

# Smart PLAY

BARBARA SHER

101 Fun,  
Easy Games  
That  
Enhance  
Intelligence



- - - - -

Smart Play

- - - - -



---

# Smart Play

101 Fun, Easy Games That  
Enhance Intelligence

---

**BARBARA SHER**

ILLUSTRATIONS BY  
**RALPH BUTLER**



JOHN WILEY & SONS, INC.

This book is printed on acid-free paper. ∞

Copyright © 2004 by Barbara Sher. All rights reserved  
Illustrations copyright © 2004 by Ralph Butler. All rights reserved

Published by John Wiley & Sons, Inc., Hoboken, New Jersey  
Published simultaneously in Canada

Design and production by Navta Associates, Inc.

No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, scanning, or otherwise, except as permitted under Section 107 or 108 of the 1976 United States Copyright Act, without either the prior written permission of the Publisher, or authorization through payment of the appropriate per-copy fee to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, MA 01923, (978) 750-8400, fax (978) 646-8600, or on the web at [www.copyright.com](http://www.copyright.com). Requests to the Publisher for permission should be addressed to the Permissions Department, John Wiley & Sons, Inc., 111 River Street, Hoboken, NJ 07030, (201) 748-6011, fax (201) 748-6008.

The publisher and the author have made every reasonable effort to insure that the experiments and activities in this book are safe when conducted as instructed but assume no responsibility for any damage caused or sustained while performing the experiments or activities in this book. Parent, guardians, and/or teachers should supervise young readers who undertake the experiments and activities in this book.

For general information about our other products and services, please contact our Customer Care Department within the United States at (800) 762-2974, outside the United States at (317) 572-3993 or fax (317) 572-4002.

Wiley also publishes its books in a variety of electronic formats. Some content that appears in print may not be available in electronic books. For more information about Wiley products, visit our web site at [www.wiley.com](http://www.wiley.com).

*Library of Congress Cataloging-in-Publication Data*

Sher, Barbara.

Smart play : 101 fun, easy games that enhance intelligence / Barbara Sher ;  
illustrations by Ralph Butler.

p. cm.

Includes index.

ISBN 0-471-46673-5 (pbk. : alk. paper)

1. Educational games. 2. Family recreation. I. Title.

GV1480.S54 2004

371.33'7—dc22

2004002247

Printed in the United States of America

10 9 8 7 6 5 4 3 2 1

This book is dedicated to all the wonderful children everywhere who have played these games with me, especially to my young playmates on the islands of Saipan, Tinian, and Rota.



# Contents - - - - -

Acknowledgments xi

Introduction 1

- - -  
PART ONE

Games That Enhance  
Visual-Spatial Skills 5

*Ages 6 and Under* My Very Own Color Book 7

Color Run 8

Color Dots 10

Match Me Up 12

Everyone Wins Bingo 15

Cereal Box Puzzles 16

Match the Lids 18

Carny Game 19

Full of Beans 20

Going to the Store 23

*Ages 6 and Up* Go Fish for Colors 24

Drive into the Empty Spaces 26

Digestion Drama 28

*All Ages* Jump the Shapes 31

Obstacles Galore 34


Internal Map 36

Kangaroo Ball 38

Popsicle Stick Puzzle 40



	Blind Portraits	41
	Connect to a Star	42
	Label Art	44
<p style="text-align: center;">- - - PART TWO</p>		
	<b>Games That Enhance Verbal-Language Skills</b>	<b>45</b>
<i>Ages 6 and Under</i>	Book in a Baggie	47
	Name Matches	49
	Learn to Read in Five Minutes or Less!	50
	Alphabet Fishing	52
	Polka-Dot Letters	54
	Sand Letters	55
	Alphabet Instant Letters	57
	Letter Hopscotch	58
	Musical Movements	60
<i>Ages 6 and Up</i>	Sounds True	61
	Alphabet Trail	62
	People Pencils	63
	Finger Letters	65
	Body Letters	66
	Compound Your Words	67
	Window Shade Rhyming Game	69
<i>All Ages</i>	Hot Ball/Cold Ball	70
	Category Toss	72
	Dictionary Game	73
<p style="text-align: center;">- - - PART THREE</p>		
	<b>Games That Enhance Math Skills</b>	<b>75</b>
<i>Ages 6 and Under</i>	Straw Counts	77
	You Can with Cans	78

	Cereal Necklace	80
	Guess Who? Guess What?	81
<i>Ages 6 and Up</i>	Breath Math	82
	Kung Fu Math	83
	Math Story	85
	Counting on Estimates	87
	A Number of Number Ways	88
<i>All Ages</i>	Mr. Clock, Mr. Clock	92
	How Many Steps?	94
	Palm Measuring	95
	Beach Ball Bounce	96
	<b>Games That Enhance Kinesthetic Skills</b>	<b>99</b>
<b>PART FOUR</b>		
<i>Ages 6 and Under</i>	Human Hoop	101
	Jolly Jumps	102
	Just You and Me and a Balloon	103
	Blanket Ride	104
	Balloon Baseball	106
	Holes-in-Your-Sheet Toss	107
	The Bunny Game	108
	Domino Blowing	109
	Bubble-Wrap Jump	110
	Styrofoam Hammering	111
	Rare Races	113
	Lost in Rice	114
	Envelope Shapes	117
<i>All Ages</i>	Foot Writing	118
	Footprint Game	119

Going Bats	121
Gentle Ball Games	125
Do Your Own Thing	127
Leap, Run, and Slalom	129
Jumping Joys	130
Ballooning Inside	133
Instant Relay	134
Wiggly Snake	136
Tube Sock Throw	137
Target Ball	138
Hold Tight/Let Go	139
Eyedropper Art	141
Toothpick Sculptures	143
Stone Painting	144
Penny Flick	145

— — —  
PART FIVE

Games That Enhance  
Interpersonal Skills 147

<i>Ages 6 and Under</i>	Who's in the Box?	149
	A Stone's Throw	151
	Poker-Chip Play	152
	A People Sandwich	154
	The Same Inside	155
	Lily Pads	157
<i>Ages 6 and Up</i>	Stepping on Tails	159
	Push Me/Pull You	161
<i>All Ages</i>	Shoe Mountain	163
	Life Is a Kick	164
	Doodling Doodles	166

Cooperative “Pin the Tail”	167
A-Step-at-a-Time Toss	168
Newspaper Bonnets	170
Walk This Way	171
Bat Square Rhythms	173
Hum a Tune	174
Who Is This?	175
Index	177



# Acknowledgments - - - - -

People often ask me how long it takes to write my books. I answer that each book takes about a year to write, and about thirty years to gather the materials to write about.

If I wanted to be even more accurate, I'd probably say sixty years, because getting the confidence to write a book took the love and unconditional support from my family of birth and the family I made; it took encouragement from my loving friends and the enthusiastic response from the teachers at the schools and the participants at the national and international workshops I have given. Especially, it took the lessons I got from my main teachers: the children who have played all of these games with me. They have had a harsh but honest approach that lets me know which games work and which don't. They either respond with excitement or they just wander away. The games in this book have been well field-tested and only the most successful ones made the grade.

My books are also always inspired by my wonderful daughters. They have been my creative assistants at international workshops, my first readers, my game players, my emotional support, and my friends. I'll never stop appreciating the presence (and present) of Marissa, Roxanne, and Jessica. For my dear friend Jenny Slack who gave me love and clear thoughts during the rewriting phase, and my good pal and colleague Patty Staal who enthusiastically plays these games with me at the schools, I also give thanks.

Of course, it's one thing to write a book and quite another to get it to you. For this, I owe big thanks to my great agent, Judi Schuler, who is quick to answer my e-mail and fulfill my needs. I owe gratitude to my former editor, Carole Hall, who said she thought of me as an "unending diamond mine" of ideas. I owe appreciation to my present editor, Kate Bradford, who has a keen editing eye and plays games with her own children. I am grateful

## xiv Acknowledgments

to my delightful illustrator Ralph Butler, who made the drawings exactly as I want them, and to the people at John Wiley & Sons, especially John Simko, who does the difficult legwork of turning a manuscript into a book.

Most important, I want to acknowledge you, my readers, for taking my ideas and using them with the children you care for. It is this step that takes the love that is behind my words and spreads it out into the world. Thank you, thank you, thank you.

# Preface

Equipment leasing is one of the most complex forms of financing in existence today, involving sophisticated concepts often understood only by experts. Many equipment users fail to consider this important alternative when they need equipment because of their lack of understanding of the advantages. Even those who do consider it frequently do not know how to maximize their position. On the other hand, many lessors lenders overlook obvious opportunities for profit because of a limited view of equipment financing. And that's why this book was written.

*The Complete Equipment-Leasing Handbook: A Deal Maker's Guide, with Forms, Checklists, and Worksheets* is a comprehensive book for lessees and lessors, divided into two parts, a leasing reference section and a forms section. Its purpose is to provide the legal, financial, tax, accounting, and business background and tools essential to evaluate, negotiate, advise on, and document successful equipment lease transactions. Not only does it contain transaction critical information, but it also includes a comprehensive array of over 115 equipment lease and loan business and legal forms, in writing and on computer diskette, for ready reference and drafting guidance. It will assist both leasing novices and those with more experience. The equipment lease transaction is analyzed from start to finish, taking the reader step by step through the ten most important aspects of leasing—the general marketplace, the preliminary evaluation stage, the proposal, the documents, the tax issues, the business aspects, the bankruptcy issues, the security interest issues, the accounting treatment, and the economics. Many prospective lessees, for example, are not aware they can dramatically increase their chances of getting the most favorable available deals by simply eliminating certain type of lessors, those less suited for their particular transactions. The characteristics of the various lessors are explained, as well as the pros and cons of dealing with each. Some prospective lessors, on the other hand, leave themselves needlessly exposed to financial, business, and tax risks.

If you are a prospective or existing lessor, lessee, or equipment lender, or a lease advisor, and you want to have the best available leasing information or documentation, this book is for you. It will address issues such as:

- How does the leasing marketplace really work?
- What are the leasing profit areas?
- How does a leasing company run?
- Do bank leasing companies give the most aggressive rates?
- When is leasing a poor choice?
- What is the best way for a company to solicit lease bids?
- Does a proposal letter really commit a lessor?
- What should a properly written lease cover?
- How can an underwriter protect its fee?
- How good is a legal opinion on questionable issues?
- When should a leveraged lease be used?
- When will a lease meet the IRS requirements?



- How does the alternative minimum tax affect leasing?
- Can a fixed price purchase option be used?
- What advantageous depreciation methods are now available?
- Is the investment tax credit completely gone?
- What tax and economic risks does a lessor have?
- What special risks must a leveraged lease investor consider?
- How should a lease be analyzed financially?
- What impact do the lease accounting rules have?
- What are the bankruptcy issues and concerns?
- What common lease provisions are voided by the bankruptcy rules?
- What are Uniform Commercial Code rules for leasing and secured lending?
- How does UCC Article 2A help both lessors and lessees?
- Can lessors prevent lessees' creditors from getting their leased equipment?
- What is the best document for a particular situation?

In addition, the business of leasing is explained, both domestically and internationally, to provide you, whether you are on the lessor's or lessee's side, with key information on issues such as lessor profit strategies, the establishment and operation of a leasing company, and the leasing of equipment in the growing international market—all with a view to maximizing leasing opportunities and minimizing leasing risks. The equipment leasing rules established under the Uniform Commercial Code, Article 2A, and the secured lending rules under Article 9 of the Uniform Commercial Code, as they affect or impact equipment lending transitions, are handily explained. Finally, the bankruptcy rules, a critical consideration in approaching and managing defaulted equipment lease or secured loan transactions, are simply explained for the businessperson.

Throughout the book the latest and best techniques for dealing with the technical and business issues are explained. Practical suggestions and insights are offered to enable you to gain every advantage and avoid the many legal and financial pitfalls. Following are topics you will find in the leasing reference section.

**Proposal stage.** In any lease financing arrangement, the proposal stage is the critical point when the parties establish the transaction's business parameters. At this stage, the prospective lessee will be in its strongest negotiating position. By taking advantage of some simple techniques recommended by the author, it can, for example, get a "below market" lease rent. A prospective lessor can, on the other hand, gain some valuable advantages at this time by properly structuring its offer.

**Documentation.** The documentation stage—where the participant's rights and obligations are defined—is another crucial step in the transaction. To be fully aware of what their risks and obligations will be, all participants must understand the transaction's basic concepts. For example, a lessor may inadvertently assume certain state tax payment obligations that can drastically reduce its profits. A lessee may also unknowingly assume burdensome obligations. This book comprehensively examines the documents to give anyone responsible for negotiating an equipment lease the essentials necessary to avoid the many traps.

**Tax issues.** Problems often arise because of the lack of understanding complex tax issues. Parties spend time and money on transactions that will not be approved by the IRS. The revised alternative minimum tax is an important consideration in whether to lease or buy equipment. Understanding how it works is essential.

**Accounting issues.** Lease accountability should always be a foremost consideration. Improper structuring can cause undesirable accounting treatment. The Financial Accounting Standards Board has promulgated an extensive and complicated set of rules

on accounting for leases. A chapter summarizes the rules and puts them into a more meaningful context.

**Financial issues.** Another key consideration is the financial side of a lease decision. There are many apparent—and some not so apparent—economic advantages and disadvantages to leasing. Lease investors, for example, should be aware that incorrect equipment residual assumptions can wipe out profits. A prospective lessee can end up making the wrong financing decision by using an incorrect method of analysis. The economic advantages and disadvantages, as well as the methods of financial analysis, are explained so that a prospective lessor, lessee, lender, or investor can determine a viable position.

**Leveraged leasing.** An entire chapter explains the specialized field of leveraged leasing—where the lease transaction is financed largely with nonrecourse debt. One of the most sophisticated and competitive forms of leasing, leveraged leasing, can produce many unique benefits, but also pose many dangers. Some lease underwriters, for example, “low ball” rent quotations to eliminate the competition and then later raise the rates. A prospective lease investor can end up making a poor investment by relying on an unrealistic investment analysis.

**The business of leasing equipment.** How does a lessor reduce its risks and make money in the leasing business? Surprisingly, it is often in ways that are not readily apparent. A successful profit strategy used by some lessors in highly competitive market areas is to target equipment that historically maintains excellent resale value and to aggressively go after lease deals by offering very low rents. Although these low rents often do little more than the lessor’s operational overhead, the profit picture brightens when the equipment comes off lease and is sold or re-leased by the lessor. A risk for these lessors is technical obsolescence or reduced buyer demand, but properly approached, these risks can be successfully managed.

**International leasing.** The business of leasing equipment in the United States is mature and, accordingly, highly competitive. Many lessors with the ability to finance equipment for overseas users are finding a market gold mine. To realize success in the international market, however, requires different skills than those for leasing in the U.S. market. Accordingly, some lessors should avoid this market. For those lessors with the right resources, however, providing they do their homework, the international leasing market may yield attractive new opportunities.

**Leasing laws under the Uniform Commercial Code.** As a lessor, you cannot protect your equipment under lease from claims of outside lessee creditors unless you have a working knowledge of the technical requirements of the leasing laws adopted by the various states in which your equipment is located, including the secured lending laws. One mistake can eliminate your rights to reclaim your equipment. Although the leasing laws, as embodied in legislation referred to as the Uniform Commercial Code, can vary somewhat from state to state, the issues to be addressed are the same: How do these laws work? Do you need to make a state or local filing to protect your equipment against third-party claims? How do you make any necessary filings? When must any required filings be made? What happens if you fail to make a critical filing? Lessees, on the other hand, must know the impact of these leasing laws, to properly assess if they have unnecessarily committed to a lessor leasing law request that will create problems in the future.

**Bankruptcy.** One of the most complex laws affecting equipment leasing and secured lending transactions are the bankruptcy laws, in particular the federal bankruptcy laws. The bankruptcy laws can severely impact an equipment lease or loan transaction. If you are a lessor, you will at some point encounter a situation in which your rights are controlled by the bankruptcy rules. If you do not anticipate how these rules can affect your lease, your losses can be far greater than necessary. As a lessee, you must also understand

these laws. In particular, you must know your bankruptcy rights in the event it becomes necessary to file for protection under the bankruptcy laws, so your chances of surviving increase.

Many chapters include time-saving checklists that cover the critical stages and aspects of an equipment lease financing. Examples have been incorporated to illustrate many of the financial points discussed. In Chapter 15, the leasing industry's important terms and buzzwords have been compiled and simply defined for ready access.

In summary, the reference text portion of this book gives the reader a complete grasp of the legal, financial, tax, accounting, and business considerations for leasing, including those that are necessary to originate, evaluate, and negotiate the most favorably structured equipment leasing transaction.

In the forms section of *The Complete Equipment-Leasing Handbook: A Deal Maker's Guide with Forms, Checklists, and Worksheets*, you will find examples of virtually every type of document, worksheet, checklist, notification, and letter to assist anyone involved, or intending to become involved, in equipment leasing or lending. In total, there are 115 sample documents. If you are a prospective or existing lessor, lessee, or equipment lender, or a lease or loan advisor, this book will provide a handy and invaluable state-of-the-art document reference for small to multimillion dollar equipment financing, and equipment financing-related transactions. Examples include the following:

- Preparing lessor lease proposals and lessee requests for lease proposals, such as lessor lease proposals and lessee RFQs
- Evaluating lessor proposals or prospective lessee deals, such as transactions summaries
- Documenting equipment lease or loan transactions, such as single deal or master lease and loan agreements
- Starting and operating a leasing business, such as lessee marketing materials, internal deal and operations worksheets, and collection notices
- Setting up equipment vendor financing arrangements, such as vendor program and remarketing agreements

All documents, where relevant, are fully integrated with cross references to other documents, which may be integral with the document being used, thereby enabling you to quickly access these collateral forms. For example, lease agreements are integrated with opinions of counsel, guaranties, corporate resolutions, and various lessee and lessor lease options to provide a complete package. In addition, you receive a computer disk containing the agreements, forms, worksheets, checklists, notifications, and letters (not sold separately).

Each form is preceded by the respective form number, CD file name identification, summary of the form's purpose, identification of the executing parties, and cross references to other pertinent forms. Other than the CD file name identification, that information appears only in this volume, the computer files on the accompanying CD containing only information that is part of the respective document.

## Specific Tips on Using Your Form Section

The following tips may help you get the most out of the form section of this book.

### ***Do You Need a Particular Lease or Loan Provision?***

The 115 agreements, forms, worksheets, and checklists in this book are based on, and have been honed through, the author's equipment financing experience with hundreds of transactions and situations, both as a legal and business advisor and as a business principal, during his 20-year involvement with the business of equipment leasing and lending. With these documents at your fingertips, you have immediate access to a unique wealth of equipment lease and loan provisions to help you gain every advantage, avoid the many pitfalls, and develop negotiating compromises when necessary. Many form categories provide drafting approach choices to enable you to select the most appropriate provision style for a particular situation. For example, in a small ticket financing, a less detail-specific approach may be the most appropriate. Many provisions also reflect the give-and-take situation of actual deal negotiations. These provisions will provide you with winning insights to increase your bargaining power, help you win profitable business deals or obtain cost-effective equipment financing, enhance your ability to effectively make reasonable negotiating compromises, and assist you in closing beneficial equipment financing deals.

### ***Do You Need a Particular Form?***

When you need a particular form, turn to the Contents at the front of the book. When relevant, the author has provided a selection of forms within a particular category. For example, if you are looking for an equipment lease agreement, you will find three lease agreements from which to choose: a long form master lease agreement, a short form lease agreement, and a lease agreement used in a leveraged transaction. If you are involved with a small ticket, nontax-sensitive lease transaction, you will not need, or want, a 50-page document, so the short form lease agreement is the place to start. If, on the other hand, you are involved with a multimillion dollar lease transaction, you should refer to one of the more comprehensive lease agreements which will contain provisions that address the needs found in major equipment financings. If you need assistance with specific lease agreement provisions, refer to the lease agreements for guidance—each document contains valuable deal nuances. In using these documents, keep in mind that no matter what type of equipment is involved, the basic forms can be easily adapted by making the appropriate equipment-type changes.

### ***Are You Putting Together an Entire Transaction?***

Equipment lease and loan transactions involve multiple documents which, in many cases, must interrelate. For example, if you are involved with an equipment lending transaction, you will not only need the loan and security agreement, but you will also need the collateral forms typically used in a loan transaction, such as a form legal opinion. By referencing the loan document section of the Contents, you can identify which loan and security agreement forms are packaged specifically to provide fully integrated collateral documents, so important and critical deal aspects and collateral documents are not inadvertently overlooked. Using these fully integrated forms will save you drafting time. Additionally, the description preceding each form has cross references, when relevant, to other documents of interest.

### ***Are You Proposing a Deal?***

If you are an equipment lessor or lease underwriter, this book can save you time in assembling the best possible proposal for you and your prospective lessee. The relevant checklists, worksheets, and letters will get you off on the right track—quickly. For example, the book contains forms for single investor and multiple investor proposal formats. Additionally, if you are proposing on an equipment loan, these forms can be readily adapted to loan proposals.

### ***Are You Looking for Equipment Financing Offers?***

If you are a prospective equipment lender or borrower and want financing bids on equipment, the documents available will ensure that you do not miss out on the many possible benefits, that you put together a professional-looking request for bids, and that you are able to quickly analyze financing offers when they come in. For example, there is a time-saving request for lease proposals (RFQ—Deal Sheet Format, Form r-01) developed by the author that sets up the bidding parameters so offer comparisons can be done simply and meaningfully.

### ***Are You Concerned about Missing an Important Deal Point?***

Unless you are thoroughly experienced in equipment leasing or lending, it is often difficult, and sometimes impossible, to know what to request and what may be available. Even when you do know, in the rush of a deal it is easy to inadvertently miss an important point. The worksheets and checklists should help guide you away from such situations—whether you are on the lessor's or lessee's side. For example, a handy lease proposal evaluation worksheet, and an invaluable lease negotiation and drafting checklist, gives you expert guidance.

### ***Are You Negotiating a Deal?***

In negotiating any equipment lease or loan financing, a ready reference to comprehensive provisions and forms can assist you in documenting or negotiating difficult points, and in formulating possible solutions when transaction impasses occur—and they will. The documents provided in this book come from the negotiating trenches. If you need assistance, they will help you solve difficult problems and gain protection.

### ***Are You Starting or Running a Leasing or Lending Business?***

Not only does this book contain the basic agreements needed to document an equipment lease or loan transaction, but it also contains worksheets, checklists, and time-saving form letters to use in the day-to-day running of a leasing business. For example, the lessee marketing materials include a form rate sheet and a form proposal letter, transaction audit worksheets, and collection letters. All are based on documents in actual use by equipment lessors and lenders.

In summary, whatever your equipment financing needs, the Forms section of this book offers a unique and ready source for invaluable state-of-the-art agreements, forms, worksheets, and checklists that are not available in any other publication.

Richard M. Contino, Esq.

# ***About the Author***

Richard M. Contino is an internationally known equipment financing expert, as well as a practicing attorney, business consultant, and businessman. He is the Managing Partner of Contino + Partners, an equipment lease and business law firm located in White Plains, New York. Prior to entering private practice, Mr. Contino held the positions, over a five-year period, of Marketing Vice President and Eastern Regional Counsel for GATX Leasing Corporation, a major independent equipment lessor and lease underwriter.

Mr. Contino is the author of five equipment lease financing books, two human potential development books, and the finance author of a business handbook. In addition to his books, he has written numerous articles and conducted seminars throughout the United States for many private corporations, business groups, law associations, and other professional organizations on the legal, financial, business, and marketing aspects of equipment leasing.

Mr. Contino received an LL.M. in corporate law from the New York University Graduate School of Law, a Juris Doctor from the University of Maryland School of Law, and a Bachelor of Aeronautical Engineering from Rensselaer Polytechnic Institute. He is a member of the bars of the states of New York and Maryland, as well as the District of Columbia. Mr. Contino is also a member of the American Bar Association and the New York State Bar Association. He is listed in *Who's Who of American Law*, *Who's Who of Emerging Leaders*, *Who's Who in the World*, and *The International Who's Who of Contemporary Achievement*.

**This Page Intentionally Left Blank**

# **The Complete Equipment-Leasing Handbook**



**This Page Intentionally Left Blank**

# Introduction - - - - -

Lessons learned through our bodies stick with us. We don't read a manual to learn how to ride a bike or play a game of Ping-Pong. We learn through our bodies, and once our bodies learn something, we never forget it.

This same kind of body intelligence can be used to help children learn their mental skills. Children will have more of an internal awareness of what 5 means by jumping forward five times in a Mother-May-I game than by looking at a picture of five rabbits.

Children who play the game of making the letter A using their fingers are going to remember how to form that letter faster than if they just see it written.

Children who get to mime the words *sweatpants* and *dragonfly* for others to guess are never going to forget what compound words are.

Children who move their bodies as part of the learning process are stimulated and alert. They also increase their body coordination, and learning to move one's body well is important whether one chooses to climb a mountain or dance the latest steps or just walk down the road with style and grace.

To promote using movement and fun as a way to increase cognitive and kinesthetic learning, I have given workshops in such varied places as orphanages in Cambodia, colleges in New Zealand, and schools in Nicaragua and Micronesia. I show caregivers, parents, teachers, and children fun ways to play that enhance their intelligence.

There are two major reasons why I'm serious about fun.

First, research shows that anything learned with tension often gets flushed out along with the unpleasant memories.

Second, the fun factor lifts our spirits and gives us that sense of well-being that opens our minds and hearts. In one of my previous books, *Spirit Games*, I suggest a large variety of fun games to help our children get past negative moments and find that more balanced state of mind from which problems can more easily be solved.

Playing games to learn cognitive and kinesthetic skills works for the same reasons. When we are in a positive frame of mind, we are present to that moment. It is in that state of acceptance that we are most open to new experiences and new knowledge.

We parents are our children's first teachers. We want them to be smart, we want them to enjoy themselves, we want to do what's good for them—and we want them to have fun with us.

Play *Smart Play* games and you can have it all.

### EXPLANATION OF AGE CATEGORIES

Sometimes it is difficult to say at what age a child will do best with which game. There are some children who are delayed in their physical coordination but have exceptional control in their ability to use their hands and/or minds. Others don't want to sit and focus but have incredible large muscle coordination. Each child is unique.

The best way to know which games work best for your child or children is to try them out. Their enthusiasm or lack of it will let you know. You might find, as I often do, that children who I think are “too big” to be interested in that little kids' game are enthusiastic players. I like that, because they can be good models for the younger ones. For the purposes of this book, I've provided some general guidelines to age level, but feel free to make your own decisions.

**Ages 6 and Under** are games that will mostly appeal to the preschool/ kindergarten set. There will be some two-year-olds who will be able to play many of the games and some six-year-olds who will be ready to move on to bigger challenges.

**Ages 6 and Up** are games that have slightly more involved directions and require more physical skills and a larger understanding of concepts.

**All Ages** are games with enough variability in them that siblings, friends of differing ages and abilities, and adults can all play them together.

## HOW TO CONTACT THE AUTHOR

I have done workshops around the world where participants (teachers, aides, parents, therapists, and children) learned by playing. They had first-hand experience in playing *Self-Esteem Games*, *Spirit Games*, *Smart Play* games, and other games that can all be played in the family setting or in the inclusive classroom. They also learned how to make their own games and educational toys out of local and recyclable materials.

If you are interested in my services as a consultant or a workshop leader, simply e-mail me at: [momsense@asis.com](mailto:momsense@asis.com).



# P A R T   O N E



## Games That Enhance Visual-Spatial Skills

**V**isual-spatial skills include an understanding of the shapes, images, patterns, designs, colors, and textures we see with our external eyes as well as all of the images we are able to conjure inside our heads. Spatial awareness includes the orientation of one's body to other objects in space and those objects' relationships to each other. Children who are strong in these skills are good at puzzles, reading maps, and finding their way around new places. They tend to think in pictures and images. They have opinions about colors that go together and textures that are pleasing; they enjoy visualizing, imagining, and "seeing with the mind's eye."

The games included in this part start with the basics: What are the colors, shapes, and sizes in our world? This information is presented in many ways, such as matching colors, jumping to shapes, and finding the prize under a certain size can.

These beginning games also help children be aware of things in the space around them and of how objects in that space relate to each other. In some games this is done with the whole body, as in one in which children pretend they are cars driving around and not bumping into each other. In other games it's done with the mind by making maps and doing puzzles.

Finally these games help children practice the art of visualizing things they cannot see with their eyes, such as the stars and their internal organs!



# AGES 6 AND UNDER



## My Very Own Color Book

*This is a game designed for the scribbler. Even if a child is only at the scribbling stage of her artistic development, she can still make her own book! This game shows her how, and it's fun for you, too. Sitting and quietly scribbling together can be a lovely bonding moment in itself. Then later, when you have something to "read" together many times, the pleasure of that moment is multiplied.*



One or two  
people



### MATERIALS

paper  
crayons, markers, colored pencils, or other drawing tools  
ribbons, string, or plastic bag ties

### DIRECTIONS

Take one piece of white paper, the heavier the better, and together scribble all over the page, using only one color. Then scribble another page, with another color. You can use crayons, markers, colored pencils, watercolors, pastels, chalks, or whatever else appeals to you.

After you have made a page for each color, poke some holes in the edges of the papers and tie the pages together using ribbon or string or plastic bag ties.

Read the book together and talk about the colors: "This is our blue page. There is some light blue here. It reminds me of the sky on a sunny day. This dark blue looks like the same color as my jeans. What else is blue in this room? You're right. My toenail polish is blue."



**WHAT IS BEING LEARNED**

Children are learning the names of colors and the variations of each color. They are learning that they can make a book. They are learning that their coauthor loves them so much that she wants to make and read a book together.



Two or more  
people

**Color Run**

*I learned this game from a Montessori teacher who uses it as part of outdoor fun time. She likes it because it works out the children's extra energy while making them aware of colors and the world around them at the same time. What pleases her most is seeing the differences in the objects the children choose. One child, who was enthralled with nature, ran to touch the budding leaf of a flower for the color green. Another child, who prefers social interaction, ran after the first child because he was wearing a green jacket.*

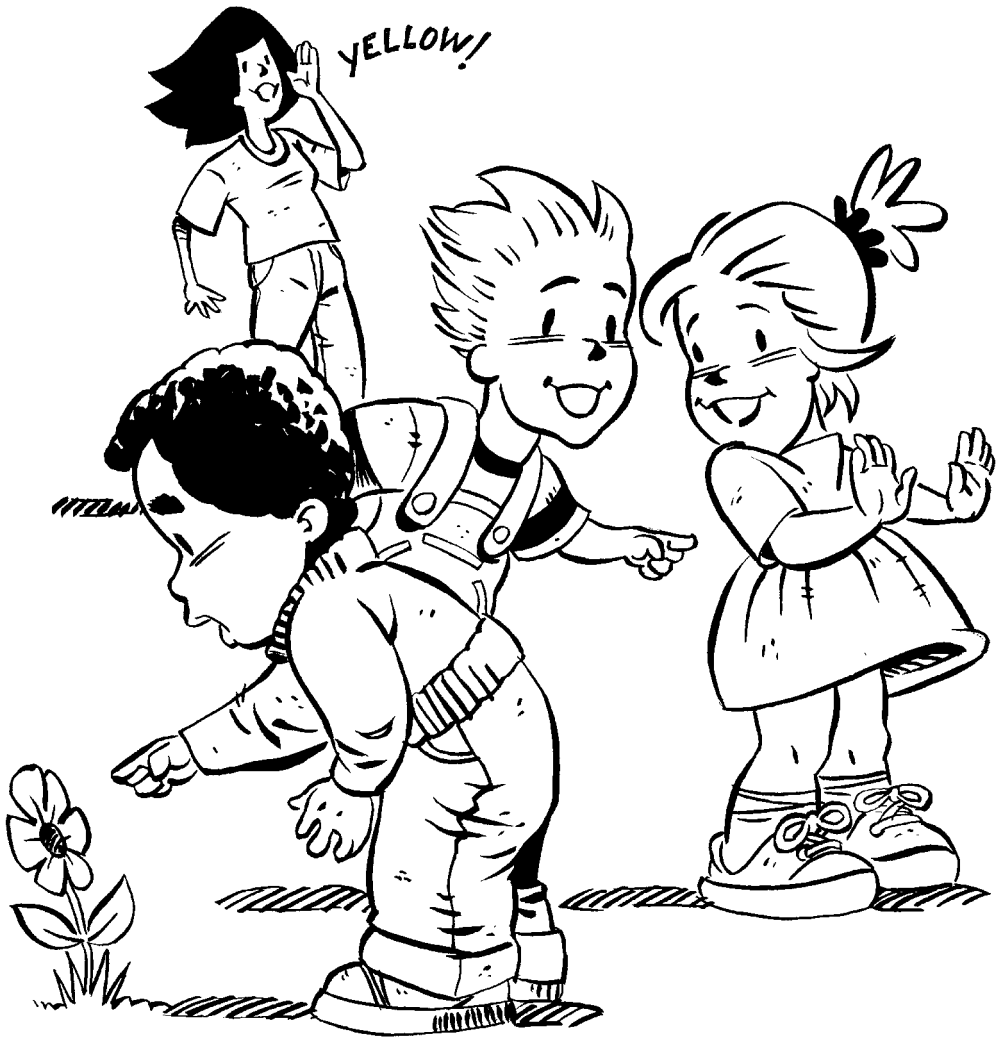
**DIRECTIONS**

When you and the children are outside, call out a color and have everyone scatter and run to something that is that color. For example, yell out "Yellow" and see who goes where to find what. Join in the fun and run, too. Consider it your workout for the day and a good excuse to avoid the treadmill at the gym.

Repeat the same color many times, as in "What else is yellow?" and let the children run and explore until they find, for example, that small buttercup hidden in the grass.

**VARIATIONS**

- ◆ Take a "Purple Walk." As you walk down the street, look for anything that is purple. Next time, choose a different color to look for.



- ◆ If no one is in the mood to move, play the color game of I Spy. One player says, “I spy the color \_\_\_\_\_,” naming the color of something he sees outside or in the room. Then all the players try to guess which object was spied. When the object is identified, another player takes a turn at spying a color.
- ◆ For very little ones who don’t know their colors yet, show an example of the color first. “See the blue color in your shirt? Find something else that is like that blue color.”

## WHAT IS BEING LEARNED

This is a color-learning game, of course, but it also helps to increase children's awareness of what's around them—their own everyday environment.

Distinguishing red from blue or brown from green is also another lesson in awareness—specifically, the differences and similarities between things. Whether it is seeing the difference between red and blue or noticing the similarities between blue and turquoise, children are sharpening their conscious awareness.



Two or more  
people

## Color Dots

*Here's a fun way to teach colors because kids get to jump to them while they're learning. I find that children are always glad for an excuse to get out of their chairs, and teachers and parents are happy that the children are learning something while they are jumping around.*

## MATERIALS

colored construction paper

*Optional:* cardboard, tag board, nonslip material, glue

## DIRECTIONS

To play this game, you need to make some color dots. The easiest way is to cut circles at least 6 inches in diameter out of different-colored construction paper.

If you want to get a little fancier and have the dots last for more than one game, glue the dots to cardboard or tag-board circles.

If you want the dots to last even longer, and not slip around when they are jumped on, buy some nonslip material, usually found at hardware stores or in the kitchen supplies section of a grocery store. Cut out circles

that match the size of your dots and stick them to the bottom of the dots. Sandpaper works, too, if you are playing on a rug (but not on wooden floors, which could get scratched).

Not in the mood to cut out dots? The same game can be played just using pieces of colored paper.

Make at least six dots of different colors. Lay them randomly on the floor.

First, ask your player to jump from dot to dot.

Next, ask your player to jump to the color you call out. The jump from the red dot to the blue dot might be easy, but the jump from the red to the green might be a real doozy. Or, you can let the other players take turns calling out the colors the jumper should try to jump to.

## VARIATIONS

- ◆ **Chair to Dot:** A player stands on a chair with the stack of color dots in her hand. She tosses them onto the floor and then calls out the color dot she wants to jump to.
- ◆ **Dot to Dot:** For this one, you'll need to make a few more sets of dots so that there are several of each color. Lay the color dots randomly on the floor and have the players jump to all the ones that are the same color. Some jumps may be easy if dots of the same color are close together. Others may be very far apart and more challenging, so the players have to jump "with all their might" to do it. Make sure kids know that making it to the dot isn't the important part—trying is.

You can also vary the way each player goes from dot to dot. Use a variety of directions, such as:

- ◇ Jump to all the red dots.
- ◇ Jump sideways to all the orange dots.
- ◇ Leap to all the blue dots.
- ◇ Jump backward to all the purple dots.
- ◇ Hop to all the greens dots.
- ◇ Jump and twirl to all the yellow dots.

- ◇ Jump to this sequence: red, then blue, then yellow, then green.
- ◇ Every time you land on a red dot, jump twice on the dot, and every time you land on a green dot, jump three times.
- ◆ **Beanbag to Dot:** Lay the dots down on the floor. Put down a marker to indicate where the player should stand. Give your player a beanbag. When you call out a color, the player throws a beanbag onto that color. If your learner is very young, have a duplicate set of colors in your hand and say, “Throw the beanbag to the color that is the same as this.”

### WHAT IS BEING LEARNED

This game is about learning the colors, of course, but because it involves precise movements it also encourages an understanding of how much energy is needed to jump longer or shorter distances. Also, because it involves jumping, it enhances physical strength.

If your child does the variation of jumping from a chair, he is also learning to improve his sense of balance.

A child who does the variation of throwing a beanbag at the color is learning to improve eye-hand coordination, as well.



One or two  
people

## Match Me Up

*I once suggested this simple color-matching game and its variations to my teacher friend Lara. She had recently had a baby and was having difficulty with her three-year-old daughter, Lia. At first, Lia was charmed with her baby brother but then not so charmed when so much of her mother’s attention was taken up by the new one. Lia started to get cranky and stubbornly defiant.*

*One morning they sat down and made this game and played it together. It took less than an hour and yet the mom reported that Lia was*

*cheery all day. This game and its variations became one of those things that they could do together—and little brother couldn't! There's something about sitting down with your sweetie, being totally in the moment with her, and taking the time to play that tells her how much she matters to you.*

*You and your child can play this game alone or you can invite others to join in. Sometimes visiting relatives, for example, want to relate to your child but don't know how to initiate play. This game and its variations help elicit those bonding experiences.*

*The fun is multiplied if you and your child make the materials needed together or if older siblings make the games for younger ones.*

## **MATERIALS**

paper or index cards

felt-tip markers or crayons

*Optional:* colored construction paper, scissors

## **DIRECTIONS**

Using small pieces of paper or index cards, make color-matching sets of red, blue, green, yellow, black, and white. Ask your child to help you make the cards using felt-tip markers or crayons. Let your child scribble away until the card is full.

You could also cut out squares of colored construction paper.

Then get ready to “play school.” You pretend that you are the teacher and your child is the student. At first, place only two colors, such as red and blue, on the table. Give your player one of the matching cards and say, “Put the blue card on the other blue card” or “Put blue on blue.” Next turn, add other choices so the player has to find the matching color out of three colors. Keep adding choices until all the colors are presented together and the player has to find the matching color out of six or more choices.

Remember to take turns. Sometimes she's the teacher and hands you the cards. If she's new to the game, you being the student each time will model for her how to match colors. It's important not to make this a testing situation. If your new learner gets it “wrong,” simply state the facts.

“Okay, you put red on green. Let’s look together and find the other red. Is it this one? No. That’s yellow. What do you think about this one?”

### VARIATIONS

There really is almost no limit to the variety of things that can be matched in this type of game for young children.

- ◆ Match identical flaps of cereal or cracker boxes.
- ◆ Match silhouette outlines of common objects, such as combs, spoons, and pencils, with the actual objects.
- ◆ Match shapes instead of colors. Cut out matching shapes, such as circles, squares, triangles, rectangles, and crosses, of the same color.
- ◆ Match textures using objects such as two cotton balls, two pieces of wax paper, two pieces of sandpaper, two macaroni noodles, two pieces of cellophane, two rubber bands, two pieces of sponge, two scraps of fabric, two pennies, two straws, and so on.
- ◆ Match written words. Start with family names and then add words of common objects or actions.
- ◆ You can even match smells by making your own scratch-and-sniff cards: Mix a scent, such as powdered cinnamon or cloves, perfume, or essential oils, with a texture, such as sand, salt, or glitter. Paint some glue on a card, pour on the scented texture, and let it dry. Shake off the excess and then have the players rub or scratch each of the cards and find the card with the matching scent.

### WHAT IS BEING LEARNED

Knowing how things are the same and how they are different is the foundation for discrimination that helps us notice the details in life. We may start by noticing differences between colors or how the letter B is different from the letter P. Then, throughout our lives, we continue to notice more detailed differences: how to tell a crow from a raven; a Queen Anne chair from a Louis XV. Playing matching games with your child encourages a lifelong and rewarding awareness.

# Everyone Wins Bingo

*Regular bingo can be hard for young ones when the tension builds as they hope their bingo card fills up first and then someone else yells “Bingo!” I know, that’s life; some days you win and some days someone else wins. But wouldn’t it be nice if everyone could win? In this version of bingo for the little ones, everyone does.*

Group  
activity

## MATERIALS

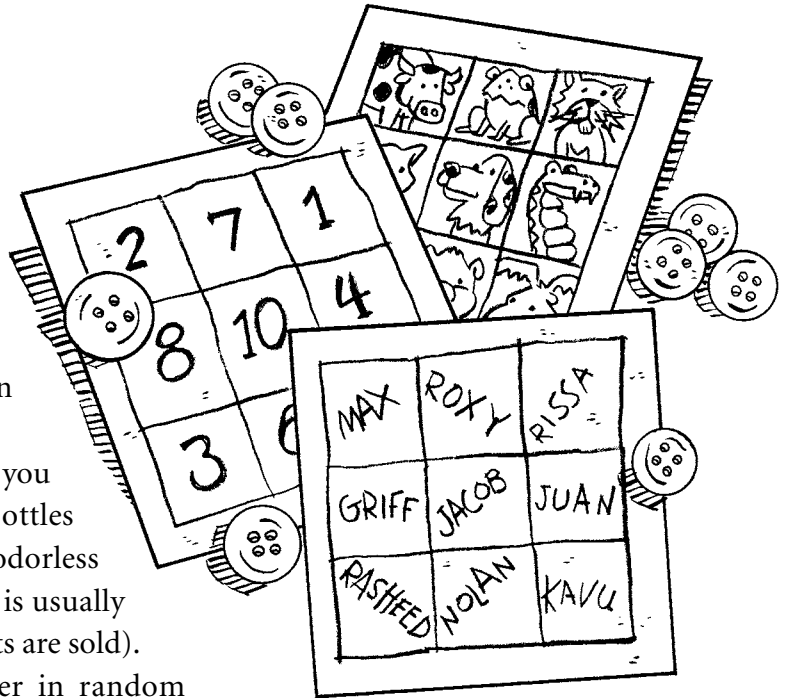
cardboard  
pens  
buttons or other markers

## DIRECTIONS

Using the cardboard, make bingo cards by writing numbers 1 to 10 or 10 to 20 on each card. All the cards should have the same numbers on them, but in a different order. Give each player a card and a pile of markers, such as buttons, cut-up pieces of paper, coins, shells, or nuts in their shells.

If you photocopied the cards, you can use the bingo marker paint bottles that “real” bingo players use (an odorless version of this sponge-top bottle is usually available wherever children’s paints are sold).

As you call out each number in random order, have the players find that number on their cards and cover it with a marker.





When all of the numbers have been covered, go around to each player and say, “Got the 1 covered? Yep. Got the 2? Yep. Let’s see if you got the 3. Oh, you did,” and so on. When you’ve checked all the numbers, say, “It’s a Bingo card! He has got Bingo, too!”

Believe me, the kids don’t mind at all if everyone wins!

### VARIATIONS

You can use this game to teach many things to young minds.

Make bingo cards using colors or shapes or letters or short words or people’s names or animal pictures or whatever lesson you want to reinforce.

Instead of using buttons or other things as markers, you can make markers out of pictures or words on paper that players match to the pictures or words on the cards.

### WHAT IS BEING LEARNED

Children are learning to match and recognize numbers or colors or shapes or whatever is on the card.

They are also experiencing the warm feeling that comes when they and everyone around them is doing well.



One or two  
people

## Cereal Box Puzzles

*Cereal boxes are made of such nice heavy cardboard, it seems a shame to toss them in the garbage. Here’s a way you can make an instant puzzle for your child and recycle that nice cardboard at the same time. (Cracker boxes work well, too.)*

### MATERIALS

cereal box  
scissors

## DIRECTIONS

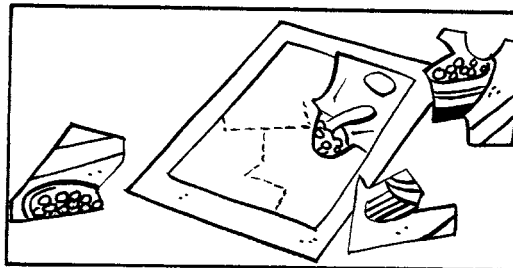
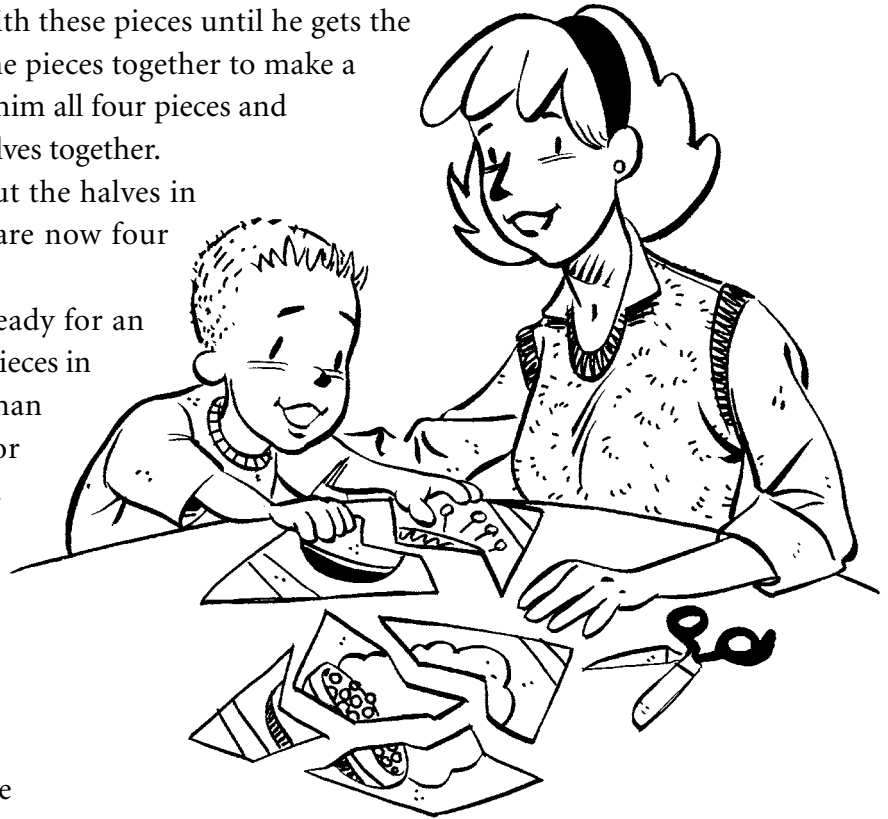
Cut out the front and back sides of the cereal box. Cut each side into two or more pieces depending upon the skill level of your child. For very little ones, cut the front side in half and show how the two parts can be put together to make a whole picture again. Then let him try completing the puzzle on his own. Cut the back side in half as well but use a diagonal cut this time so that you have two triangular halves.

Let your child play with these pieces until he gets the idea and can easily put the pieces together to make a whole picture. Then give him all four pieces and let him put the correct halves together.

For older children, cut the halves in half again so that there are now four pieces to each puzzle.

When your child is ready for an added challenge, cut the pieces in abstract shapes rather than just squares, triangles, or rectangles. If your child needs help with this type of puzzle, you can lay the puzzle on a piece of paper and outline each piece so he can see the shapes more clearly.

If you want to reuse the puzzles, they keep nicely in a brown mailing envelope. If you have another cereal box with the same design, cut that out and paste it on the envelope so your child can see which puzzle is inside.



## VARIATIONS

- ◆ You can make the fastest puzzle ever (think: stuck in a waiting room with cranky kid) by tearing up a piece of paper.
- ◆ You can also make a more attractive (and less commercial-looking) puzzle by pasting a picture from a magazine on a piece of cardboard instead. Pictures from *National Geographic* or *Smithsonian* magazines work well.

## WHAT IS BEING LEARNED

When they are doing puzzles, children must be very aware of shapes and how they match the empty spaces where pieces are needed. Puzzles also encourage children to notice similarities, such as how the color red or the bold line in one piece matches up to the same feature in another piece.



