price equal to one dollar (\$1.00).

Accepted By:

Accepted By:

FIRST PREMIER CAPITAL LLC  
 "LESSOR"

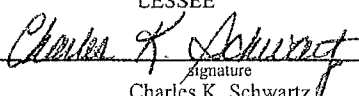
By:   
signature

Name: Stephen V. Alpeter  
please print or type

Title: Partner

Date: 5/1/08

ALLIED HEALTH CARE SERVICES, INC.  
 "LESSEE"

By:   
signature

Name: Charles K. Schwartz  
please print or type

Title: President

Date: 4/24/08

**EXHIBIT 3**

Exhibit A  
to  
Lease Agreement No. ALL022207  
Lease Schedule No. 016  
Equipment Description

<u>Mfg</u>	<u>Qty</u>	<u>Mach/Mod</u>	<u>Equipment Description</u>	<u>Serial Number</u>
LifeCare	50	PLV 102	Ventilators	142000
				142001
				142002
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				142056

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Franklin National Bank of Minneapolis, a national banking association

(b) County of Residence of First Listed Plaintiff Hennepin (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Benjamin J. Court, Messerli & Kramer P.A., 1400 Fifth Street Towers, 100 South Fifth Street, Minneapolis, MN 55402-1217

DEFENDANTS

Allied Health Care Services, Inc., et al.

County of Residence of First Listed Defendant Essex County, New Jersey (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332

Brief description of cause: Breach of Contract

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

07/30/2010 s/ Benjamin J. Court

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE