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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

In Re:	:	Ch.11 Case No.08-76313-dte
	:	Chapter 7
JOHN RICHARD CONSTABLE d/b/a	:	
ROJOHN AMUSEMENTS,	:	
	:	
Debtor.	:	
	:	
HL LEASING, INC.	:	Adversary Case No._____
	:	
Plaintiff,	:	
	:	
JOHN RICHARD CONSTABLE d/b/a	:	
ROJOHN AMUSEMENTS,	:	
	:	
Defendant.	:	

**COMPLAINT TO DETERMINE NON-DISCHARGEABILITY  
OF DEBT TO PLAINTIFF**

Plaintiffs, HL LEASING, INC., through counsel, as and for their complaint against defendants JOHN RICHARD CONSTABLE d/b/a ROJOHN AMUSEMENTS upon their knowledge and upon information and belief as to other matters, allege as follows:

**PARTIES**

1. Plaintiff, HL Leasing, Inc. (“HL Leasing” or “Plaintiff”) is a corporation with an office for the transaction of business at 3439 West Shaw Avenue, Fresno, California 93711.

2. Upon information and belief, defendant John Constable, individually and d/b/a RoJohn Amusements (“Constable” or “Defendant”) was and is a resident of the State of New York, residing at 56 Timber Ridge Drive, Holbrook, New York 11741.

### **JURISDICTION AND VENUE**

3. On November 10, 2008 (the “Petition Date”), Defendant, John Constable, individually and d/b/a RoJohn Amusements filed a voluntary petition for relief pursuant to chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of New York.

4. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 157 and § 1334.

5. This is an action pursuant to Rules 4007 and 7001 of the Federal Rules of Bankruptcy Procedure for a determination that a debt owed by Defendant to Plaintiff is not dischargeable under §§ 523(a)(2)(A), and (a)(6) of the Bankruptcy Code. As such this matter is a core proceeding under 28 U.S.C. §157 (b)(2)(A),(I) and (O).

6. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **ALLEGATIONS COMMON TO EACH COUNT**

#### **Lease No. 12289**

7. On or about February 3, 2005, Defendant entered into Lease Agreement #12289 (“Lease 12289”) in writing, with American Capital Group (“ACG”), whereby he leased twenty-nine (29) Single Crane Machines, with Bill Stacker, SN#s: 8809-8838 (the “Equipment #1”) for a lease term of forty-eight (48) months, with monthly rentals due as follows: a deposit of \$3,397.56, due on execution of Lease 12289, followed by one (1) payment of \$1,698.78; followed by three (3) payments of \$100.00 each; followed by forty-four (44) payments, each in

the amount of \$1,698.78. A copy of Lease 12289 along with the various Schedules and Addendums thereto is annexed hereto as **Exhibit “A”**.

8. On September 1, 2005, Lease 12289 was assigned to Pentech Financial Services, and on December 30, 2005, it was assigned to HL. A copy of the assignments are annexed hereto as **Exhibit “B.”**

9. Plaintiff perfected its security interest in the Equipment in the State of New York. A copy of the UCC Financing Statement Amendment is annexed hereto as **Exhibit “C”**.

**Lease No. 5922**

10. On or about January 5, 2005, the Debtor entered into Lease Agreement #5922 (“Lease 5922”) in writing with American Capital Group, whereby Defendant leased twenty-nine (29) New Super Single Crane Machines with ICT Stacker, 50 Cent Vend., Liberty Art Work, Med. Claw (“Equipment #2”) for a lease term of forty-eight (48) months, with monthly rentals due as follows: a deposit of \$3,397.56, due on execution of Lease 5922, followed by one (1) payment of \$1,698.78; followed by three (3) payments of \$100.00 each; followed by forty-four (44) payments, each in the amount of \$1,698.78. A copy of Lease 5922 along with the various Schedules and Addendums thereto is annexed hereto as **Exhibit “D”**.

11. ACG perfected its security interest in Equipment #2 by filing a UCC-1 Financing Statement with the Secretary of State of New York. A copy of the UCC-1 is annexed hereto as **Exhibit “E.”**

12. On September 1, 2005, Lease 5922 was assigned to Pentech Financial Services, and on December 30, 2005, it was assigned to HL Leasing. See **Exhibit “B.”**

13. Paragraph 3 of Lease 12289 and Lease 5922 entitled “Equipment Location” provide that the Equipment will be kept at the location shown on the front of the Leases and that

the Equipment may not be removed without prior written consent of the Lessor. Concurrent with the execution of the Leases, Defendant, John Constable, provided to HL Leasing a handwritten location list (the "List"). The addresses on the List were all located in the State of New York. A copy of the List is annexed hereto as **Exhibit "F."**

### **THE DEBTOR'S DEFAULT UNDER THE LEASES**

14. The Debtor subsequently defaulted under the Lease 12289 by failing to make certain monthly installment payments as they came due. Specifically, the Debtor made payments to HL Leasing of the monthly installments due under Lease 12289 through and including February 5, 2008, but failed and refused to make payment of the March 5, 2008 installment, or any additional installments despite repeated demands.

15. The Debtor subsequently defaulted under Lease 5922 by failing to make certain monthly installment payments as they came due. Specifically, the Debtor made payment to HL Leasing of the monthly installments due under Lease 5922 through and including February 5, 2008, but failed and refused to make payment of the March 5, 2008 installment, or any additional installments despite repeated demands.

16. On May 9, 2008, HL Leasing learned for the first time that Equipment #1 and Equipment #2 were now located in Puerto Rico and not in the State of New York. The removal of Equipment #1 and Equipment #2 were not authorized and consented to by the HL Leasing and in violation of the term of the Leases.

17. Defendant misrepresented to Plaintiff with false, untrue and misleading information, *inter alia*, the location of the Equipment, for the sole purpose to induce Plaintiff to enter into the Lease Agreements. Plaintiff relied on the false, untrue and misleading information to extend credit and finance the purchase of the Equipments leased to the Defendant.

18. Thereafter, on or about May 20, 2008, HL, successor-in-interest to ACG, initiated a cause of action in the Supreme Court of the State of New York, County of Suffolk, Index No. 18964-08 (the “State Court Action”) against the Debtor for monies due under Lease 12289 and Lease 5922.

19. The State Court Action was resolved via Stipulation of Settlement executed on July 10, 2008. The Debtor defaulted under the Stipulation of Settlement by failing to make payment of, among other things, the legal and late fees due under Paragraph 17 of the Stipulation of Settlement.

20. Defendant misrepresented to Plaintiff on the Stipulation of Settlement that he would make the payments provided for the Stipulation of Settlement but, in truth, the Defendant no longer had dominion and control over Equipment #1 and Equipment #2 and he had no intention of making the payments and in fact did not.

21. Concurrent with the execution of the Stipulation of Settlement of the State Court Action, the Debtor represented to HL Leasing the exact location of Equipment #1 and Equipment #2 (collectively, the “Collateral”) in Puerto Rico.

22. In truth, Defendant had converted the Collateral and treated it as his own so that he can hypothecate, exchange, or sell the Collateral to satisfy outstanding debts or further his own interests. Defendant did not advise Plaintiff of his true intent.

23. The Defendant had breach Lease 12289 and Lease 5922 by exchanging, selling and/or transferring the Collateral without Plaintiff’s express authorization.

24. On November 10, 2008 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code.

25. On November 10, 2008, Allan B. Mendelsohn (the “Trustee”) was appointed the Chapter 7 Trustee of the Debtor.

26. Since the Petition Date, HL has not received any payments under Lease 12289 or Lease 5922. Accordingly, HL’s interest in the Collateral is not adequately protected.

27. Further, the fair market value of the Collateral as listed on Schedule D of the Debtor’s Petition is \$17,400.00. See Debtor’s Petition, Schedule D. Specifically, the Debtor’s Petition lists \$8,700.00 as the fair market value for both Equipment #1 and Equipment #2.

28. The outstanding balance due under Lease 12289 is \$16,732.07.

29. The outstanding balance due under Lease 5922 is \$15,058.12.

**First Count**

*(for a determination that the debt to Plaintiff is non-dischargeable pursuant to § 523(a)(2)(A) of the Bankruptcy Code)*

30. Plaintiffs repeat and reiterate each of the allegations contained in the Complaint Number 1 through 29 as if more fully set forth at length herein.

31. Defendant represented to Plaintiff that any sale or transfer by him of the Collateral would be subject to Plaintiff’s express consent.

32. Defendant represented to Plaintiff that the Collateral was to be kept in State of New York but he moved the Collateral to Puerto Rico without authorization or the express consent of HL Leasing.

33. Defendant represented to Plaintiff that he had merely relocated the Collateral but in truth, he had converted the Collateral.

34. Defendant represented to others that he owned the Collateral and was free to hypothecate, trade, sell or transfer at his own discretion.

35. Each of the foregoing representations made by Defendant was materially false when made. Defendant knew or should have known that the foregoing representations were false when made.

36. Defendant made such false representations with the specific intent to mislead the Plaintiff for his own personal benefit or in furtherance of his own personal interests.

37. Through Defendant's conversion, unauthorized sale and/or transfer of the Collateral, Defendant obtained money, property or services by false pretenses, false representation or actual fraud.

38. Accordingly, the debt owed by Defendant to Plaintiff is not dischargeable pursuant to § 523(a)(2)(A) of the Bankruptcy Code.

**Second Count**

*(for a determination that the debt to Plaintiff is non-dischargeable pursuant to § 523(a)(6) of the Bankruptcy Code)*

39. Plaintiffs repeat and reiterate each of the allegations contained in the Complaint Number 1 through 38 as if more fully set forth herein at length.

40. By converting the Collateral, and hypothecating, trading, selling or transferring the Collateral, without the authorization or consent of Plaintiff, Defendant willfully and maliciously caused damage and injury to the property of Plaintiff.

41. Accordingly, the debt owed by Defendant to Plaintiff is not dischargeable pursuant to § 523(a)(6) of the Bankruptcy Code

**Relief Requested**

**WHEREFORE**, Plaintiff demands relief as follows:

(a) determining the debt owed by Defendant to Plaintiff is not dischargeable pursuant to § 523(a)(2)(A) and/or (a)(6) of the Bankruptcy Code; and

(b) awarding Plaintiff the cost and expenses, including reasonable attorneys' fees and the costs of suit; and

(c) awarding Plaintiff such other and further relief as may be just and proper.

Dated: New York, N.Y.  
January 26, 2009

Respectfully submitted,

*s/Andrew B. Helfand*  
Andrew B. Helfand, Esq.  
Michael C. D'Aries, Esq.  
Helfand & Helfand  
60 East 42<sup>nd</sup> Street, Suite 1048  
New York, NY 10165  
(212) 599-3303  
Attorneys for Plaintiffs

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# American Capital Group Lease Agreement

TO OUR VALUED CUSTOMER: This Lease has been written in "Plain English". When we use the words you and your in the Lease, we mean you our customer, which is the Lessee indicated below. When we use the words we, us, and our in this Lease, we mean the Lessor, American Capital Group, Inc. Our address is 175 Technology Dr. Ste 100 Irvine, CA 92618.

<b>CUSTOMER INFORMATION</b>	Lessee Name John Constable dba RoJohn Amusements		Lease # 101665-03 AC
	Billing Street Address 56 Timber Ridge Drive Holbrook, NY 11741		Tax ID# NONE
	Equipment Location (If different from above)		Lessee Phone # 631-472-1228
<b>SUPPLIER INFORMATION</b>	Company Name United Textile Fabricators		Contact
	Address 21 Germania Station Rd. Toms River, NJ 08755		Phone #
<b>EQUIPMENT DESCRIPTION</b>	Quantity 29	Make/Model Single Crane Machines, with Bill Stacker SN#'s 8809-8838	Serial Number
<b>TERM AND PAYMENT</b>	Monthly Rent (Plus Applicable Taxes) See schedule B attached hereto	Base Term In Months 48 months	Deposit \$3,397.56
	Deposit Applied To Two Advanced Payments		
This Lease shall become effective upon acceptance by us by signing and dating this Lease and the term of this Lease shall begin on the day the Equipment has been delivered to and is usable by you ("Commencement Date"). The base term of this Lease shall begin on the first day of the month following the Commencement Date and terminate upon the expiration of the number of months stated under Lease Term.			
<b>INSURANCE &amp; TAXES</b>	You are required to provide and maintain insurance related to the Equipment, and to pay any property, use and other taxes related to this Lease or the Equipment. (See sections 4 and 7 of this Lease) If you are tax-exempt, you agree to furnish us with satisfactory evidence of your exemption. You further agree to pay reasonable service fees assessed for processing of insurance premiums and taxes.		
<b>TERMS &amp; CONDITIONS</b>	<p><b>BY SIGNING THIS LEASE (i) YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS ON EACH PAGE OF THIS LEASE, (ii) YOU AGREE THAT THIS LEASE IS A NET LEASE THAT YOU CANNOT TERMINATE OR CANCEL, YOU HAVE AN UNCONDITIONAL OBLIGATION TO MAKE PAYMENTS DUE UNDER THIS LEASE AND YOU CANNOT WITHHOLD, SET OFF OR REDUCE SUCH PAYMENTS FOR ANY REASON, (iii) YOU WILL USE THE EQUIPMENT ONLY FOR BUSINESS PURPOSES, (iv) YOU WARRANT THAT THE PERSON SIGNING THIS LEASE FOR YOU HAS THE AUTHORITY TO DO SO AND TO GRANT THE POWER OF ATTORNEY SET FORTH IN SECTION 6 OF THIS LEASE, (v) YOU CONFIRM THAT YOU DECIDED TO ENTER INTO THIS LEASE RATHER THAN PURCHASE THE EQUIPMENT FOR THE TOTAL CASH PRICE AND THAT YOU WILL NOT SELECT ANY OTHER ALTERNATE SOURCE OF FINANCING WHILE WE PROCESS THIS LEASE. DOING SO WOULD CONSTITUTE A BREACH OF CONTRACT AND (vi) YOU AGREE THAT THIS LEASE HAS BEEN PERFORMED AND ENTERED INTO IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, YOU CONSENT TO JURISDICTION IN ORANGE COUNTY, YOU EXPRESSLY WAIVE ANY RIGHTS TO A TRIAL BY JURY.</b></p>		

Lessee: John Constable dba RoJohn Amusements  
 Lessor: American Capital Group, Inc.  
 By: *John Constable* By: *Fredie M. G.*  
 Title: Owner Title: *Fredie M. G.*  
 Date: *2/3/05* Date: *2/4/05*

**THIS LEASE IS SUBJECT TO APPROVAL AND ACCEPTANCE BY US. GUARANTY**

As additional inducement for us to enter into the Agreement, the undersigned ("you") unconditionally personally guarantees that the customer will make all payments and meet all obligations required under this Agreement and any supplements fully and promptly. You agree that we make other arrangements including compromise or settlement with the customer and you waive all defenses and notice of those changes and will remain responsible for the payment and obligations of this Agreement. We do not have to notify you if the customer is in default. If the customer defaults, you will immediately pay in accordance with the default provision of the Agreement all sums due under the terms of the Agreement and will perform all the obligations of the Agreement. If it is necessary for us to proceed legally to enforce this guaranty, you expressly consent to the jurisdiction of any court in the County of Orange, California and agree to pay all costs, including attorneys fees incurred in enforcement of this guaranty. It is not necessary for us to proceed first against the customer before enforcing this guaranty. By signing this guaranty, you authorize us to obtain credit bureau reports for credit and collection purposes.

X *John Constable* John Constable Home Phone Number Date *631-472-1228*  
 Signature *John Constable* Print Name of Guarantor

I HAVE READ AND AGREE TO ALL ITEMS ON THIS PAGE 1 OF *1* INITIAL *JK*

**Pentech # 12289**

**1. LEASE: DELIVERY AND ACCEPTANCE.** You agree to lease the equipment described on the front of this lease agreement (collectively "Equipment") on the terms and conditions shown on the front and back of this lease ("Lease"). You agree to inspect the Equipment and execute a Delivery and Acceptance Certificate after the Equipment has been delivered and after you are satisfied the Equipment is satisfactory in every respect. If you fail to sign a Delivery and Acceptance Certificate within 10 days of delivery of the Equipment, we have the option of either beginning the Lease or terminating the Lease. If we begin the Lease you shall be bound by all terms and conditions of the Lease and you will perform all obligations as required. If we terminate the Lease, you shall pay us on demand all sums paid or owing by us to the supplier(s) of the Equipment and you shall indemnify and hold us harmless from any claims made by the supplier(s) arising out of or relating to the Equipment, purchase order or the Lease.

**2. NO WARRANTIES.** We are leasing the Equipment to you "AS-IS". YOU ACKNOWLEDGE THAT WE DO NOT MANUFACTURE THE EQUIPMENT, WE DO NOT REPRESENT THE MANUFACTURER OR THE SUPPLIER AND YOU HAVE SELECTED THE EQUIPMENT AND SUPPLIER BASED UPON YOUR OWN JUDGEMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. YOU AGREE THAT REGARDLESS OF CAUSE, WE ARE NOT RESPONSIBLE FOR AND YOU WILL NOT MAKE ANY CLAIM AGAINST US FOR ANY DAMAGES, WHETHER CONSEQUENTIAL, DIRECT, SPECIAL OR INDIRECT. YOU AGREE THAT NEITHER SUPPLIER NOR ANY SALESPERSON, EMPLOYEE OR AGENT OF SUPPLIER IS OUR AGENT OR HAS ANY AUTHORITY TO SPEAK FOR US OR TO BIND US IN ANY WAY. We transfer to you for the term of this Lease any warranties made by the manufacturer or Supplier under any purchase or supply contract.

**3. EQUIPMENT LOCATION; USE AND REPAIR; RETURN.** You will keep and use the Equipment only at the Equipment Location shown on the front of this Lease. You may not move the Equipment without prior written consent. At your own cost and expense you will keep the Equipment eligible for any manufacturer's certification, in compliance with all applicable laws and in good condition, except for ordinary wear and tear. You will not make any alterations, additions or replacements to the Equipment without our prior written consent. All alterations, additions and replacements will become part of the Equipment and our property at no cost or expense to us. We may inspect the Equipment and location/site of the equipment at any reasonable time. Unless you purchase the Equipment in accordance with this Lease, at the end of this Lease you will immediately deliver the Equipment to us in as good condition as when you received it, except for ordinary wear and tear, to any place in the United States that direct. In the event the Equipment is not in good working condition when you return it, you agree to pay for any repairs, changes, storage fees, alterations, or upgrades, necessary to return the Equipment to good working condition. You will pay all expenses of deinstalling, crating and shipping, and you will insure the Equipment for its full replacement value during shipping.

**4. TAXES AND FEES.** You will pay when due, either directly to us or upon our demand to any taxing authority, all taxes, fines and penalties relating to this Lease or the Equipment that are now or in the future assessed or levied by any state, local or other government authority. We will file all personal property, use or other tax returns (unless we notify you otherwise in writing) and you agree to pay us a fee for making such filings. We do not have to contest any taxes, fines or penalties. You will pay estimated property tax with each Lease Payment, quarterly or annually, as invoiced. You agree to pay any fees relating to the use of the equipment or reimburse us for any (including, but without limitation), equipment inspection fees. You shall pay registration, if applicable, directly to the states agency for motor vehicles, and if you fail to pay the necessary fees promptly, you shall be subject to late and processing fees.

**5. LEASE PAYMENT.** You shall pay us the monthly Lease Payment, in advance, for each month or any part thereof the Lease is in effect. The first such payment shall be made on the first day of the month following the Commencement Date. A pro rata portion of the Lease Payment based on a daily charge of one-thirtieth (1/30) of the Lease Payment calculated from the Commencement Date to the 1<sup>st</sup> payment due date shall be due and payable at the Commencement Date. Lease Payments and other sums due which are not paid within three (3) days of their due date shall be subject to a late charge equal to fifteen percent (15%) of each delayed payment (or such lesser rate as is the maximum rate allowable under applicable law). We have the right, but not the obligation, to electronically withdraw funds from your bank account to pay for any unpaid lease payments, taxes, fees, charges and assessments. You shall provide us with any bank account information we request in order to process electronic payments. You may revoke our authorization to electronically withdraw funds by giving us 10 days written notice. You agree to pay us a fee of \$30.00 for each occurrence of a dishonored check or electronic payment.

**6. TITLE; RECORDING.** We are the owner of and will hold title to the Equipment. You will keep the Equipment free of all liens and encumbrances. You agree that this transaction is a true lease. However, if this transaction is deemed to be a lease intended for security, you grant us a purchase money security interest in the Equipment (including any replacements, substitutions, additions, attachments and proceeds). You will deliver us signed financing statements or other documents we request to protect our interest in the Equipment. YOU AUTHORIZE US TO FILE A COPY OF THIS LEASE AS A FINANCING STATEMENT AND APPOINT US OR OUR DESIGNEE AS YOUR ATTORNEY-IN-FACT TO EXECUTE AND FILE, ON YOUR BEHALF, FINANCING STATEMENTS COVERING THE EQUIPMENT.

**7. INSURANCE.** You will provide and maintain at your expense (a) property insurance against the loss, theft, or destruction of, or damage to, the Equipment for its full replacement value, naming us as loss payee, and (b) public liability and third party property insurance, naming us as an additional insured. You will give us certificates or other evidence of such insurance when requested. Such insurance will be in a form, amount and with companies acceptable to us, and will provide that we will be given 30 days advance notice of any cancellation or material change of such insurance. If you do not give us evidence of insurance acceptable to us, we have the right, but not the obligation, to obtain insurance covering our interest in the Equipment for the term of this Lease, including any renewal or extensions, from an insurer of our choice. We may add the costs of acquiring and maintaining such insurance and our fees for our service in placing and maintaining such insurance (collectively, "Insurance Charge") to the amounts due from you under this Lease. You will pay the Insurance Charge in equal installments allocated to the remaining Lease Payments. If we purchase insurance, you will cooperate with our insurance agent with respect to the placement of insurance and processing of claims. Nothing in this Lease will create an insurance relationship of any type between us and any other person. You acknowledge that we are not required to secure or maintain any insurance, and we will not be liable to you if we terminate any insurance coverage that we arrange. If we replace or renew any insurance coverage, we are not obligated to provide replacement or renewal coverage under the same terms, costs, limits, and conditions as the previous coverage. If we replace or renew any insurance coverage you agree to pay any reasonable fee assessed for the processing, maintenance, billing and handling of the policy.

**8. LOSS OR DAMAGE.** As between you and us, you are responsible for any loss, theft or destruction of, or damage to, the Equipment (collectively "Loss") from any cause at all, whether or not insured, until the equipment is delivered to us at the end of this Lease. You are required to make all Lease Payments even if there is a Loss. At time of Loss or Damage, at our option, you will either (a) repair the Equipment so that the equipment is in good condition and working order, eligible for any manufacturer's certification, or (b) pay us the amounts specified in Section 10b.

**9. DEFAULT/ BREACH OF CONTRACT.** Each of the following is a "Default" under this Lease: (a) you fail to pay any Lease Payment or any other payment, fee, charges, cost or assessment within 10 days of its due date, (b) you do not perform any of your other obligations under this Lease or under any other agreement with us and this failure continues for 10 days after we have notified you of it, (c) you become insolvent, you dissolve or are dissolved, or you assign your assets for the benefit of your creditors, or enter (voluntarily or involuntarily) any bankruptcy or reorganization proceeding; (d) any guarantor of this Lease dies, does not perform their obligations under the guaranty, or becomes subject to one of the events listed in clause (c) above; (e) you are unable or unwilling to provide us with the necessary documents that are required, during anytime, by us in order to approve or fund this lease; (f) you fail to provide additional personal and/or cross corporate guaranties if needed after we discover additional shareholders and/or owners or another company is anyway affiliated to you, and/or (g) you misrepresent your company's creditworthiness and/or fabricate information.

I HAVE READ AND AGREE TO ALL ITEMS ON THIS PAGE 2 OF 4

Pentech # 12289

INITIAL

**10. REMEDIES.** If a Default or Breach of Contract occurs, we may do one or more of the following: (a) we may terminate this Lease or all other agreements that we have entered into with you; (b) we may require you to immediately pay us, as compensation for loss of our bargain and not as a penalty, a sum equal to (i) the present value of all unpaid Lease Payments for the remainder of the term plus the present value of our anticipated residual interest in the Equipment, each discounted at 5% per year, compounded monthly, plus (ii) all other amounts due or that become due under this Lease; (c) we may require you to deliver the Equipment to us as set forth in Section 3; (d) we or our agent may peacefully repossess the Equipment without court order and you will not make any claims against us for damages or trespass or any other reason; and (e) we may liquidate any or all deposits and/or collect additional fees for our costs associated to process this lease. You agree to pay all of our costs of enforcing our rights against you, including reasonable attorneys' fees. If we take possession of the Equipment, we may sell or otherwise dispose of it with or without notice, at a public or private sale, and apply the net proceeds (after we have deducted all costs related to the sale or disposition of the Equipment) to the amounts that you owe us. You agree that if notice of sale is required by law to be given, 10 days' notice shall constitute reasonable notice. You will remain responsible for any amounts that are due after we have applied such net proceeds.

**11. ASSIGNMENT. YOU MAY NOT ASSIGN, SELL, TRANSFER OR SUBLEASE THE EQUIPMENT OR YOUR INTEREST IN THIS LEASE.** We may, with or without notifying you, sell, assign, or transfer this Lease or our rights in the Equipment. You agree that the new owner will have the same rights and benefits that we have now under this Lease but not our obligations. The rights of the new owner will not be subject to any claim, defense or set-off that you may have against us.

**12. FINANCE LEASE STATUS.** You agree that if Article 2A of the Uniform Commercial Code applies to this Lease, this Lease will be considered a "finance lease" as that term is defined in Article 2A. By signing this Lease, you agree that either (a) you have reviewed, approved, and received, a copy of the Supply Contract or (b) that we have informed you of the identity of the Supplier, that you have rights under the Supply Contract, and that you may contact the Supplier for a description of those rights. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU WAIVE ANY AND ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE BY ARTICLE 2A.**

**13. INDEMNIFICATION.** You are responsible for any losses, damages, penalties, claims, suits and actions (collectively "Claims"), whether based on theory or strict liability or otherwise caused by or related to (a) the manufacture, installation, ownership, use, lease, possession, or delivery of the Equipment or (b) any defects in the Equipment. You agree to reimburse us for and if we request, to defend us against, any Claims.

**14. LEASE MATURITY OPTIONS:** You will have the following options at the end of the original term, provided the lease has not terminated early and no event of default under the lease has occurred and is continuing. 1. Purchase the equipment for the fair market value. 2. Renew the lease per Paragraph 15. 3. Return the equipment as provided in Paragraph 3.

**15. RENEWAL PROVISIONS.** If no default exists under this Lease you will have the option at the end of the original or any renewal term to purchase all (but not less than all) of the Equipment at the Purchase option price reflected in Paragraph 14 this Lease, plus any applicable taxes. You must give at least 120 days prior written notice via certified mail before the end of the original term that you will purchase the Equipment or that you will deliver it to us. If you do not give us such written notice or if you do not purchase or deliver the Equipment in accordance with the terms and conditions of this Lease, this Lease will automatically renew for a 12 month term and thereafter renew for successive one month terms until you deliver the Equipment to us. During such renewal (s) the Lease payment will remain the same. We may cancel the automatic renewal by sending you written notice 10 days prior to such renewal term. For all Fair Market Value Purchase Options, we will use our reasonable judgment to determine the Equipment's fair market value. Upon payment of the Purchase Option price, plus any applicable sales tax and closing Bill of Sale and Title fees, and if no default exists, we shall transfer our interest in the Equipment to you "AS, IS, WHERE IS" without any representation or warranty whatsoever and this Lease will terminate.

**16. CREDIT INFORMATION. YOU AUTHORIZE US OR ANY OF OUR AFFILIATES TO OBTAIN CREDIT BUREAU REPORTS, AND MAKE OTHER CREDIT INQUIRES THAT WE DETERMINE ARE NECESSARY. ON YOUR WRITTEN REQUEST, WE WILL INFORM YOU WHETHER WE HAVE REQUESTED A CONSUMER CREDIT REPORT AND THE NAME AND ADDRESS OF ANY CONSUMER CREDIT REPORTING AGENCY THAT FURNISHED A REPORT. YOU ACKNOWLEDGE THAT WITHOUT FURTHER NOTICE WE MAY USE OTHER ADDITIONAL CREDIT BUREAU REPORTS TO UPDATE OUR INFORMATION SO LONG AS YOUR OBLIGATIONS TO US ARE OUTSTANDING. DURING THE TIME OF THIS LEASE APPROVAL, FUNDING, TERM AND ANY RENEWAL HEREOF, YOU AGREE TO PROVIDE US WITH ALL FINANCIAL STATEMENTS AND COPIES OF FEDERAL AND STATE TAX RETURNS, BANK STATEMENTS, TRADE REFERENCES OR ANY OTHER INFORMATION. AS WE REASONABLY REQUEST.**

**17. ENTIRE AGREEMENT/FURTHER DOCUMENTS AND PROCESSES.** You agree that the terms and conditions contained in this Lease make up the entire agreement between you and us regarding the lease of the Equipment. There is no implied, verbal, and/or other agreement between the representatives of us and you. Any change in the terms and conditions of this Lease must be in writing and signed by us. You agree however that we are authorized without notice to you, to supply any missing information or correct obvious errors in this Lease. If we delay or fail to enforce any of our rights under this Lease, we will still be entitled to enforce those rights at a later time. After equipment review, final approval, and final invoices are received, we may send additional paperwork to finalize this lease. These "final documents" will reflect the final terms and or conditions of the lease. If the terms and/or conditions are different, the remaining clauses of this Lease are still enforceable. Before this transaction funds, you might be required to participate in the verbal authorization. You understand that you participate in these authorizations voluntarily and that this is the final stage of the funding process in which you may raise concerns or questions with this Lease. We have no time limit restrictions on the time it takes to fund a transaction. You understand that we will quickly process this transaction and only perform our due diligence necessary to fund this lease. Therefore, you will not pursue us for any delays in the funding process. This Lease Agreement represents only one lease transaction and does not include any sort of Multiple Lease transactions, and/or Master Lease Line Credit or Line of Credit. You agree that only a single lease transaction has been entered, unless otherwise agreed upon by a letter signed by an officer of our Company.

**18. LEASE DEPOSITS.** Lease deposits are any Security Deposits, Advance Payments, or any fees that we may require you to pay for rent, term and/or processing this lease. In the event the Lease is rejected or terminated for any reason whatsoever, you may request a refund by written notification so that we have confirmation that you no longer want us to pursue this lease for you. Following the date we receive such notification, we shall refund you, within sixty (60) days, the deposit minus your documentation fee and a processing fee in the amount of 1% of the original cost of the Equipment, to cover part of our fees and expenses in processing the lease. You further understand that any deposits you make to us enter our operating account, and thus you shall receive no interest for deposits held by us. We may apply any Security Deposits made hereunder to cure any default. If additional funds remain from the deposit (after the advance payments, documentation fees, interim rents, and other fees are deducted), those remaining funds will be returned within 30 days from the date of lease funding. Written request for these funds should be given to us as well. If a security deposit addendum exists, the conditions of that addendum supersede this Lease. You understand that our acceptance of your Security Deposit does not constitute acceptance of this Lease, which acceptance is evidenced only by our execution of this Lease in the space provided on the first page.

**19. SEVERABILITY.** This Lease is intended to constitute a valid and enforceable legal instrument. In the event any provision hereof is declared invalid, or if this Lease is cancelled, the remaining provisions of this Lease, all of which will remain in full force and effect.

Pentech # 12289

I HAVE READ AND AGREE TO ALL ITEMS ON THIS PAGE 3 OF 4

INITIAL

**20. MISCELLANEOUS.** All notices shall be given in writing by the party sending the notice and shall be effective when deposited in the U.S. Mail and shall be made via certified mail where noted in this Lease, addressed to the other party receiving the notice at its address shown on the front of this Lease (or any other address specified by that party in writing) with postage prepaid. All of the maximum amount of time price differential or interest, as applicable, permitted to be charged or collected by applicable law, and any such excess payment will be applied to Lease Payments in inverse order of maturity, and any remaining excess will be refunded to you. If you do not perform any of your obligations under this Lease, we have the right, but not the obligations, to take any action or pay any amount we believe are necessary to protect our interest. You agree to reimburse us immediately upon our demand for any such amounts that we pay. If more than one Lessee has signed this Lease, each of you agrees that your liability is joint and several.

**21. ELECTRONIC DOCUMENTS.** This document may have been sent electronically. I hereby warrant this document has not been altered in any way. Any alteration or revision to any part of this or any attached documents will make all documents non-binding and void.

**DELIVERY**

You certify that all the equipment listed above has been furnished, that the delivery and installation has been fully completed and satisfactory. Further, all conditions and terms of this agreement have been reviewed and acknowledged. Upon your signing below, your promises herein will be irrevocable and unconditional in all respects. You understand and agree that we have purchased the equipment from the supplier, and you may contact the above supplier for your warranty rights, if any, which we transfer to you for the term of this lease. Your approval as indicated below of our purchase of the equipment from supplier is a condition precedent to effectiveness of this lease.

Date of Delivery \_\_\_\_\_ Customer John Constable dba RoJohn Amusements Signature  Owner Title Owner INITIAL 

I HAVE READ AND AGREE TO ALL ITEMS ON THIS PAGE 4 OF 4

I HEREBY AUTHORIZE \_\_\_\_\_ Title \_\_\_\_\_ TO ORALLY VERIFY MY/OUR ACCEPTANCE OF THE ABOVE REFERENCED EQUIPMENT IN MY ABSENCE

Pentech # 12289

**PAYMENT SCHEDULE "B":**

**Lessee:** John Constable dba RoJohn Amusements

**Lease Number:** 101665-03

	PAYMENT			PAYMENT
1	\$ 1,698.78		25	\$ 1,698.78
2	\$ 100.00		26	\$ 1,698.78
3	\$ 100.00		27	\$ 1,698.78
4	\$ 100.00		28	\$ 1,698.78
5	\$ 1,698.78		29	\$ 1,698.78
6	\$ 1,698.78		30	\$ 1,698.78
7	\$ 1,698.78		31	\$ 1,698.78
8	\$ 1,698.78		32	\$ 1,698.78
9	\$ 1,698.78		33	\$ 1,698.78
10	\$ 1,698.78		34	\$ 1,698.78
11	\$ 1,698.78		35	\$ 1,698.78
12	\$ 1,698.78		36	\$ 1,698.78
13	\$ 1,698.78		37	\$ 1,698.78
14	\$ 1,698.78		38	\$ 1,698.78
15	\$ 1,698.78		39	\$ 1,698.78
16	\$ 1,698.78		40	\$ 1,698.78
17	\$ 1,698.78		41	\$ 1,698.78
18	\$ 1,698.78		42	\$ 1,698.78
19	\$ 1,698.78		43	\$ 1,698.78
20	\$ 1,698.78		44	\$ 1,698.78
21	\$ 1,698.78		45	\$ 1,698.78
22	\$ 1,698.78		46	\$ 1,698.78
23	\$ 1,698.78		47	\$ 1,698.78
24	\$ 1,698.78		48	\$ 1,698.78

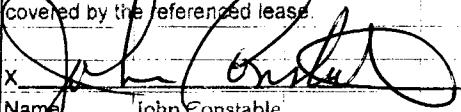
**Plus Applicable Sales/ Use Taxes**

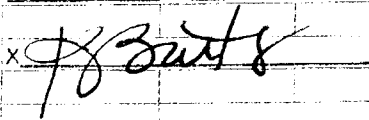
**LESSEE:** John Constable dba RoJohn Amusements

**LESSOR:** American Capital Group, Inc.

This Payment Schedule is hereby verified as correct by the undersigned LESSEE and constitutes all the equipment covered by the referenced lease.

Payment Schedule attached to and made part of the Lease agreement dated the 4 day of Feb. 2005 between Lessee and Lessor

X   
 Name: John Constable  
 Title: Owner

X 

Pentech # 122829

AMERICAN CAPITAL GROUP

ADDENDUM "A"

LEASE SCHEDULE NO. 101665-03 AC

This addendum, shall become part of the above-referenced lease (the "Lease") dated the 4<sup>th</sup> day of Feb, 2005 by and between John Constable dba RoJohn Amusements as Lessee, and American Capital Group, as Lessor.

For good and valuable consideration, the receipt of which is hereby acknowledged, the Lessor and Lessee agree as follows:

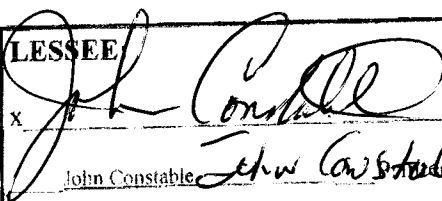

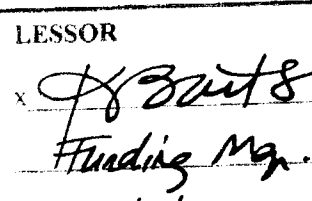
Lessee shall have the first right, but not the obligation, to exercise this purchase option to purchase all but not less than all of the equipment (the "Equipment") leased by Lessee pursuant to the above-referenced lease (the "Lease") in its AS IS, WHERE IS CONDITION, WITH NO REPRESENTATION OR WARRANTIES WHATSOEVER, EITHER EXPRESSED OR IMPLIED OF ANY KIND, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE upon expiration of the Lease and satisfactory compliance with all terms and conditions of the Lease.

The Lessee shall have the right to exercise the option to purchase said equipment from Lessor or Lessor's Assignee, for the current Fair Market Value. THE FAIR MARKET VALUE SHALL BE DETERMINED BY LESSEE.

Further, Lessee's right to exercise said option is conditioned upon (a) Lessee having performed all of the terms and conditions of the Lease, and of all other agreements between Lessee and Lessor or Lessor's assignee, at the time and in the manner required therein; (b) After the final base lease payment has been made, plus all accrued but unpaid late charges, interest, taxes, penalties, and/or any other sums due and owing under the Lease agreement, and no event of default, as the same is more fully described in said Lease, has occurred or is continuing, (as to above-referenced Lease Schedule to said Lease). (c) Written notice of intent to purchase is delivered by Lessee to Lessor (by certified mail) One Hundred and Twenty (120) Days prior to the end of the base term. In the event Lessee does not provide written notice, this Lease will automatically renew for a twelve (12) month term and thereafter for successive one month terms until such time as the purchase option has been exercised, (d) If all of the terms and conditions contained in the addendum and Lease have been timely and fully performed, the parties above-referenced agree as follows:

Lessee shall determine the Fair Market Value consistent with industry principles. Fair Market Value is not meant to include liquidation value or a conditional sale. Fair Market Value is defined as the price at which property would change hands between a willing buyer and a willing seller when neither party is under any compulsion to buy or sell, both parties having reasonable knowledge of relevant facts. Upon receipt by the Lessor of the full purchase price, Lessor will furnish Lessee with a Bill of Sale warranting good title to the equipment

In all other respects, the terms and conditions of the Lease, as originally set forth, shall remain in full force and effect. In witness whereof, the parties hereto, by authorized signatories, have executed this Addendum "A" at the date set forth below their respective signatures

<p><b>LESSEE</b></p> <p>x </p> <p>John Constable </p>	<p><b>LESSOR</b></p> <p>x </p> <p>_____ Funding Mgr. Title</p>
<p>Owner _____ Title _____</p>	<p>_____ 2/4/05 Date</p>
<p>+ 2/3/05 Date</p> <p>John Constable dba RoJohn Amusements Company</p>	<p>ACCEPTED BY AMERICAN CAPITAL GROUP, INC.</p>

# AMERICAN CAPITAL GROUP, INC.

## SCHEDULE E

Addendum, to Lease Agreement ("Agreement") 101665-03 AC, dated 2/4 2005  
between American Capital Group, Inc. ("Lessor") and John Constable dba RoJohn Amusements ("Lessee").

1. The Lessee is engaged in the business of renting Equipment of the kind described as "Equipment" as described in Equipment Description of the Lease Agreement. Lessee and Lessor agree that Lessee may sublease or rent the Equipment but subject to the Agreement and this Rental Addendum, to the extent applicable, and only in the regular course of Lessee's rental business. Upon termination of any such rental, Lessee may remove the Equipment to other locations, without prior consent of Lessor. In no event shall Lessee remove or permit the Equipment to be removed outside the state where Lessee's principal address is located, as stated in the Agreement without prior written consent of Lessor.
2. To further secure payment of all Lessee's obligations under this Agreement, and this Rental Addendum, Lessee hereby:
  - a. Grants to Lessor a security interest in, and assigns to Lessor all rental contracts arising from rental of the Equipment which may now exist or hereafter arise (the "Rental Contract s"), together with all rights thereunder and all proceeds, monies, rentals and other payments (including proceeds of purchase options and renewals pursuant to the terms hereof) due and to become due thereunder ("Rentals"). Until the occurrence of an Event of Default (as defined in the Agreement), Lessee shall have the right to receive Rentals. In the event of an occurrence of an Event of Default, Lessee will permit Lessor to collect Rentals from Lessee's customers and shall instruct customers to forward such Rentals directly to Lessor.
  - b. Agrees to take reasonable steps to protect Lessee's interest in the Collateral against such customers or creditors of the customers. No rental or sublease of the Equipment subject hereto shall relieve Lessee from any of its obligations to Lessor hereunder or under the Agreement.
  - c. Agrees that no Rental Contract shall grant any equity or purchase option to the customer hereunder, and no customer shall be permitted to prepay any Rental Contract by more than thirty (30) days.
  - d. Lessee must be responsible for maintaining records showing the location of each piece of leased equipment. Lessee will report this location to Lessor upon written request by Lessor. Failure to do so shall constitute a breach of the lease, which shall default shall be governed by the terms and conditions specified in paragraph 17 of the lease agreement.

### Subrentals

Lessee agrees that Lessee shall insert a provision in any Rental Contract prohibiting its customers from subrenting the collateral to anyone without the express written consent of Lessor or its assignee

American Capital Group, Inc.  
Lessor [Signature]  
(authorized party must sign)

Title Funding man.

Date 2/4/05

John Constable dba RoJohn Amusements  
Lessee [Signature]  
(authorized party must sign)

Title Owner

Date 2/3/05

Pentech # 12289

American Capital Group

LEASE SCHEDULE NO. 101665-03 AC

February 3, 2005

Pentecost # 12289

American Capital Group  
175 Technology Dr. Ste 100  
Irvine, CA 92618

Dear Sir:

We acknowledge it is American Capital Group, Inc.'s normal policy not to fund any portion of equipment leases to vendors unless delivery of the leased equipment has been made by the vendor to the lessee and the lessee is satisfied.

To facilitate completion and purchase of the equipment described in the Equipment Lease Agreement, we request the American Capital Group, Inc. to disburse a pre-funded payment. We understand that the terms and conditions of the lease will commence upon this funding. If we should ultimately fail to take delivery or installation should not be completed due to dispute or dissatisfaction with the vendor, we agree to make all payments called for under the equipment lease and to seek no recourse against American Capital Group, Inc.

John Constable dba RoJohn Amusements

By: 

Title: owner

Date: 2/3/05



**DELIVERY GUARANTEE**

Addendum to Lease # 12289 dated 2/4/05, between American Capital Group, Inc. as Lessor and, John Constable dba RoJohn Amusements as Lessee.

You acknowledge that you understand and agree that in the event you are not satisfied with the delivery or installation of the Equipment that you shall only look to persons other than Lessor such as the manufacturer, installer, or supplier and shall not assert against Lessor any claim or defense you may have with reference to the Equipment, its delivery or non-delivery, or its installation. Upon your signing below, you authorize us to pay the below supplier and your promises herein will be irrevocable and unconditional in all respects and payments shall begin immediately and shall be due continuously hereafter. In reliance on your promise to pay we will **purchase the Equipment from the supplier, and you may contact the supplier for your warranty rights (if any, which we transfer to you) which are not the Lessor's responsibility.**

United Textile Fabricators is the Vendor for the equipment and the Lessee understands that payments shall begin on the same date that the Lessee executes this agreement and shall be continuous thereafter per the terms of the Lease.

50% will be paid to United Textile Fabricators (Vendor) upon execution of this agreement.

50% will be paid to United Textile Fabricators (Vendor) upon final verification by Lessee after completion of delivery and installation.

American Capital Group, Inc.  
Lessor

[Signature]  
Signature

Funding Man.  
Title

2/4/05  
Date

John Constable dba RoJohn Amusements  
Lessee

[Signature]  
Signature

Owner  
Title

2/3/05  
Date

Vendor Acknowledgement: [Signature]

American Capital Group

LEASE SCHEDULE NO.101665-03 AC

February 3, 2005

Pentech # 12289

American Capital Group  
175 Technology Dr. Ste 100  
Irvine, CA 92618

Dear Sir:

We acknowledge it is American Capital Group, Inc.'s normal policy not to fund any portion of equipment leases to vendors unless delivery of the leased equipment has been made by the vendor to the lessee and the lessee is satisfied.

To facilitate completion and purchase of the equipment described in the Equipment Lease Agreement, we request the American Capital Group, Inc. to disburse a pre-funded payment. We understand that the terms and conditions of the lease will commence upon this funding. If we should ultimately fail to take delivery or installation should not be completed due to dispute or dissatisfaction with the vendor, we agree to make all payments called for under the equipment lease and to seek no recourse against American Capital Group, Inc.

John Constable dba RoJohn Amusements

By: 

Title: owner

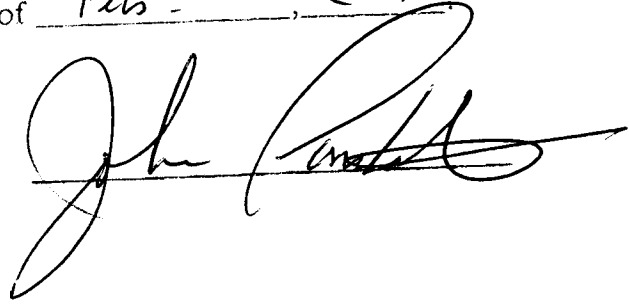
Date: 2/3/05

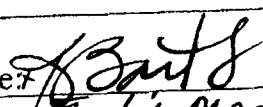
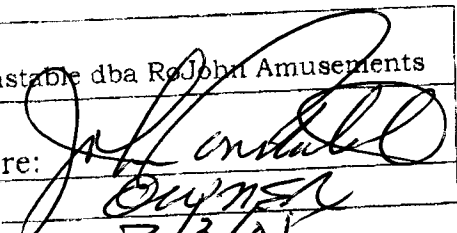
Pentech # 12289

LOCATION ADDENDUM TO LEASE AGREEMENT NO.  
Between, John Constable dba RoJohn Amusements as LESSEE  
AND American Capital Group, Inc. AS LESSOR  
DATED 2-4-05

LOCATION: Lessor agrees to amend the Lease Agreement. In regard to the location of the equipment, lessee must be responsible for maintaining records showing the location of each piece of leased equipment. Lessee will report this location to Lessor upon written request by Lessor. Failure to do so shall constitute a breach of the lease, which default shall be governed by the terms and conditions specified in the Lease Agreement.

Agreed to this 3<sup>rd</sup> day of Feb, 2005

\_\_\_\_\_ 

Lessor: American Capital Group, Inc.	Lessee: John Constable dba RoJohn Amusements
Signature: 	Signature: 
Title: <u>✓ Funding Rep.</u>	Title: <u>OWNER</u>
Date: <u>2/3/05</u>	Date: <u>2/3/05</u>



## American Capital Group

Financial Solutions for the 21<sup>st</sup> Century

175 Technology Drive, Suite 100  
Irvine CA 92618  
Phone (949) 271-5800  
Fax (949) 271-5850

September 1, 2005

John Constable dba RoJohn Amusements  
56 Timber Ridge Drive  
Holbrook, NY 11741

Re: Lease #101665-03

Dear John:

Thank you for choosing American Capital Group as your financing partner. American Capital Group is committed to providing you with the best possible resources in the leasing industry. If we can provide other services for you, please call us at 800-305-0224.

Although American Capital Group will continue to service your account, please be advised that we have assigned your lease term to Pentech Financial Services, Inc. They will be billing and servicing your account for the next 40 months. You will soon be receiving an invoice for your first payment due to them which will begin on 10/2/05. Please remit all payments to the following address:

Pentech Financial Services  
P.O. Box 71320  
Cincinnati, OH 45721-2320  
Customer Service # 866-874-4835

Sincerely,

Kimberly Bartling

## **MASTER PURCHASE, SALE, ASSIGNMENT, AND TRANSFER AGREEMENT**

**THIS MASTER PURCHASE, SALE, ASSIGNMENT, AND TRANSFER AGREEMENT** (“Agreement”) is made as of December 30, 2005, by and between **HL Leasing, Inc.** (“**Purchaser**”), a corporation organized and existing under the laws of the State of California, with its principal office at 3439 West Shaw Avenue, Fresno, California 93711 (hereinafter referred to as “**Purchaser**”) and **PENTECH FINANCIAL SERVICES, INC.** (hereinafter referred to as “**Seller**”), a California corporation with a place of business at 910 East Hamilton Avenue, Suite 400, Campbell, CA 95008.

### WITNESETH

**WHEREAS**, Seller may, from time to time, desire to sell and assign to Purchaser and Purchaser may, from time to time, desire, in its sole discretion, to purchase and accept assignment of all of Seller's right, title and interest (but none of Seller's obligations) in, to and under the Contracts and Sold Property; and

**WHEREAS**, Seller and Purchaser desire that this Agreement serve as a master agreement which sets forth the terms and conditions governing any sale by Seller to Purchaser of Contracts and Sold Property.

**NOW, THEREFORE**, in consideration of the agreements and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### **1      DEFINITIONS**

As used herein, all capitalized terms used herein but not defined herein shall have the meanings as set forth below:

“Advance Rate” means, as to each Portfolio, the Purchase Price of the Contracts in a Portfolio at the agreed to Discount Rate.

“Agreement” means this Master Purchase and Sale Agreement and all Exhibits annexed hereto and made a part hereof, as may be amended, supplemented and or modified from time to time by the parties hereto.

“Assignment” means an assignment, substantially in the form of Exhibit A hereto, transferring all of the Seller's right, title and interest in, but not the obligations under, the Portfolio described in Schedule 1 thereto to Purchaser. The Assignments shall be numbered sequentially.

“Broker” means the person named as originator, lessor or lender in a Broker Contract assigned and sold to Seller.

“Broker Contract” means a Contract between a Broker and an Obligor as to which Broker assigned all of its right, title and interest in and to such Contract to Seller and such Contract is identified as a Broker Contract in a Schedule to an Assignment.

“Closing Date” means, as to an Assignment, the effective date of the sale as set forth in the Closing Letter for such Assignment.

“Closing Letter” means as to each Assignment a letter agreement substantially in the form of Exhibit E hereto.

“Contract” means a lease, installment sales contract, or note or security agreement (including, without limitation, all Broker Contracts and True Leases) that is approved by and acceptable to Purchaser for purchase under this Agreement and identified in a Schedule to an Assignment, including all schedules, riders, addenda or supplements thereto.

“Contract File” has the meaning given such term in Section 3.1(m) of this Agreement.

“Cut-Off Date” means, as to each Assignment, the date specified as the “Cut-Off Date” in the Closing Letter for such Portfolio.

“Defective Contract” means a Contract with respect of which Seller has breached a representation, warranty or covenant or which is affected by such breach.

“Delivery and Acceptance Certificate” means a written acknowledgement executed by an authorized representative of the Obligor evidencing that the Equipment has been delivered to and accepted by the Obligor and the obligation to make payments under the Contract has commenced.

“Discount Rate” means, as to all Contracts in a Portfolio, the interest rate set forth in the Closing Letter for such Assignment as agreed to between the parties at time of purchase.

“Eligible Contract” means any Contract that is not a Defective Contract or Delinquent Contract and with respect to which all of the representations and warranties set forth in Section 3.1 are true and for which Seller has received at least one (1) timely regularly scheduled payment (exclusive of advance payments) from the Obligor prior to Purchaser’s purchase thereof from Seller.

“Equipment” means all equipment and other personal property, together with all components and parts incorporated therein, and all acquisitions, replacements, substitutions and accessories incorporated therein, and software licensed in connection therewith, sold or leased to an Obligor under a Contract or otherwise securing a Contract.

“Guaranty” means any and all agreements of guaranty, surety or repurchase obligations for any Contract.

“Lockbox Account” means a separate account established and maintained by Purchaser at a bank where Contract payments due Purchaser are to be initially deposited or transmitted electronically by Automated Clearing House (“ACH”) or by other means as property of and for the benefit of Purchaser.

“Obligor” means a lessee under a lease, a purchaser under an installment sales contract, or a borrower under a note or security agreement, or any other party to a Contract with a payment obligation thereunder. The term Obligor shall include any guarantor of Contract obligation.

“Payoff Amount” means the amount owed to a third-party holder of, or Person having a security interest in, a Contract or Contracts being purchased by Purchaser as set forth in a Payoff Letter.

“Payoff Letter” has the meaning specified in Section 2.2(h) of this Agreement.

“Person” shall mean an individual, partnership, corporation, limited liability company, business trust, trust, joint stock company, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

“Portfolio” means the pool of Contracts purchased by Purchaser on a Closing Date identified in a Schedule to an Assignment.

“Purchase Option” means the right given to the Obligor to purchase the Equipment that is the subject of a Contract.

“Purchase Price” means, as to a Portfolio, an amount equal to the aggregate of the Net Contract Balances of the Contracts in such Portfolio as of the Closing Date, less any Security Deposits.

“Schedule” means the Schedule(s) executed by Seller and Purchaser and attached to the applicable Assignment(s), which describes the Contracts and the amounts payable thereunder.

“Seller Event of Default” means the occurrence of any of the following events or conditions at any time on or after the Closing Date, unless waived with the consent of Purchaser:

(a) Failure on the part of Seller to remit to the Purchaser any amount required to be remitted under this Agreement within the time period required under this Agreement;

(b) If any material representation or warranty of Seller made in this Agreement or in any certificate or other writing delivered pursuant hereto or any other related document is incorrect in any material respect as of the time when the same shall have been made, and if such breach or inaccuracy is curable, continuance of such breach or inaccuracy for a period of thirty (30) days after the earlier to occur of (i) actual knowledge of such breach or inaccuracy by Seller or (ii) the date on which there has been given to Seller by the Purchaser a written notice specifying such breach or inaccuracy;

“Sold Property” means, as to a Portfolio, (a) the Contracts in the Portfolio; (b) all sums due and to become due under such Contracts on and after their Cut-Off Date; (c) Seller’s rights in any Guaranty; and (d) all of Seller’s rights and remedies under the Contracts. Sold Property does not include any residual interest of a Broker in Equipment leased pursuant to a True Lease unless said interest passes to Seller.

“True Lease” means a lease under which Broker retains a residual interest in the equipment.

“UCC” means the Uniform Commercial Code as the same may from time to time be in effect in the State of California; *provided, however*, that in the event, by reason of mandatory provisions of law, any and all of the attachment, perfection or priority of the security interest of Purchaser in and to the Sold Property is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of California, the term “UCC” shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions relating to such attachment, perfection or priority and for purposes of definitions related to such provisions; *provided, further*, that the term “UCC” shall include Article 9 thereof as in effect on the Closing Date.

## **2 SALE AND PURCHASE OF PORTFOLIOS**

2.1 Sale and Purchase. Seller hereby agrees to sell and assign to Purchaser, without recourse of any kind or nature (except as expressly agreed to herein by Seller), and Purchaser hereby agrees to purchase for the applicable Purchase Price, all of Seller's right, title and interest (with such exceptions as are specifically set forth herein), in and to the Contracts listed and described in each Schedule constituting a Portfolio and the Sold Property relating thereto. Purchaser may purchase such Portfolios and Contracts as Purchaser determines in its sole discretion.

2.2 Conditions Precedent. It shall be a condition precedent to each purchase of a Portfolio by Purchaser that the representations and warranties contained in Section 3.1 of this Agreement shall be true and correct on the Closing Date for such Portfolio and no Seller Event of Default shall have occurred. On or before the Closing Date for each Portfolio, Seller shall provide or cause to be provided to Purchaser the

items described in clauses (a), (b), (c), (d), (e) and (h) below, including documents evidencing the assignment of the Portfolio to Purchaser, furthermore, on or before the Closing Date of even date hereof, Seller shall also provide or cause to be provided to Purchaser the items described in clauses (f), (g) and (i) below:

- (a) The Assignment;
- (b) The Closing Letter;
- (c) The original counterpart of all Contracts together with all amendments, riders and supplements thereto (with each Guaranty therefor, if any) identified on Schedule 1 to the Assignment, with the following related documents as to each Contract in the Portfolio:
  - (i) Delivery and Acceptance Certificate;
  - (ii) Acknowledgment copies of either (A) UCC-1 financing statements designating the Obligor, as debtor, and Broker, as secured party, and UCC-3 notices of assignments to Seller or (B) UCC- 1 financing statements designating the Obligor, as debtor, and Seller, as secured party, filed by Broker and/or Seller at Broker's expense or Seller's expense, as the case may be, in each jurisdiction where the Obligor is organized, in each case with UCC assignments in favor of Purchaser, and assignments thereof in favor of Purchaser
  - (iii) Invoices for the related Equipment, if applicable, and evidences of payment and assignment of Broker Contracts (evidencing Original Seller's title to each Contract and the related Equipment);
  - (iv) Evidence of insurance on the Equipment covering both liability for personal injury and loss or damage, and naming Seller or its assignee as loss payee and additional insured with respect to Equipment; and
  - (v) All other Contract documentation held by Seller in each related Contract File;
- (d) Notification to Obligors of the assignment of the Contracts executed by Seller but not acknowledged by any Obligor in the form of Exhibit B, and a separate notification to Obligors of the change of address for submission of payments;
- (e) Certificate as to authorizing resolution of Seller, substantially in the form of Exhibit C;
- (f) Good Standing Certificate from Seller's jurisdiction of organization and where it maintains its chief executive office and principal place of business;
- (g) Payoff letters and/or bailee agreements acceptable to Purchaser, including therein wire instructions for payment in the form of Exhibit F (each, a "Payoff Letter"), assignments of all liens and the filing and delivery of UCC-3 amendments from all entities holding a security interest or other interest in any of the Sold Property; and
- (h) Letter from Seller to the bank holding Purchaser's Lockbox Account, authorizing the bank, for the limited purpose of processing payments pertaining to a Portfolio, to accept mail addressed to Seller and payments made payable to Seller.



2.3 Payment of Purchase Price and Transfer of Title. On each Closing Date, upon the satisfaction of all conditions precedent to Closing, or as otherwise agreed by the parties, Purchaser shall pay the Purchase Price to Seller, with such adjustments as may be agreed to (as set forth on the Closing Letter), by wire transfer in accordance with Seller's written instructions and title to the Sold Property for such Portfolio shall pass to Purchaser. In the event Seller does not provide separate written instructions to Purchaser, Purchaser shall wire transfer in accordance with any payoff letters received in accordance with Section 2.2(h) with the balance, if any, being sent to Seller. Purchaser's obligation to wire the Purchase Price is contingent upon the Purchaser receiving the confirmations in the Payoff Letters required by Section 2.2(h).

### 3 REPRESENTATIONS, WARRANTIES AND COVENANTS

#### 3.1 Seller's Representations and Warranties.

(a) Seller represents and warrants, as of the date hereof, and as of each Closing Date (but only as to the Portfolio sold on such particular Closing Date), that Seller is a corporation duly organized, validly existing and in good standing under the laws of the state set forth in the preamble of this Agreement. Seller is duly qualified to do business and is in good standing in such state and every other jurisdiction where the nature of its business requires it to be qualified except where failure to so qualify would not have a material adverse affect on (i) Seller's ability to perform its obligations hereunder or under an Assignment, or (ii) any of the Contracts included in the Portfolio, and is not subject to any bankruptcy, insolvency or other similar proceeding. Seller's chief executive office and principal place of business is located at the address set forth at the beginning of this Agreement.

(b) Seller has full power, authority, and legal right to execute, delivery, and perform the Contracts, this Agreement, and the Assignment and the execution, delivery and performance hereof and thereof have been duly authorized by all necessary corporate action.

(c) This Agreement and the Assignment have been duly executed and delivered by Seller and each constitutes a legal, valid and binding obligation of Seller enforceable in accordance with its terms.

(d) The execution, delivery and performance of this Agreement or the Assignment (i) are not in contravention of any material agreement or indenture by which Seller is bound, or by which its properties may be affected, (ii) do not require any stockholder approval (or such approval has been obtained), or any approval or consent of, or filing or registration with, any governmental body or regulatory authority or agency, or any approval or consent of any trustees or holders of any of its indebtedness or obligations unless such approval or consent has been obtained, and (iii) do not contravene any law, regulation, judgment or decree applicable to it or its certificate of incorporation or by-laws;

(e) All information in whatever form provided or to be provided by Seller to Purchaser concerning the Portfolio (including, without limitation (i) the legal names and addresses of Obligors and guarantors of such Obligor's obligations under the Contracts, (ii) the amount and due dates of payments due under all Contracts included in the Portfolio, (iii) descriptions of such Contracts and Equipment, (iv) stated or guaranteed residual values of Equipment, (v) cash flows, pay histories, and delinquency, (vi) the amount of all Security Deposits, certificates of deposit or other collateral held by Seller as security for such Contract obligations, and (vii) information as to the Obligor's credit worthiness) has been provided with the knowledge that Purchaser has been induced to enter into this Agreement and to purchase the Portfolio on the terms agreed upon in reliance on such information and Seller warrants that all such information is true, accurate, and complete in all material respects. Seller warrants that each Contract included in the Portfolio was processed and approved through Seller's ordinary course of business and according to Seller's underwriting guidelines for the Portfolio.

(f) Each Contract included in the Portfolio is in full force and effect and no such Contract has been terminated or is subject to litigation, and is not past due in payment in excess of thirty (30) days or otherwise in default;

(g) Seller is the sole owner or assignee and holder of all right, title and interest in each Contract included in the Portfolio, and Seller has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as the applicable Assignment shall remain in effect, the whole or any part of the rights hereby and thereby assigned, to anyone other than Purchaser, its designee, its successors or assigns.

(h) On the Closing Date, Seller has the absolute right to sell and transfer the Portfolio; none of the Contracts included in the Portfolio contain a prohibition against such sale and assignment and, on the Closing Date, Purchaser shall acquire good and valid title to the Portfolio, free and clear of all liens, claims and encumbrances other than Obligor's rights under such Contract, or a Broker's rights to the residual interest in Equipment under a True Lease.

(i) With respect to each Contract included in the Portfolio, there is not and shall not be any act, failure to act, omission or misrepresentation of Seller which nullifies, modifies, limits or in any way affects the genuineness, validity or enforceability of any obligation of an Obligor under a such Contract or a Broker or other party under such Contract, except as may be approved in writing by Purchaser;

(j) No Obligor has been released, in whole or in part, from any of its obligations in respect of a Contract included in the Portfolio and no Equipment has been released from any such Contract by Seller, in whole or in part, nor has any instrument been executed by Seller that would effect any such satisfaction, release, cancellation, subordination or rescission by reason of any act or omission of Seller and each contract is non-cancelable for the duration of its term.

(k) The Schedule accurately reflects the information relating to each Contract included in the Portfolio.

(l) No Contract included in the Portfolio is a "consumer lease" as defined in Article 2A of the UCC or requires the prior written consent of the Obligor or contains any other restriction relating to the transfer or assignment of such Contract by the Seller except such consent as has been obtained on or prior to the date of such transfer and further each Contract was originated in connection with the lease or sale of one or more units of new or used equipment intended for commercial, industrial, agricultural, or other business use, and all costs, fees and expenses incurred by Seller or any other Person in originating and recording each such Contract Contracts and any Contract Document have been paid.

(m) There exists (i) an executed "original" of each Contract included in the Portfolio that constitutes "chattel paper" or "an instrument" for purposes of Article 9 of the UCC, (ii) original certificate, executed by the related Obligor, evidencing delivery and acceptance of the Equipment, (iii) such Obligor's application and evidence of authority to enter into such Contract, (iv) the Guaranty, if any, of such Contract, (v) copies of documentation relating to purchase of the Equipment (and the related Contract, if applicable), including any Guaranty or repurchase obligations of the supplier, (f) documents evidencing or related to any insurance policy, (vi) copies of all UCC financing statements filed with respect to the Equipment or such Contract, and (vii) and any other documents relating thereto (items (i) through (vii) hereof, collectively, the "Contract File") with respect to each such Contract and there are no material deficiencies with respect to any Contract File and;

(n) Seller has not committed any act or omission to act that has an adverse effect on the enforceability of Purchaser's rights and remedies in and under the Representations And Warranties made

by Seller under Section 3.1 of this Agreement in favor of Purchaser under the assignment thereof by Seller to Purchaser hereunder.

(o) All Contracts included in the Portfolio (i) are substantially similar in form to the forms provided by Seller and attached hereto as Exhibit D, or (ii) provide Seller (and following any sale and assignment hereunder, Purchase) with rights and remedies which are substantially similar to the rights and remedies provided under the forms attached hereto a Exhibit D, and no such Contract contains any material modification to such forms except as disclosed to Purchaser in writing and accepted by Purchaser in writing;

(p) As to each original Contract included in the Portfolio delivered to Purchaser on or prior to the Closing Date for such Contract subject to the terms and conditions as set forth in this agreement, such Contract constitutes the genuine sole original counterpart of all of the original instruments or contracts constituting "chattel paper" for purposes of the UCC, as in effect in the applicable jurisdiction, and constitutes the entire agreement of the parties thereto (including the Seller as assignee of the related Broker);

(q) As of the Closing Date, (i) each Contract described on the Schedule relating to the Portfolio is an Eligible Contract, (ii) to the best of Seller's knowledge, without giving effect to any modifications, waivers or extension granted by Seller, Seller has received no notice that any scheduled payment of basic rent, purchase price installment or monthly principal and interest by an Obligor under any such Contract is subject to any insolvency, bankruptcy or other similar proceedings;

(r) All taxes imposed prior to the Closing Date by any taxing authority on the Contracts included in the Portfolio or the related Equipment have been or will be paid by Seller so that no lien attaches to any thereof;

(s) The transactions entered into by Seller in respect of each Contract included in the Portfolio are, and the Equipment covered thereby is, in all material respects, in conformity with all applicable laws and regulations and all such Contracts arose out of *bona fide* business transactions in the ordinary course of business;

(t) As to each Contract included in the Portfolio, the Equipment has been delivered to, and accepted by, the Obligor under the terms of such Contract, to best of Seller's knowledge, no such Equipment has suffered a casualty, and the Obligor is obligated to make scheduled payments of basic rent or monthly principal and interest under such Contract.

(u) All fees have been paid and all obligations accruing or arising prior to the applicable Closing Date of Seller under any Contract included in the Portfolio have been performed and to the extent Seller is required to perform any further obligations, Seller will perform the same after the Closing Date in good faith and in a commercially reasonable manner.

(v) Each Contract included in the Portfolio evidences a valid reservation of title to the Equipment subject thereto, subject only to the rights of the Obligor under such Contract or a Broker under a True Lease, or a valid, perfected first priority security interest in such Equipment, all UCC and other filings or other procedures necessary to perfect or protect such interests have been made or taken, and upon the assignment of such Contracts to Purchaser, Purchaser shall acquire such title, or a valid perfected first priority security interest in the Equipment, which is in either case effective against and prior to the rights of all other persons.

(w) With respect to each Contract included in the Portfolio, the obligations of the Obligor under each such Contract are not subject to any offset, deduction, defense, counterclaim or lien and the Equipment is not subject to any lien equal to or greater in priority to Purchaser's interest except that created by this Agreement.

(x) Each Contract included in the Portfolio consists of a valid lease, note or other form of payment obligation and contains provisions setting for (i) the term, (ii) the number of schedule payments,

the scheduled payment amount and any scheduled tax payments due under such Contract, and (iii) any prepayment amounts, regular advances, irregular advances, administrative fees and security deposits made under such Contract.

(y) Each Contract included in the Portfolio requires the Obligor thereunder to maintain insurance covering damage to, destruction or theft of the Equipment subject thereto in an amount at least equal to the lesser of the replacement value of such Equipment or the Net Contract Balance and general public liability insurance coverage. All Equipment is properly insured by the Obligor against loss or damage by fire and all other hazards normally included within standard coverage in accordance with the respective Contracts, and, to the best of Seller's knowledge, there are no pending claims by or through any Obligor against the manufacturer or supplier of any of the Equipment based on express or implied warranties, product liability or otherwise, and no Equipment is the subject of any other warranty or product liability claim or any claim based upon patent or copyright infringement.

(z) As of the Closing Date, no Contract included in the Portfolio has (i) an initial term greater than sixty (60) months.

(aa) Each remaining contract receivable set forth on schedules previously provided to Purchaser correctly reflects the amount of the periodic rentals or periodic installments remaining to be paid on each Contract that is payable to Purchaser upon consummation of the Contracts contemplated hereby (net of any sales, use or similar taxes hereon and net of any purchase option or purchase agreement relating to any Contract) and no security deposits or other payments have been received by Seller other than disclosed on the Closing Letter and the Purchase Price has been adjusted thereby.

(bb) There are no oral or written agreements of any kind between Seller and any other Person (including without limitation, brokers, vendors, Obligors, governmental bodies) which will or may materially and adversely affect Purchaser's interest in or to any of the Contracts or the property and rights being assigned and transferred to Purchaser.

(cc) With respect to each Contract Document, there is not and shall not be any act, failure to act, omission or misrepresentation of Seller (or of any other Person to the best knowledge of Seller) which nullifies, modifies, limits or in any way affects the genuineness, validity or enforceability of any obligation of an Obligor under a Contract Document

3.2 Seller's Covenants. Until the termination of this Agreement and for as long thereafter as Purchaser holds any Contracts under this Agreement:

(a) Seller agrees that it shall, if required by applicable law, pay and discharge or cause to be paid and discharged, all sales, use, rental and personal property or similar taxes and fees (excluding any taxes on Purchaser's net income) which arise prior to the applicable Closing Date in connection with the sale, lease, use or ownership of the Equipment covered by an assigned Contract. Seller further agrees to indemnify and hold Purchaser harmless from and against all claims, losses and damages arising as a result of a breach by Seller of the foregoing agreement;

(b) Seller shall from time to time execute and deliver such further documents and do such further acts and things as Purchaser may reasonably request in order to fully effect the purposes of this Agreement and the Assignment and to protect Purchaser's interest in the Sold Property; and

(c) Seller shall enforce for the benefit of Purchaser any repurchase agreements or Guaranty of a Broker or Equipment supplier.

3.3 Purchaser's Representations and Warranties

(a) Purchaser has full power, authority, and legal right to execute deliver and perform this Agreement and its obligations hereunder and the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action;

(b) Except for the requisite corporate action, no consent, approval or other clearance is required with respect to the execution, delivery and performance of this Agreement by Purchaser, nor will such execution, delivery and performance constitute a default under any agreement, instrument, judgment, or decree to which it is a party or by which it is bound; and

(c) This Agreement has been duly executed and delivered by Purchaser and constitutes the legal, valid and binding obligations of Purchaser enforceable against Purchaser in accordance with its terms.

#### **4 DEFECTIVE CONTRACTS.**

4.1 Repurchase. Seller shall, within ten (10) calendar days after Purchaser's written demand, repurchase any Defective Contract for an amount equal to the remaining contract receivable of such Contract on the date of repurchase, discounted at the Discount Rate used in the appropriate Portfolio. If the Purchaser claims a Contract is defective by virtue of a breach by Seller of the warranties made pursuant to section 3.1 (e) (i) Purchaser, at Purchaser's cost and expense, shall take all actions and remedies available to collect said obligation and shall only tender such Contract for repurchase to Seller after a determination of fraud has been established through legal process.

4.2 Purchaser's Reassignment. In connection with the repurchase by Seller of any Contract, Purchaser shall, within 15 days after the occurrence of any of the aforementioned events (i) deliver to Seller the repurchased and related Contract File, and (ii) execute and deliver to Seller an assignment, in the form prepared by Seller and reasonably acceptable to Purchaser, of all of Purchaser's right, title and interest in the repurchased Contract, any related Sold Property and all proceeds thereof together with any UCC-3 assignment financing statements, which assignment shall be without recourse and without representation or warranty, except that Purchaser shall warrant that such Contract has not been previously assigned by Purchaser to any third party and the Contracts and related Sold Property are not subject to any liens or encumbrances created by or through Purchaser. All actions in connection with a repurchase shall be at the expense of Seller.

4.3 No Waiver. Purchaser's knowledge at any time of any breach of, or non-compliance with, any representations, warranties, covenants or agreements hereunder shall not constitute or be deemed a waiver of any of such rights or remedies hereunder, and any waiver of any default shall not constitute a waiver of any other default.

#### **5 INDEMNITIES BY SELLER**

5.1 Indemnity By Seller. Seller, at its sole cost and expense and without limiting any other rights which Purchaser has hereunder, shall indemnify, protect and hold Purchaser, and its directors, officers, employees, affiliates, successors or assigns, harmless against and from any and all claims, damages, losses, liabilities, obligations, demands, defenses, judgments, costs, disbursements or expenses of any kind or of any nature whatsoever which may be imposed upon, incurred by or asserted or awarded against Purchaser related to or arising from the following, unless caused by the gross negligence or willful misconduct of Purchaser: (i) any breach by Seller of any warranty, covenant or other obligation in this Agreement, (ii) any defense, claim, or offset related to any Contract resulting from an act or omission of Seller, (iii) any act, failure to act, omission, representation or misrepresentation by Seller which

constitutes negligence, gross negligence, fraud or intentional or willful misconduct in connection with the performance of Seller's obligations under this Agreement and (iv) the violation by Seller in connection with this Agreement or a Contract of any local, state, or federal law, rule or regulation.

5.2 Notice. If any claim or action is brought or threatened against Purchaser (the "Indemnified Party") based on a claim, loss or damage for which Seller (the "Indemnifying Party") is required to provide indemnity hereunder, the Indemnified Party shall promptly notify the Indemnifying Party in writing of such claim; *provided, however*, that the failure to provide such notice shall not relieve the Indemnifying Party of their liability hereunder, unless the failure of providing such notice is the direct cause of the Indemnifying Party's loss.

5.3 Defense of Claims. The Indemnifying Party agrees to pay all amounts due under this Section 4 promptly on notice thereof from the Indemnified Party. To the extent that the Indemnifying Party may make or provide, to Indemnified Party's satisfaction, for payment under this Section, the Indemnifying Party shall be subrogated to the Indemnified Party's rights with respect to such events or conditions. The Indemnifying Party may defend the litigation related thereto with counsel satisfactory to the Indemnified Party; *provided, however*, that no Seller Event of Default has occurred. the Indemnifying Party may not settle any such claims without the Indemnified Party's prior written approval.

5.4 Survival. All of the indemnities and agreements contained in this Section shall survive and continue in full force and effect notwithstanding termination of this Agreement.

## **6 MISCELLANEOUS**

6.1 Inspection of Records. Seller shall permit authorized representatives of Purchaser to examine, audit and photocopy Seller's records, with respect to any Contract or other Sold Property, at the expense of Purchaser, with such examinations to take place at Seller's principal place of business during Seller's normal business hours and at reasonable intervals, upon not less than five (5) business days notice to Seller.

6.2 Power of Attorney. Seller hereby irrevocably constitutes and appoints Purchaser as Seller's attorney-in-fact with full power of substitution, for Seller and in Seller's name to do, at Purchaser's option and at Seller's expense, all lawful acts and things which Purchaser may deem necessary to perfect and continue the perfection of any security interest created hereunder (including, but not limited to, the execution, in Seller's name, of notification letters in the form of Exhibit B hereto), and, if a Seller Event of Default has occurred and is continuing, to ask, demand, collect receipt for, sue for, compound and give acquittance for any and all payments assigned hereunder. Seller hereby also appoints Purchaser as Seller's attorney-in-fact to endorse, in writing or by stamp, Seller's name or otherwise on all checks for any monies in respect of the Sold Property.

6.3 Survival. All covenants, agreements, representations, warranties, indemnities contained in this Agreement (and any and each other agreement or instrument delivered pursuant hereto) shall survive (a) the execution and delivery of this Agreement, (b) the consummation of the transactions contemplated hereby, and (c) termination of this Agreement until all obligations and liabilities of Seller have been performed or repaid in full except for indemnification obligations which shall continue indefinitely.

6.4 Assignments. Except as herein provided, this Agreement shall be binding upon and inure to the benefit of Purchaser and Seller and their respective representatives, successors and assigns.

Notwithstanding the foregoing, Seller may not without Purchaser's written consent which may be withheld in its sole but reasonable discretion, assign, transfer or otherwise convey this Agreement, in whole or in part, other than by operation of law.

6.5 Notices. All notices, consents, requests, instructions, approvals and communications provided herein shall be validly given, made or served, effective only if in writing, except as otherwise provided herein, and sent by U.S. mail, postage prepaid, or by wire transmission, and shall be deemed received within five (5) business days from the date of posting if sent by mail, one business day after delivery thereto if sent by overnight courier service, or on the day of transmission if sent by fax with a confirmation receipt obtained, or if such day is not a business day, then on the following business day. All such notices, consents, requests, instructions, approvals and communications shall be sent to a party at the address set forth for such party on the first page hereof, or to such other address as such party may designate in writing.

6.6 GOVERNING LAW; CONSENT TO JURISDICTION AND SERVICE OF PROCESS. THIS AGREEMENT SHALL BE SUBJECT TO AND GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA (WITHOUT REGARD TO THE CONFLICT OF LAW PRINCIPLES THEREOF). SELLER DOES HEREBY SUBMIT, AT PURCHASER'S ELECTION, TO THE EXCLUSIVE JURISDICTION AND VENUE OF ANY COURTS (FEDERAL, STATE OR LOCAL) HAVING A SITUS WITHIN THE STATE OF CALIFORNIA WITH RESPECT TO ANY DISPUTE, CLAIM, OR SUIT WHETHER DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY RELATED ASSIGNMENT OR ANY OF SELLER'S OBLIGATIONS OR INDEBTEDNESS HEREUNDER. SELLER EXPRESSLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO SERVICE BY CERTIFIED MAIL, POSTAGE PREPAID, DIRECTED TO ITS LAST KNOWN ADDRESS WHICH SERVICE SHALL BE DEEMED COMPLETED WITHIN THREE (3) DAYS AFTER THE DATE OF MAILING THEREOF. SELLER HEREBY IRREVOCABLY WAIVES ANY CLAIM THAT THE STATE OF CALIFORNIA IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE AS WELL AS ANY RIGHT IT MAY NOW OR HEREAFTER HAVE TO REMOVE ANY SUCH ACTION OR PROCEEDING, ONCE COMMENCED TO ANOTHER COURT ON THE GROUNDS OF FORUM NON CONVENIENS OR OTHERWISE. THE EXCLUSIVE CHOICE OF FORUM SET FORTH HEREIN SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY PURCHASER OF ANY JUDGEMENT OBTAINED IN SUCH FORUM OR THE TAKING OF ANY ACTION BY PURCHASER TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION.

6.7 Other Documents. Seller and Purchaser shall execute such other documents and shall otherwise cooperate with the other party as such party reasonably requires to effectuate the transactions contemplated hereby.

6.8 Severability. If any part of this Agreement shall be contrary to any law which a party might seek to apply or enforce or should otherwise be defective, the other provisions hereof shall not be affected thereby but shall continue in full force and effect, to which end they are hereby declared severable.

6.9 Headings. The headings of the Sections of this Agreement are for convenience only and shall not be used to interpret or construe this Agreement.

6.10 Entirety; Amendments. This Agreement and the Exhibits referred to herein constitute the entire agreement between Purchaser and Seller as to the subject matter contemplated herein, and supersedes all prior agreements and understandings relating thereto. Each of the parties hereto

acknowledges that no party hereto nor any agent of any other party whomsoever has made any promise, representation or warranty whatsoever, express or implied, not contained herein, concerning the subject matter hereof, to induce it to execute this Agreement. No other agreements will be effective to change, modify or terminate this Agreement in whole or in part unless such agreement is in writing and duly executed by the party to be charged except as expressly set forth herein.

6.11 Intent of Agreement. This Agreement is intended by the parties hereto to effect an arm's length sale of the Contracts and other Sold Property and it is not to be construed as a loan or a commitment to make a loan, nor shall this Agreement be construed to effect a partnership or joint venture or to create a fiduciary, trust, agency or other special relationship, between Seller and Purchaser, which shall have the relationship of independent contractors with respect to each other; *provided*, that, if the transactions contemplated herein are deemed to be a financing, then to secure the obligations of Seller and the Obligors hereunder, Seller grants Purchaser a first priority security interest in the Sold Property and for purposes of such grant this Agreement shall constitute a security agreement under applicable law. Notwithstanding anything herein to the contrary, Seller grants Purchaser a first priority security interest in the Over Collateralization Amounts. Each party hereto acknowledges and warrants that it has been represented by counsel of its own choice, or by its own choice declined to be represented by counsel, throughout all negotiations that preceded the execution of this Agreement.

6.12 Costs and Expenses. Each party hereto shall bear its own costs and expense in connection with the purchase and sale of the Portfolios.

6.13 Indulgences Not Waivers. No delay in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by a party of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy.

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

**HL Leasing, Inc.**  
Purchaser

By: \_\_\_\_\_

Name: *Frankie D. Otto*  
Title: *Owner / CEO*

**Pentech Financial Services, Inc.**  
Seller

By: \_\_\_\_\_

*Ben Millerbis*  
President & CEO

**EXHIBIT**

A  
B  
C  
D  
E  
F

**HEADING**

Form of Assignment  
Form of Notice to Obligor  
Form of Secretary's Certificate from Seller  
Form of Contract  
Form of Closing Letter  
Payoff Letter



## ASSIGNMENT NO. 1

For value received as set forth on Schedule 1 hereto, Pentech Financial Services, Inc. ("Assignor"), hereby sells, assigns and transfers, without recourse of any kind or nature (except as otherwise expressly agreed to by Seller in the Purchase Agreement), to HL Leasing, Inc. ("Assignee"), its successors and assigns, all of Assignor's right, title and interest in and to the Sold Property as defined in the Purchase Agreement (hereinafter defined) with respect to the Contracts described on the attached Schedule 1 hereto and all of Assignor's rights and remedies under the Contracts, and the right either in Assignee's own behalf or in Assignor's name to take all such proceedings, legal, equitable or otherwise, that Assignor might take, save this Assignment.

This Assignment is delivered pursuant to the terms of that certain Master Purchase and Sale Agreement dated as of December 30, 2005 between Assignor and the Assignee (as amended from time to time the "Purchase Agreement"), and is subject to the terms, conditions, promises and warranties contained therein. Capitalized terms used and not otherwise defined herein shall have the respective meanings given to such terms in the Purchase Agreement.

Annexed hereto as (i) Schedule 1 is a list of all of the assigned Contracts, setting forth for each Contract, the Contract number, state where the Obligor is located, unpaid balance, purchase price, number of remaining payments, maturity date and equipment description.

Assignor represents that (i) as of the date of this Assignment the information contained in the attached Schedule 1 is true and correct, (ii) Assignor will comply with all of its covenants and other obligations in connection therewith, if any; and (iii) each Contract is in full force and effect, is subject to no default and has not assigned or pledged, and hereby covenants that it will not assign or pledge, in whole or part, of the rights hereby assigned to anyone other than Assignee.

All of Assignor's right, title and interest herein assigned may be reassigned by Assignee and any subsequent assignee without notice to or consent by Assignor.

**IN WITNESS WHEREOF**, the undersigned has executed this Assignment by its duly authorized representative as of the 30th day of December 2005.

**PENTECH FINANCIAL SERVICES, INC.**

By:   
(Authorized Signature)


Todd Harris, CFO

(Typed Name and Title)


**SCHEDULE 1 TO ASSIGNMENT NO. 1**

Count	Contract No.	Obligor Name	Tier	State	Unpaid Balance	Purchase Price	Remaining Payments	Maturity Date	Equipment Description
1	4317	MESH HOLDINGS, LLC DBA MESH SPA	T1	NJ	91,185.28	68,937.07	58	11/15/2010	NEW ASSORTED SPA EQUIPMENT
2	4563	UNLIMITED ENGRAVING INC.	T2	SC	18,163.84	15,478.76	32	08/01/2008	NEW ENGRAVING & SIGN MAKING EQUIPMENT
3	5477	BASWINDER K. MAHAL, INDIVIDUAL DBA K	T1	CA	138,066.20	102,761.22	58	10/01/2010	19 FASTCORP VENDING MACHINES
4	5692	PARADISE VENDING OF NORTH FLORIDA,	T2	FL	82,636.54	68,788.24	37	01/01/2009	1998 - 2004 VENDING EQUIPMENT
5	5922	JOHN R. CONSTABLE, INDIVIDUAL DBA R	T2	NY	61,156.08	51,146.03	36	12/01/2008	NEW SINGLE CRANE PLUS W/LIBERTY ART
6	7768	R & E ENTERPRISES, LLC	T2	PA	96,980.00	79,607.70	40	04/01/2009	NEW SUBWAY
7	7815	SUBWAY OF BROADWAY, A PARTNERSHII	T1	NY	110,436.48	95,907.94	28	04/01/2008	NEW STORE EQUIPMENT
8	8229	TRACEY D. CAMARA, INDIVIDUAL DBA CAI	T2	NH	150,510.42	115,861.43	54	06/01/2010	1999 TIGERCAT 630 GRAPPLE SKIDDER
9	10422	ROAD 9, INC.	T1	CO	85,609.11	78,368.85	17	05/15/2007	COMPUTER HARDWARE & SOFTWARE
10	10770	KOKILA ENTERPRISE INC DBA SUBWAY	T2	PA	107,399.50	87,752.44	41	05/15/2009	SUBWAY REMODEL
11	10849	OFFICEMATES 5 OF DALLAS INC	T2	TX	33,339.18	27,114.36	42	06/15/2009	COMPUTER NETWORKING & SOFTWARE
12	11061	LONG ISLAND FIBER EXCHANGE, INC.	T2	NY	33,175.89	28,405.29	31	07/01/2008	NEW 37SE SPLICER KIT/EXPO MAINFRAME
13	11081	UNIVERSITY CHIROPRACTIC, INC.	T2	FL	139,031.20	106,541.36	55	07/01/2010	NEW CHIROPRACTIC TABLE
14	11389	VANISH, INC.	V1	FL	185,169.06	139,989.84	58	11/01/2010	1 POLARIS COMET SYSTEM, 1 SYNER COOL
15	11506	AGGRESSIVE PROPERTY MANAGEMENT,	T2	OR	84,742.20	65,233.70	54	06/01/2010	NEW DUMP TRUCK
16	11564	ACORCINO MARTINEZ, INDIVIDUAL DBA C	T2	NM	14,574.85	11,798.85	43	07/01/2009	1996 FREIGHTLINER
17	11698	SHAFFER TRUCKING INC., C.E.	T2	VA	60,166.68	48,932.86	42	06/01/2009	USED 2000 KENWORTH
18	11725	SPECIALTY BRANDED PRODUCTS, INC. DI	T2	CA	60,811.30	46,600.46	55	07/15/2010	RISCO STUFFER
19	11819	TRUMAN TOUCHSTONE, INDIVIDUAL DBA	T2	TX	113,159.34	92,031.17	42	06/15/2009	USED 2002 JOHN DEERE TRACTOR
20	12001	D.C. ELECTRIC COMPANY	T1	CT	126,905.94	97,690.93	54	06/15/2010	NEW SKID STEER & USED MINI EXCAVATOR
21	12015	BRIDGE ENTERTAINMENT, INC. DBA E-PO	T2	CA	20,475.74	16,575.83	43	07/01/2009	NEW PHONE SYSTEM
22	12110	MCR INVESTMENT CORP. DBA LINN COUN	T2	IA	109,637.53	88,755.43	43	07/15/2009	USED 2000 GOMACO SLIPFORM PAVER
23	12144	A.E.C. CONSULTANTS, INC.	T2	AZ	50,079.15	38,376.28	55	07/01/2010	GPS SYSTEM
24	12289	JOHN R. CONSTABLE, INDIVIDUAL DBA R	T2	NY	62,854.86	52,321.59	37	01/01/2009	VENDING MACHINES
25	12444	SIERRA HOMES CONSTRUCTION, INC.	T1	UT	25,464.45	19,513.73	55	07/15/2010	USED 1995 PETERBILT TRACTOR
26	12484	JAIESTUART, INC.	T1	MA	115,481.48	87,305.26	58	12/01/2010	SALON EQUIPMENT
27	12908	DELTA COMMUNICATIONS, L.L.C. DBA CLI	T2	IL	76,870.26	64,893.57	34	10/01/2008	COMPUTER/TELECOMMUNICATIONS EQ
28	12961	BACK TO ROOTS INC DBA KCUB	T2	TX	26,896.84	22,086.71	37	01/01/2009	STUDIO EQUIPMENT
29	13003	INOVS SOLUTIONS	T1	CA	85,358.72	72,740.54	32	08/01/2008	LASER SCANNER
30	13050	DJS & JAW, LLC DBA THE SALON PROFES	T1	OH	65,218.10	49,305.60	58	12/01/2010	ASSORTED NEW SALON EQUIPMENT
31	13144	D. & D. AMUSEMENT L.L.C.	T1	FL	135,355.50	108,568.67	45	09/15/2009	HIGH END VIDEO GAMES, COIN OPERATED
32	13261	EGO MECHANIX, LLC	T1	CA	37,708.70	28,508.19	58	11/15/2010	NEW BEAUTY SALON EQUIPMENT
33	13306	BERGMAN FARMS CUSTOM HARVESTING	T1	KS	92,056.72	70,226.11	56	08/01/2010	1 NEW GREEN CART TRAILER; 1 NEW DOUB
34	13380	CENTURION GROUP INC	T2	UT	51,541.02	42,684.92	36	12/15/2008	INFOPIA SOFTWARE PACKAGE
35	13462	GREEN ACRES RANCH, INC.	T2	CA	22,196.90	18,738.54	34	10/15/2008	TRAILER
36	13563	JAMES RICH, INDIVIDUAL DBA RICH ENVIF	T2	CA	20,384.10	16,350.09	45	09/01/2009	USED TRUCK
37	13977	EQUIPMENT ACQUISITION RESOURCES, I	T1	IL	149,126.25	113,249.93	57	09/15/2010	USED GRINDING MACHINE
38	14042	PAUL E. CROWDER, INDIVIDUAL DBA DOL	T1	AR	102,058.77	86,563.44	33	09/01/2008	USED CONSTRUCTION EQUIPMENT
39	14213	PC EXPRESS DELIVERY, INC.	T1	CA	56,248.65	45,117.05	45	09/15/2009	USED (2001) BOX TRUCK
40	14318	DNT TRUCKING, INC.	T1	OR	32,942.01	25,016.93	57	09/15/2010	NEW GRAPPLE MACHINE & BRUSH RAKE
41	14534	BOUTWELL, BRYSON & POWELL, L.L.C.	T1	OH	36,189.94	30,551.40	34	10/01/2008	NEW MARQUEE SIGN
42	15055	TIMBERWOOD LANDSCAPE, INC.	T1	CA	14,508.14	12,247.71	34	10/15/2008	NEW TRAILER, NEW TILLER, NEW EDGER A
43	15158	TEXAS COUNTRY TOURS INC DBA ESCOM	T1	TX	57,073.23	46,632.57	41	05/01/2009	1 NEW KITCHEN EQUIPMENT; 1 NEW AUDIO
44	15414	MAJOR GAUGE AND TOOL COMPANY	T1	MI	75,995.08	57,453.11	58	12/01/2010	GAUGES, LAPS, PUNCHES
45	15542	OFS AQUISITION, INC. DBA OMNI FACILIT	T1	MI	15,390.44	12,992.55	34	10/01/2008	1- TOMCAT SCRUBBER
46	15674	NEW DAY MEDIA, INC.	T1	OK	17,068.95	13,691.01	45	09/15/2009	MEDIA EQUIPMENT
47	15678	M9 CORPORATION	T1	CA	50,185.74	44,848.67	22	10/15/2007	NEW HARDWARE/SERVER COMPONENTS
48	15692	STILL WATERS MEDICAL SPA LLC	T1	FL	15,162.35	12,740.09	35	12/01/2008	MILLENIUM SOFTWARE & DELL HARDWARE
					3,412,748.71	2,727,004.02			

Pentech Financial Services, Inc.

By:   
 Todd Harris  
 Title: CFO

HL Leasing, Inc.

By:   
 Title: CEO

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UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]  
Dilligenz (800)858-5294

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Dilligenz, Inc.  
6500 Harbour Heights Pkwy, Suite 400  
Mukilteo, WA 98275, USA  
NYfillings@Dilligenz.com  
(Fax)(800)345-6059

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE # 200501040013299 Filedate: 04-JAN-05

1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

2.  TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3.  CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4.  ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects  Debtor or  Secured Party of record. Check only one of these two boxes.  
Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c.  DELETE name: Give record name to be deleted in item 6a or 6b.  ADD name: Complete item 7a or 7b, and also item 7c, also complete items 7d-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME HL Leasing, Inc.

OR

7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7c. MAILING ADDRESS 3439 W Shaw Ave

CITY Fresno	STATE CA	POSTAL CODE 93711	COUNTRY USA
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7d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	7e. TYPE OF ORGANIZATION Corporation	7f. JURISDICTION OF ORGANIZATION CA	7g. ORGANIZATIONAL ID #, if any C2241728	<input type="checkbox"/> NONE
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8. AMENDMENT (COLLATERAL CHANGE): check only one box.  
Describe collateral  deleted or  added, or give entire  restated collateral description, or describe collateral  assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here  and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME HL LEASING, INC.

OR

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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10. OPTIONAL FILER REFERENCE DATA [17084726]

**American Capital Group Lease Agreement 5922**  
**TO OUR VALUED CUSTOMER:** This Lease has been written in "Plain English". When we use the words you and your in the Lease, we mean you our customer, which is the Lessee indicated below. When we use the words we, us, and our in this Lease, we mean the Lessor, American Capital Group, Inc. Our address is 175 Technology Dr. Ste 100 Irvine, CA 92618.

<b>CUSTOMER INFORMATION</b>	Lessee Name John Constable dba RedJohn Amusements		Lease # 101665-02 AC
	Billing Street Address 56 Timber Ridge Drive Holbrook, NY 11741		Tax ID# NONE
<b>SUPPLIER INFORMATION</b>	Company Name United Textile Fabricators		Lessee Phone # 631-472-1228
	Address 21 Germania Station Rd. Toms River, NJ 08755		Contact Phone #
<b>EQUIPMENT DESCRIPTION</b>	Quantity 29	Make/Model New Super Single Crane Machine with ICT Stacker, 50 Cent Vend, Liberty Art Work, Med Claw	Serial Number
	<b>TERM AND PAYMENT</b>	Monthly Rent (Plus Applicable Taxes) See Schedule B Attached	Base Term In Months 48 months
		Deposit \$3,397.56	Deposit Applied To Two Advanced Payments
<p>This Lease shall become effective upon acceptance by us by signing and dating this Lease and the term of this Lease shall begin on the day the Equipment has been delivered to and is usable by you ("Commencement Date"). The base term of this Lease shall begin on the first day of the month following the Commencement Date and terminate upon the expiration of the number of months stated under Lease Term.</p>			
<p><b>INSURANCE &amp; TAXES</b> You are required to provide and maintain insurance related to the Equipment, and to pay any property, use and other taxes related to this Lease or the Equipment. (See sections 4 and 7 of this Lease) If you are tax-exempt, you agree to furnish us with satisfactory evidence of your exemption. You Further agree to pay reasonable service fees assessed for processing of insurance premiums and taxes.</p>			
<p><b>TERMS &amp; CONDITIONS</b>  <b>BY SIGNING THIS LEASE (i) YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS ON EACH PAGE OF THIS LEASE, (ii) YOU AGREE THAT THIS LEASE IS A NET LEASE THAT YOU CANNOT TERMINATE OR CANCEL, YOU HAVE AN UNCONDITIONAL OBLIGATION TO MAKE PAYMENTS DUE UNDER THIS LEASE AND YOU CANNOT WITHHOLD, SET OFF OR REDUCE SUCH PAYMENTS FOR ANY REASON, (iii) YOU WILL USE THE EQUIPMENT ONLY FOR BUSINESS PURPOSES, (iv) YOU WARRANT THAT THE PERSON SIGNING THIS LEASE FOR YOU HAS THE AUTHORITY TO DO SO AND TO GRANT THE POWER OF ATTORNEY SET FORTH IN SECTION 6 OF THIS LEASE, (v) YOU CONFIRM THAT YOU DECIDED TO ENTER INTO THIS LEASE RATHER THAN PURCHASE THE EQUIPMENT FOR THE TOTAL CASH PRICE AND THAT YOU WILL NOT SELECT ANY OTHER ALTERNATE SOURCE OF FINANCING WHILE WE PROCESS THIS LEASE. DOING SO WOULD CONSTITUTE A BREACH OF CONTRACT AND (vi) YOU AGREE THAT THIS LEASE HAS BEEN PERFORMED AND ENTERED INTO IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, YOU CONSENT TO JURISDICTION IN ORANGE COUNTY, YOU EXPRESSLY WAIVE ANY RIGHTS TO A TRIAL BY JURY.</b></p>			

Lessee: John Constable dba RedJohn Amusements  
 By: *John Constable*  
 Title: Owner  
 Date: 1/4/05

Lessor: American Capital Group, Inc.  
 By: *[Signature]*  
 Title: Funding Man.  
 Date: 1/5/05

THIS LEASE IS SUBJECT TO APPROVAL AND ACCEPTANCE BY US.  
**GUARANTY**

As additional inducement for us to enter into the Agreement, the undersigned ("you") unconditionally personally guarantees that the customer will make all payments and meet all obligations required under this Agreement and any supplements fully and promptly. You agree that we make other arrangements including compromise or settlement with the customer and you waive all defenses and notice of those changes and will remain responsible for the payment and obligations of this Agreement. We do not have to notify you if the customer is in default. If the customer defaults, you will immediately pay in accordance with the default provision of the Agreement all sums due under the terms of the Agreement and will perform all the obligations of the Agreement. If it is necessary for us to proceed legally to enforce this guaranty, you expressly consent to the jurisdiction of any court in the County of Orange, California and agree to pay all costs, including attorneys fees incurred in enforcement of this guaranty. It is not necessary for us to proceed first against the customer before enforcing this guaranty. By signing this guaranty, you authorize us to obtain credit bureau reports for credit and collection purposes.

*[Signature]*  
 Signature: John Constable  
 Print Name of Guarantor: John Constable  
 Home Phone Number: 631-472-1228  
 Date: 1/4/05  
 INITIAL: *[Initials]*

I HAVE READ AND AGREE TO ALL ITEMS ON THIS PAGE 1 OF 2

**1. LEASE: DELIVERY AND ACCEPTANCE.** I agree to lease the equipment described on the front of this lease agreement (collectively "Equipment") on the terms and conditions shown on the front and back of this lease ("Lease"). You agree to inspect the Equipment and execute a Delivery and Acceptance Certificate after the Equipment has been delivered and after you are satisfied the Equipment is satisfactory in every respect. If you fail to sign a Delivery and Acceptance Certificate within 10 days of delivery of the Equipment, we have the option of either beginning the Lease or terminating the Lease. If we begin the Lease you shall be bound by all terms and conditions of the Lease and you will perform all obligations as required. If we terminate the Lease, you shall pay us on demand all sums paid or owing by us to the supplier(s) of the Equipment and you shall indemnify and hold us harmless from any claims made by the supplier(s) arising out of or relating to the Equipment, purchase order or the Lease.

**2. NO WARRANTIES.** We are leasing the Equipment to you "AS-IS". YOU ACKNOWLEDGE THAT WE DO NOT MANUFACTURE THE EQUIPMENT, WE DO NOT REPRESENT THE MANUFACTURER OR THE SUPPLIER AND YOU HAVE SELECTED THE EQUIPMENT AND SUPPLIER BASED UPON YOUR OWN JUDGEMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. YOU AGREE THAT REGARDLESS OF CAUSE, WE ARE NOT RESPONSIBLE FOR AND YOU WILL NOT MAKE ANY CLAIM AGAINST US FOR ANY DAMAGES, WHETHER CONSEQUENTIAL, DIRECT, SPECIAL OR INDIRECT. YOU AGREE THAT NEITHER SUPPLIER NOR ANY SALESPERSON, EMPLOYEE OR AGENT OF SUPPLIER IS OUR AGENT OR HAS ANY AUTHORITY TO SPEAK FOR US OR TO BIND US IN ANY WAY. We transfer to you for the term of this Lease any warranties made by the manufacturer or Supplier under any purchase or supply contract.

**3. EQUIPMENT LOCATION; USE AND REPAIR; RETURN.** You will keep and use the Equipment only at the Equipment Location shown on the front of this Lease. You may not move the Equipment without prior written consent. At your own cost and expense you will keep the Equipment eligible for any manufacturer's certification, in compliance with all applicable laws and in good condition, except for ordinary wear and tear. You will not make any alterations, additions or replacements to the Equipment without our prior written consent. All alterations, additions and replacements will become part of the Equipment and our property at no cost or expense to us. We may inspect the Equipment and location/site of the equipment at any reasonable time. Unless you purchase the Equipment in accordance with this Lease, at the end of this Lease you will immediately deliver the Equipment to us in as good condition as when you received it, except for ordinary wear and tear, to any place in the United States that direct. In the event the Equipment is not in good working condition when you return it, you agree to pay for any repairs, changes, storage fees, alterations, or upgrades, necessary to return the Equipment to good working condition. You will pay all expenses of deinstalling, crating and shipping, and you will insure the Equipment for its full replacement value during shipping.

**4. TAXES AND FEES.** You will pay when due, either directly to us or upon our demand to any taxing authority, all taxes, fines and penalties relating to this Lease or the Equipment that are now or in the future assessed or levied by any state, local or other government authority. We will file all personal property, use or other tax returns (unless we notify you otherwise in writing) and you agree to pay us a fee for making such filings. We do not have to contest any taxes, fines or penalties. You will pay estimated property tax with each Lease Payment, quarterly or annually, as invoiced. You agree to pay any fees relating to the use of the equipment or reimburse us for any (including, but without limitation), equipment inspection fees. You shall pay registration, if applicable, directly to the states agency for motor vehicles, and if you fail to pay the necessary fees promptly, you shall be subject to late and processing fees.

**5. LEASE PAYMENT.** You shall pay us the monthly Lease Payment, in advance, for each month or any part thereof the Lease is in effect. The first such payment shall be made on the first day of the month following the Commencement Date. A pro rata portion of the Lease Payment based on a daily charge of one-thirtieth (1/30) of the Lease Payment calculated from the Commencement Date to the 1<sup>st</sup> payment due date shall be due and payable at the Commencement Date. Lease Payments and other sums due which are not paid within three (3) days of their due date shall be subject to a late charge equal to fifteen percent (15%) of each delayed payment (or such lesser rate as is the maximum rate allowable under applicable law). We have the right, but not the obligation, to electronically withdraw funds from your bank account to pay for any unpaid lease payments, taxes, fees, charges and assessments. You shall provide us with any bank account information we request in order to process electronic payments. You may revoke our authorization to electronically withdraw funds by giving us 10 days written notice. You agree to pay us a fee of \$ 30.00 for each occurrence of a dishonored check or electronic payment.

**6. TITLE; RECORDING.** We are the owner of and will hold title to the Equipment. You will keep the Equipment free of all liens and encumbrances. You agree that this transaction is a true lease. However, if this transaction is deemed to be a lease intended for security, you grant us a purchase money security interest in the Equipment (including any replacements, substitutions, additions, attachments and proceeds). You will deliver us signed financing statements or other documents we request to protect our interest in the Equipment. YOU AUTHORIZE US TO FILE A COPY OF THIS LEASE AS A FINANCING STATEMENT AND APPOINT US OR OUR DESIGNEE AS YOUR ATTORNEY-IN-FACT-TO EXECUTE AND FILE, ON YOUR BEHALF, FINANCING STATEMENTS COVERING THE EQUIPMENT.

**7. INSURANCE.** You will provide and maintain at your expense (a) property insurance against the loss, theft, or destruction of, or damage to, the Equipment for its full replacement value, naming us as loss payee, and (b) public liability and third party property insurance, naming us as an additional insured. You will give us certificates or other evidence of such insurance when requested. Such insurance will be in a form, amount and with companies acceptable to us, and will provide that we will be given 30 days advance notice of any cancellation or material change of such insurance. If you do not give us evidence of insurance acceptable to us, we have the right, but not the obligation, to obtain insurance covering our interest in the Equipment for the term of this Lease, including any renewal or extensions, from an insurer of our choice. We may add the costs of acquiring and maintaining such insurance and our fees for our service in placing and maintaining such insurance (collectively, "Insurance Charge") to the amounts due from you under this Lease. You will pay the Insurance Charge in equal installments allocated to the remaining Lease Payments. If we purchase insurance, you will cooperate with our insurance agent with respect to the placement of insurance and processing of claims. Nothing in this Lease will create an insurance relationship of any type between us and any other person. You acknowledge that we are not required to secure or maintain any insurance, and we will not be liable to you if we terminate any insurance coverage that we arrange. If we replace or renew any insurance coverage, we are not obligated to provide replacement or renewal coverage under the same terms, costs, limits, or conditions as the previous coverage. If we replace or renew any insurance coverage you agree to pay any reasonable fee assessed for the processing, maintenance, billing and handling of the policy.

**8. LOSS OR DAMAGE.** As between you and us, you are responsible for any loss, theft or destruction of, or damage to, the Equipment (collectively "Loss") from any cause at all, whether or not insured, until the equipment is delivered to us at the end of this Lease. You are required to make all Lease Payments even if there is a Loss. At time of Loss or Damage, at our option, you will either (a) repair the Equipment so that the equipment is in good condition and working order, eligible for any manufacturer's certification, or (b) pay us the amounts specified in Section 10b.

**9. DEFAULT/ BREACH OF CONTRACT.** Each of the following is a "Default" under this Lease: (a) you fail to pay any Lease Payment or any other payment, fee, charges, cost or assessment within 10 days of its due date, (b) you do not perform any of your other obligations under this Lease or under any other agreement with us and this failure continues for 10 days after we have notified you of it, (c) you become insolvent, you dissolve or are dissolved, or you assign your assets for the benefit of your creditors, or enter (voluntarily or involuntarily) any bankruptcy or reorganization proceeding; (d) any guarantor of this Lease dies, does not perform their obligations under the guaranty, or becomes subject to one of the events listed in clause (c) above. (e) you are unable or unwilling to provide us with the necessary documents that are required, during anytime, by us in order to approve or fund this lease. (f) you fail to provide additional personal and/or cross corporate guaranties if needed after we discover additional shareholders and/or owners or another company is anyway affiliated to you, and/or (g) you misrepresent your company's creditworthiness and/or fabricate information.

I HAVE READ AND AGREE TO ALL ITEMS ON THIS PAGE 2 OF 4

  
INITIAL

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**10. REMEDIES.** If a Default or Breach of Contract occurs, we may do one or more of the following: (a) we may cancel or terminate this Lease or all other agreements that we have entered into with you; (b) we may require you to immediately pay us, as compensation for loss of our bargain and not as a penalty, a sum equal to (i) the present value of all unpaid Lease Payments for the remainder of the term plus the present value of our anticipated residual interest in the Equipment, each discounted at 5% per year, compounded monthly, plus (ii) all other amounts due or that become due under this Lease; (c) we may require you to deliver the Equipment to us as set forth in Section 3; (d) we or our agent may peacefully repossess the Equipment without court order and you will not make any claims against us for damages or trespass or any other reason; and (e) we may liquidate any or all deposits and/or collect additional fees for our costs associated to process this lease. You agree to pay all of our costs of enforcing our rights against you, including reasonable attorneys' fees. If we take possession of the Equipment, we may sell or otherwise dispose of it with or without notice, at a public or private sale, and apply the net proceeds (after we have deducted all costs related to the sale or disposition of the Equipment) to the amounts that you owe us. You agree that if notice of sale is required by law to be given, 10 days' notice shall constitute reasonable notice. You will remain responsible for any amounts that are due after we have applied such net proceeds.

**11. ASSIGNMENT. YOU MAY NOT ASSIGN, SELL, TRANSFER OR SUBLEASE THE EQUIPMENT OR YOUR INTEREST IN THIS LEASE.** We may, with or without notifying you, sell, assign, or transfer this Lease or our rights in the Equipment. You agree that the new owner will have the same rights and benefits that we have now under this Lease but not our obligations. The rights of the new owner will not be subject to any claim, defense or set-off that you may have against us.

**12. FINANCE LEASE STATUS.** You agree that if Article 2A of the Uniform Commercial Code applies to this Lease, this Lease will be considered a "finance lease" as that term is defined in Article 2A. By signing this Lease, you agree that either (a) you have reviewed, approved, and received, a copy of the Supply Contract or (b) that we have informed you of the identity of the Supplier, that you have rights under the Supply Contract, and that you may contact the Supplier for a description of those rights. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU WAIVE ANY AND ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE BY ARTICLE 2A.**

**13. INDEMNIFICATION.** You are responsible for any losses, damages, penalties, claims, suits and actions (collectively "Claims"), whether based on theory or strict liability or otherwise caused by or related to (a) the manufacture, installation, ownership, use, lease, possession, or delivery of the Equipment or (b) any defects in the Equipment. You agree to reimburse us for and if we request, to defend us against, any Claims.

**14. LEASE MATURITY OPTIONS: You will have the following options at the end of the original term, provided the lease has not terminated early and no event of default under the lease has occurred and is continuing. 1. Purchase the equipment for the fair market value. 2. Renew the lease per Paragraph 15. 3. Return the equipment as provided in Paragraph 3.**

**15. RENEWAL PROVISIONS.** If no default exists under this Lease you will have the option at the end of the original or any renewal term to purchase all (but not less than all) of the Equipment at the Purchase option price reflected in Paragraph 14 this Lease, plus any applicable taxes. You must give at least 120 days prior written notice via certified mail before the end of the original term that you will purchase the Equipment or that you will deliver it to us. If you do not give us such written notice or if you do not purchase or deliver the Equipment in accordance with the terms and conditions of this Lease, this Lease will automatically renew for a 12 month term and thereafter renew for successive one month terms until you deliver the Equipment to us. During such renewal (s) the Lease payment will remain the same. We may cancel the automatic renewal by sending you written notice 10 days prior to such renewal term. For all Fair Market Value Purchase Options, we will use our reasonable judgment to determine the Equipment's fair market value. Upon payment of the Purchase Option price, plus any applicable sales tax and closing Bill of Sale and Title fees, and if no default exists, we shall transfer our interest in the Equipment to you "AS, IS, WHERE IS" without any representation or warranty whatsoever and this Lease will terminate.

**16. CREDIT INFORMATION. YOU AUTHORIZE US OR ANY OF OUR AFFILIATES TO OBTAIN CREDIT BUREAU REPORTS, AND MAKE OTHER CREDIT INQUIRES THAT WE DETERMINE ARE NECESSARY. ON YOUR WRITTEN REQUEST, WE WILL INFORM YOU WHETHER WE HAVE REQUESTED A CONSUMER CREDIT REPORT AND THE NAME AND ADDRESS OF ANY CONSUMER CREDIT REPORTING AGENCY THAT FURNISHED A REPORT. YOU ACKNOWLEDGE THAT WITHOUT FURTHER NOTICE WE MAY USE OTHER ADDITIONAL CREDIT BUREAU REPORTS TO UPDATE OUR INFORMATION SO LONG AS YOUR OBLIGATIONS TO US ARE OUTSTANDING. DURING THE TIME OF THIS LEASE APPROVAL, FUNDING, TERM AND ANY RENEWAL HEREOF, YOU AGREE TO PROVIDE US WITH ALL FINANCIAL STATEMENTS AND COPIES OF FEDERAL AND STATE TAX RETURNS, BANK STATEMENTS, TRADE REFERENCES OR ANY OTHER INFORMATION, AS WE REASONABLY REQUEST.**

**17. ENTIRE AGREEMENT/FURTHER DOCUMENTS AND PROCESSES.** You agree that the terms and conditions contained in this Lease make up the entire agreement between you and us regarding the lease of the Equipment. There is no implied, verbal, and/or other agreement between the representatives of us and you. Any change in the terms and conditions of this Lease must be in writing and signed by us. You agree however that we are authorized without notice to you, to supply any missing information or correct obvious errors in this Lease. If we delay or fail to enforce any of our rights under this Lease, we will still be entitled to enforce those rights at a later time. After equipment review, final approval, and final invoices are received, we may send additional paperwork to finalize this lease. These "final documents" will reflect the final terms and or conditions of the lease. If the terms and/or conditions are different, the remaining clauses of this Lease are still enforceable. Before this transaction funds, you might be required to participate in the verbal authorization. You understand that you participate in these authorizations voluntarily and that this is the final stage of the funding process in which you may raise concerns or questions with this Lease. We have no time limit restrictions on the time it takes to fund a transaction. You understand that we will quickly process this transaction and only perform our due diligence necessary to fund this lease. Therefore, you will not pursue us for any delays in the funding process. This Lease Agreement represents only one lease transaction and does not include any sort of Multiple Lease transactions, and/or Master Lease Line Credit or Line of Credit. You agree that only a single lease transaction has been entered, unless otherwise agreed upon by a letter signed by an officer of our Company.

**18. LEASE DEPOSITS.** Lease deposits are any Security Deposits, Advance Payments, or any fees that we may require you to pay for rent, term and/or processing this lease. In the event the Lease is rejected or terminated for any reason whatsoever, you may request a refund by written notification so that we have confirmation that you no longer want us to pursue this lease for you. Following the date we receive such notification, we shall refund you; within sixty (60) days, the deposit minus your documentation fee and a processing fee in the amount of 1% of the original cost of the Equipment, to cover part of our fees and expenses in processing the lease. You further understand that any deposits you make to us enter our operating account, and thus you shall receive no interest for deposits held by us. We may apply any Security Deposits made hereunder to cure any default. If additional funds remain from the deposit (after the advance payments, documentation fees, interim rents, and other fees are deducted), those remaining funds will be returned within 30 days from the date of lease funding. Written request for these funds should be given to us as well. If a security deposit addendum exists, the conditions of that addendum supersede this Lease. You understand that our acceptance of your Security Deposit does not constitute acceptance of this Lease, which acceptance is evidenced only by our execution of this Lease in the space provided on the first page.

**19. SEVERABILITY.** This Lease is intended to constitute a valid and enforceable legal instrument. In the event any provision hereof is declared invalid, or if this Lease is cancelled, the remaining provisions of this Lease, all of which will remain in full force and effect.

I HAVE READ AND AGREE TO ALL ITEMS ON THIS PAGE 3 OF 4 

5922

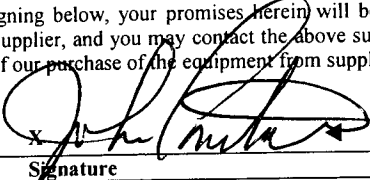
INITIAL

**20. MISCELLANEOUS.** All notices shall be given in writing by the party sending the notice and shall be effective when deposited in the U.S. Mail and shall be made via certified mail where noted in this Lease, addressed to the other party receiving the notice at its address shown on the front of this Lease (or any other address specified by that party in writing) with postage prepaid. All of the maximum amount of time price differential or interest, as applicable, permitted to be charged or collected by applicable law, and any such excess payment will be applied to Lease Payments in inverse order of maturity, and any remaining excess will be refunded to you. If you do not perform any of your obligations under this Lease, we have the right, but not the obligations, to take any action or pay any amount we believe are necessary to protect our interest. You agree to reimburse us immediately upon our demand for any such amounts that we pay. If more than one Lessee has signed this Lease, each of you agrees that your liability is joint and several.

**21. ELECTRONIC DOCUMENTS.** This document may have been sent electronically. I hereby warrant this document has not been altered in any way. Any alteration or revision to any part of this or any attached documents will make all documents non-binding and void.

**DELIVERY**

You certify that all the equipment listed above has been furnished, that the delivery and installation has been fully completed and satisfactory. Further, all conditions and terms of this agreement have been reviewed and acknowledged. Upon your signing below, your promises herein will be irrevocable and unconditional in all respects. You understand and agree that we have purchased the equipment from the supplier, and you may contact the above supplier for your warranty rights, if any, which we transfer to you for the term of this lease. Your approval as indicated below of our purchase of the equipment from supplier is a condition precedent to effectiveness of this lease.

	John Constable dba RoJohn Amusements		Owner
<b>Date of Delivery</b>	<b>Customer</b>	<b>Signature</b>	<b>Title</b>

I HAVE READ AND AGREE TO ALL ITEMS ON THIS PAGE 4 OF 4

  
INITIAL

I HEREBY AUTHORIZE \_\_\_\_\_, \_\_\_\_\_ Title TO ORALLY VERIFY MY/OUR ACCEPTANCE OF THE ABOVE

REFERENCED EQUIPMENT IN MY ABSENCE

5922

**PAYMENT SCHEDULE "B":**

**Lessee:** John Constable dba RoJohn Amusements

**Lease Number:** 5922

	PAYMENT		PAYMENT
1	\$ 1,698.78	25	\$ 1,698.78
2	\$ 100.00	26	\$ 1,698.78
3	\$ 100.00	27	\$ 1,698.78
4	\$ 100.00	28	\$ 1,698.78
5	\$ 1,698.78	29	\$ 1,698.78
6	\$ 1,698.78	30	\$ 1,698.78
7	\$ 1,698.78	31	\$ 1,698.78
8	\$ 1,698.78	32	\$ 1,698.78
9	\$ 1,698.78	33	\$ 1,698.78
10	\$ 1,698.78	34	\$ 1,698.78
11	\$ 1,698.78	35	\$ 1,698.78
12	\$ 1,698.78	36	\$ 1,698.78
13	\$ 1,698.78	37	\$ 1,698.78
14	\$ 1,698.78	38	\$ 1,698.78
15	\$ 1,698.78	39	\$ 1,698.78
16	\$ 1,698.78	40	\$ 1,698.78
17	\$ 1,698.78	41	\$ 1,698.78
18	\$ 1,698.78	42	\$ 1,698.78
19	\$ 1,698.78	43	\$ 1,698.78
20	\$ 1,698.78	44	\$ 1,698.78
21	\$ 1,698.78	45	\$ 1,698.78
22	\$ 1,698.78	46	\$ 1,698.78
23	\$ 1,698.78	47	\$ 1,698.78
24	\$ 1,698.78	48	\$ 1,698.78

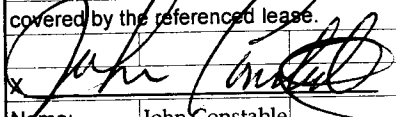
**Plus Applicable Sales/ Use Taxes**

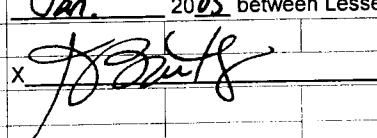
**LESSEE:** John Constable dba RoJohn Amusements

**LESSOR:** American Capital Group, Inc.

This Payment Schedule is hereby verified as correct by the undersigned LESSEE and constitutes all the equipment covered by the referenced lease.

Payment Schedule attached to and made part of the Lease agreement dated the 5 day of Jan. 2005 between Lessee and Lessor

x 

x 

**Name:** John Constable

**Title:** Owner



AMERICAN CAPITAL GROUP

ADDENDUM "A"

LEASE SCHEDULE NO. 101665-02 AC

This addendum, shall become part of the above-referenced lease (the "Lease") dated the 5<sup>th</sup> day of Jan., 2005 by and between John Constable dba RoJohn Amusements as Lessee, and American Capital Group, as Lessor.

For good and valuable consideration, the receipt of which is hereby acknowledged, the Lessor and Lessee agree as follows:

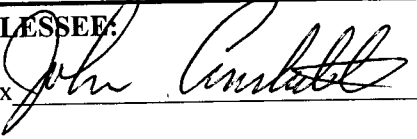
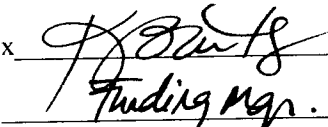
Lessee shall have the first right, but not the obligation, to exercise this purchase option to purchase all but not less than all of the equipment (the "Equipment") leased by Lessee pursuant to the above-referenced lease (the "Lease") in its AS IS, WHERE IS CONDITION, WITH NO REPRESENTATION OR WARRANTIES WHATSOEVER, EITHER EXPRESSED OR IMPLIED OF ANY KIND, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE upon expiration of the Lease and satisfactory compliance with all terms and conditions of the Lease.

The Lessee shall have the right to exercise the option to purchase said equipment from Lessor, or Lessor's Assignee, for the current Fair Market Value. THE FAIR MARKET VALUE SHALL BE DETERMINED BY LESSEE.

Further, Lessee's right to exercise said option is conditioned upon (a) Lessee having performed all of the terms and conditions of the Lease, and of all other agreements between Lessee and Lessor or Lessor's assignee, at the time and in the manner required therein; (b) After the final base lease payment has been made, plus all accrued but unpaid late charges, interest, taxes, penalties, and/or any other sums due and owing under the Lease agreement, and no event of default, as the same is more fully described in said Lease, has occurred or is continuing, (as to above-referenced Lease Schedule to said Lease). (c) Written notice of intent to purchase is delivered by Lessee to Lessor (by certified mail) One Hundred and Twenty (120) Days prior to the end of the base term. In the event Lessee does not provide written notice, this Lease will automatically renew for a twelve (12) month term and thereafter for successive one month terms until such time as the purchase option has been exercised, (d) If all of the terms and conditions contained in the addendum and Lease have been timely and fully performed, the parties above-referenced agree as follows:

Lessee shall determine the Fair Market Value consistent with industry principles. Fair Market Value is not meant to include liquidation value or a conditional sale. Fair Market Value is defined as the price at which property would change hands between a willing buyer and a willing seller when neither party is under any compulsion to buy or sell, both parties having reasonable knowledge of relevant facts. Upon receipt by the Lessor of the full purchase price, Lessor will furnish Lessee with a Bill of Sale warranting good title to the equipment.

In all other respects, the terms and conditions of the Lease, as originally set forth, shall remain in full force and effect. In witness whereof, the parties hereto, by authorized signatories, have executed this Addendum "A" at the date set forth below their respective signatures.

<b>LESSEE:</b>  x _____ John Constable Printed Name _____ Owner Title _____ 1/4/05 Date _____ John Constable dba RoJohn Amusements Company	<b>LESSOR</b> x  _____ Funding Mgr. Title _____ 1/5/05 Date _____ ACCEPTED BY AMERICAN CAPITAL GROUP, INC.
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Pentech # 5922

# AMERICAN CAPITAL GROUP, INC.

## SCHEDULE E

Addendum, to Lease Agreement ("Agreement") 101665-02 AC, dated 1-5 2005  
between American Capital Group, Inc. ("Lessor") and John Constable dba RoJohn Amusements ("Lessee").

1. The Lessee is engaged in the business of renting Equipment of the kind described as "Equipment" as described in Equipment Description of the Lease Agreement. Lessee and Lessor agree that Lessee may sublease or rent the Equipment but subject to the Agreement and this Rental Addendum, to the extent applicable, and only in the regular course of Lessee's rental business. Upon termination of any such rental, Lessee may remove the Equipment to other locations, without prior consent of Lessor. In no event shall Lessee remove or permit the Equipment to be removed outside the state where Lessee's principal address is located, as stated in the Agreement without prior written consent of Lessor.
2. To further secure payment of all Lessee's obligations under this Agreement, and this Rental Addendum, Lessee hereby:
  - a. Grants to Lessor a security interest in, and assigns to Lessor all rental contracts arising from rental of the Equipment which may now exist or hereafter arise (the "Rental Contract s"), together with all rights thereunder and all proceeds, monies, rentals and other payments (including proceeds of purchase options and renewals pursuant to the terms hereof) due and to become due thereunder ("Rentals"). Until the occurrence of an Event of Default (as defined in the Agreement), Lessee shall have the right to receive Rentals. In the event of an occurrence of an Event of Default, Lessee will permit Lessor to collect Rentals from Lessee's customers and shall instruct customers to forward such Rentals directly to Lessor.
  - b. Agrees to take reasonable steps to protect Lessee's interest in the Collateral against such customers or creditors of the customers. No rental or sublease of the Equipment subject hereto shall relieve Lessee from any of its obligations to Lessor hereunder or under the Agreement.
  - c. Agrees that no Rental Contract shall grant any equity or purchase option to the customer thereunder, and no customer shall be permitted to prepay and Rental Contract by more than thirty (30) days.
  - d. Lessee must be responsible for maintaining records showing the location of each piece of leased equipment. Lessee will report this location to Lessor upon written request by Lessor. Failure to do so shall constitute a breach of the lease, which shall default shall be governed by the terms and conditions specified in paragraph 17 of the lease agreement.

### Subrentals

Lessee agrees that Lessee shall insert a provision in any Rental Contract prohibiting its customers from subrenting the collateral to anyone without the express written consent of Lessor or its assignee.

American Capital Group, Inc.

John Constable dba RoJohn Amusements

Lessor

[Signature]  
(authorized party must sign)

Lessee

[Signature]  
(authorized party must sign)

Title

Funding Man.

Title

Owner

Date

1/5/05

Date

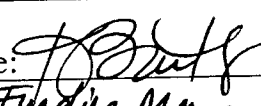
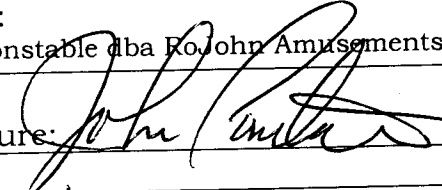
1/4/05

Pentech # 5922

LOCATION ADDENDUM TO LEASE AGREEMENT NO. 5922  
 Between, John Constable dba RoJohn Amusements as LESSEE  
 AND American Capital Group, Inc. AS LESSOR  
 DATED 1-5-05.

LOCATION: Lessor agrees to amend the Lease Agreement. In regard to the location of the equipment, lessee must be responsible for maintaining records showing the location of each piece of leased equipment. Lessee will report this location to Lessor upon written request by Lessor. Failure to do so shall constitute a breach of the lease, which default shall be governed by the terms and conditions specified in the Lease Agreement.

Agreed to this 5<sup>th</sup> day of Jan, 2005.

Lessor: American Capital Group, Inc.	Lessee: John Constable dba RoJohn Amusements
Signature: 	Signature: 
Title: <u>Funding Man.</u>	Title:
Date: <u>1/5/05</u>	Date: <u>1/4/05</u>

**DELIVERY GUARANTEE**

Addendum to Lease # 5922 dated 1/5/05, between American Capital Group, Inc. as Lessor and, John Constable dba RoJohn Amusements as Lessee.

You acknowledge that you understand and agree that in the event you are not satisfied with the delivery or installation of the Equipment that you shall only look to persons other than Lessor such as the manufacturer, installer, or supplier and shall not assert against Lessor any claim or defense you may have with reference to the Equipment, its delivery or non-delivery, or its installation. Upon your signing below, you authorize us to pay the below supplier and your promises herein will be irrevocable and unconditional in all respects and payments shall begin immediately and shall be due continuously hereafter. In reliance on your promise to pay we will **purchase the Equipment from the supplier, and you may contact the supplier for your warranty rights (if any, which we transfer to you) which are not the Lessor's responsibility.**

United Textile Fabricators is the Vendor for the equipment and the Lessee understands that payments shall begin on the same date that the Lessee executes this agreement and shall be continuous thereafter per the terms of the Lease.

50% will be paid to United Textile Fabricators (Vendor) upon execution of this agreement.

50% will be paid to United Textile Fabricators (Vendor) upon final verification by Lessee after completion of delivery and installation.

American Capital Group, Inc.

Lessor

[Signature]  
Signature

Funding Man.  
Title

1/5/05  
Date

John Constable dba RoJohn Amusements

Lessee

[Signature]  
Signature

owner  
Title

1/4/05  
Date

Vendor Acknowledgement: \_\_\_\_\_

**DELIVERY GUARANTEE**

Addendum to Lease # 5922 dated 1-5-05, between American Capital Group, Inc. as Lessor and, John Constable dba RoJohn Amusements as Lessee.

You acknowledge that you understand and agree that in the event you are not satisfied with the delivery or installation of the Equipment that you shall only look to persons other than Lessor such as the manufacturer, installer, or supplier and shall not assert against Lessor any claim or defense you may have with reference to the Equipment, its delivery or non-delivery, or its installation. Upon your signing below, you authorize us to pay the below supplier and your promises herein will be irrevocable and unconditional in all respects and payments shall begin immediately and shall be due continuously hereafter. In reliance on your promise to pay we will **purchase the Equipment from the supplier, and you may contact the supplier for your warranty rights (if any, which we transfer to you) which are not the Lessor's responsibility.**

United Textile Fabricators is the Vendor for the equipment and the Lessee understands that payments shall begin on the same date that the Lessee executes this agreement and shall be continuous thereafter per the terms of the Lease.

50% will be paid to United Textile Fabricators (Vendor) upon execution of this agreement.

50% will be paid to United Textile Fabricators (Vendor) upon final verification by Lessee after completion of delivery and installation.

American Capital Group, Inc.

John Constable dba RoJohn Amusements

Lessor

Lessee

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Vendor Acknowledgement:

Eddie Cole 1/4/05

N:\MANDOC\ORIGINAL\DEL.GUAR.DOC  
CODE: 0318

American Capital Group

LEASE SCHEDULE NO. 101665-02 AC

January 4, 2005

Pentech # 5922

American Capital Group  
175 Technology Dr. Ste 100  
Irvine, CA 92618

Dear Sir:

We acknowledge it is American Capital Group, Inc.'s normal policy not to fund any portion of equipment leases to vendors unless delivery of the leased equipment has been made by the vendor to the lessee and the lessee is satisfied.

To facilitate completion and purchase of the equipment described in the Equipment Lease Agreement, we request the American Capital Group, Inc. to disburse a pre-funded payment. We understand that the terms and conditions of the lease will commence upon this funding. If we should ultimately fail to take delivery or installation should not be completed due to dispute or dissatisfaction with the vendor, we agree to make all payments called for under the equipment lease and to seek no recourse against American Capital Group, Inc.

John Constable dba Ro John Amusements

By: 

Title: Owner

Date: 1/4/05

705218

2006 Jan 17 PM02:48

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]  
Dilligenz (800)858-5294

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Dilligenz, Inc.  
6500 Harbour Heights Pkwy, Suite 400  
Mukilteo, WA 98275, USA  
NYfillings@Dilligenz.com  
(Fax)(800)345-6059

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE # 200501040013299 Filedate: 04-JAN-05

1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

2.  TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3.  CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4.  ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects  Debtor or  Secured Party of record. Check only one of these two boxes.  
Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c.  DELETE name: Give record name to be deleted in item 6a or 6b.  ADD name: Complete item 7a or 7b, and also item 7c, also complete items 7d-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME HL Leasing, Inc.

OR

7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
----------------------------	------------	-------------	--------

7c. MAILING ADDRESS 3439 W Shaw Ave

CITY Fresno	STATE CA	POSTAL CODE 93711	COUNTRY USA
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7d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	7e. TYPE OF ORGANIZATION Corporation	7f. JURISDICTION OF ORGANIZATION CA	7g. ORGANIZATIONAL ID #, if any C2241728	<input type="checkbox"/> NONE
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8. AMENDMENT (COLLATERAL CHANGE): check only one box.  
Describe collateral  deleted or  added, or give entire  restated collateral description, or describe collateral  assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here  and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME HL LEASING, INC.

OR

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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10. OPTIONAL FILER REFERENCE DATA [17084726]

# Sheet ① Location List

- 1) CheckERS - 316 Portion Road Parkton, NY
- 2) MEDIUM PIZZA 967 Main St Holbrook NY
- 3) DIMINOS PIZZA 867 Main Road Holbrook NY
- 4) Home Run Heroes 1366 Middle Country Road Centerville NY
- 5) PARADISE RESTAURANT 800 Broadway Road Farmingdale NY
- 6) Marcus Pizzeria 444 Roswell Ave Lake Ronkonkoma NY
- 7) GLOW LUNCHEON Chapel Ave Patchogue NY
- 8) SEVERSONS PIZZA 27 Lakeland Ave Ronkonkoma NY
- 9) Lees Restaurant 224 North Main St Sayville NY
- 10) Complete Foods 159 Medford Ave Patchogue NY
- 11) Slater Foods 408 Hankins Ave Lake Ronkonkoma NY
- 12) Delta Tavern Food 208 E Main St Patchogue NY
- 13) AAA Auto 382-01 Main St Patchogue NY
- 14) SOS Foods 2805 Ocean Ave Medford NY
- 15) Fast Burgers 584 Ocean Ave Patchogue NY
- 16) Melank Sun 1521 Lakeland Ave Bohemia NY
- 17) Patchogue Diner 4307 Main Ave Patchogue NY
- 18) Lakeside Foods Inc 1502 Hankins Ave Ronkonkoma NY
- 19) Blind Cow Diner 495 Middle Country Road Alder NY
- 20) MARY 152 South Country Road Sayville NY
- 21) DOMINO PIZZA 858 South Ave Medford NY
- 22) HOMERUN HEROES 2805 Middle Country Road Centerville NY
- 23) Marcus Pizzeria Main St St James NY
- 24) SUNNY SUN PIZZA 706 Main St Medford NY
- 25) Lakeland Corner Diner 36 Post RD Farmingdale NY
- 26) POLARIS FOOD STORE 28 Middlebrook Rd Centerville NY
- 27) BBJ Diner 2805 West St Ronkonkoma NY
- 28) Middle Country Diner Sun Middle Road Ronkonkoma NY