One or two  
people

## Match the Lids

*A child's awareness of how some things are bigger than, smaller than, or the same size as other things comes at first with trial and error.*

*When you see young children trying to nest a series of cups, such as measuring cups where each cup is slightly larger than the next, you will notice that they don't immediately know that some cups are larger and will not fit into the smaller ones no matter how much force they apply. When force doesn't work, they experiment and find that small fits into big better than big fits into small!*

*Sometimes just saying the words "Try another way" can get them past the frustration of the cups not fitting and on to finding the way that they do.*

## MATERIALS

clean jars of different sizes and their lids

**DIRECTIONS**

Place a wide variety of jars with lids in front of your learner. Take all the lids off and toss them together, mixing them up.

Then give your child the challenge of finding the right lid for each jar.

With very young learners, you might want to start with just two jars and lids.

**WHAT IS BEING LEARNED**

Match the Lids shows children in a very direct way which sizes go together. If they are wrong, it doesn't fit!

**Carry Game**

*There is an old carnival gambling game—you probably know it—where an object is hidden under one of three cans and then the cans are quickly moved around to mix them up. You have to figure out under which can the object is hiding.*

*This is that same game, except that underneath the fun is the awareness of size, noticing that some things are bigger and smaller than others.*

— — —  
One or two  
people  
— — —

**MATERIALS**

three different-size cans, empty and cleaned and with labels removed  
small object, such as fruit snacks

**DIRECTIONS**

Place the three different-size cans upside down on the table.

Put a small object under one of the cans. Foods such as fruit snacks are good objects to use because the child can eat it when he guesses the right answer. If your child is past the time of putting everything in his

mouth, you might use something like a seashell or a marble that he gets to keep for each right answer.

Point out to your young player that the reward is being put under the big or medium or little can. Then mix up the cans and see if he can notice where the big can is and point to it. He's right? He gets the treat and/or praise and the chance to try again. Wrong? Look under the medium can together. "Nope, not there, in the medium-size can." Then the little one. "Nope, not under the small can." Now the big one. "Yeah. There it is! It was under the big can!"

### VARIATIONS

Try hiding objects under containers of different shapes or colors. To get different-color cans, you could cover the same-size cans in different-color paper.

### WHAT IS BEING LEARNED

Noticing the differences in sizes of objects is not automatic. It's information we pick up from experience. This is a fun way to get children to think about size discrimination.

It might take awhile for the little ones to see the difference in sizes or understand the concept of big, medium, and little. You might want to try using language that is more familiar to your child, such as the Papa-size can, the Mama-size can, and the baby-size can.



---  
One or two  
people  
---

## Full of Beans

*This game is great for those times when the children are little and you really need time to get something done (like the dishes!). Just remember to put five bags of dried beans on your grocery list next time you go shopping. You can use them to keep the little ones occupied and learn lessons about size along the way.*

**MATERIALS**

a large, clean plastic tub  
5 bags of dried beans  
unbreakable cups in different sizes  
*Optional:* plastic water bottle

**DIRECTIONS**

Take a clean plastic tub, maybe an old baby bathtub or one that is used for washing dishes, and partially fill it with the dried beans. If you use a variety of beans, you'll get a more colorful mixture. If your child might be tempted to put small objects in her nose and ears, you'll want to either use larger beans, such as large lima beans, or sit with her while she is play-



ing and remind her as often as needed that “these beans are for pouring and playing. We don’t put them in our noses. That can hurt us.” (Children aren’t being “bad” when they poke beans into different orifices, they are being little scientists exploring possibilities. It’s our job to explain the downside of that kind of experimenting! )

Provide a variety of unbreakable cups in different sizes.

Holding the cups over the plastic tub, start your learners off by showing them how to pour beans from a small cup into a larger one and noticing how many times the small container is filled and emptied before the large container is full. Next show them that when they pour the beans from the big cup into the little one, the extra overflows.

Play a guessing game: Which holds more beans, the tall narrow cup or the short fat one?

You can provide a large funnel to add to the enjoyment. Or you can make a nice one by cutting a plastic water bottle in two. The bottom half is a cup and the top half is a funnel.

Let the children experiment on their own while you get those dishes done! Beans are also just fun to run your fingers through without any purpose at all.

## VARIATIONS

- ◆ I know of one preschool that uses wild bird seed for this game and then sweeps outside whatever spills over for the birds to enjoy.
- ◆ You can also hide little treasures, such as refrigerator magnets or peanuts, in the beans for your child to find.

## WHAT IS BEING LEARNED

This is a game that shows young ones in a very concrete and easily understandable way that things come in different sizes. They are learning about comparison—that some things are bigger than others.

If you’re playing the variation about finding treasures in the beans, they are also developing their sense of touch.

## Going to the Store

*This game can be used to teach children about shapes, sizes, colors, and more, so children of different ages can play it together. It's also a game of something kids love to pretend to do: shop for food.*

Two or more  
people

### MATERIALS

food items  
chairs, bench, or 2-by-4-foot board  
table

### DIRECTIONS

Go through the kitchen and gather up a bunch of food items—a box of cereal, a box of crackers, a can of soup, empty milk cartons, whatever. Put the food items on the table. The table is the “store.”

Then make a “bridge” out of kitchen chairs lined up beside each other, a bench, or a 2-by-4-foot board on the floor.

You play the mother (how perfect is that!) and you ask each “shopper” to cross the “bridge” to go to the “store” and bring you back something. What that something is depends on the skill level of the child. Give younger children easier clues, such as something that is a specific color. Older children can get spelling or phonic clues.

If children are bringing back more than one item, give them a bag or a tray to carry the items in or on.

#### *Suggestions for clues*

- ◆ Something big or something small
- ◆ Something with yellow (or any other color) on the package
- ◆ Something with a square shape (or other shape)
- ◆ Something that starts with the sound *MMMM* (or any other phonic sound)
- ◆ Something that comes from cows



- ◆ Something that is made from flour
- ◆ Something that we eat for breakfast
- ◆ Two boxes and one can (or any other number combination)
- ◆ The item you are spelling, such as C-E-R-E-A-L

### VARIATIONS

- ◆ Play this game in the real grocery store. Have your little one look for a box that has a certain color on it or is a certain shape. Use the same clues that you did at home if you want him to find the same food items.
- ◆ You can enlarge the learning taking place in the game by putting an older child at the “store” and have him take money and make change.

### WHAT IS BEING LEARNED

Children are learning to recognize colors, shapes, numbers, and words in a play situation that models real life. Providing a wide variety of ways to learn the same thing makes the learning easier and makes it stick better.

If you make a “bridge” for the “shoppers” to cross and give them a tray to carry, they get an opportunity to practice their balancing skills. (Holding a tray means the children can’t see their feet and have to rely on and increase their internal sense of balance.)

## AGES 6 AND UP



### Go Fish for Colors

*Most young children like to play the traditional card game of Go Fish. But even older children can enjoy variations on this simple game. For example, when my kids were teens, we’d get through the tedious task of sorting socks by dealing out a “hand” of socks to each person, putting the rest in a paper*

Two or more  
people

*bag, and playing Go Fish. (“Anyone have the mate to this green sock with the hearts on it?” “No, go fish in the bag.”)*

## **MATERIALS**

colored paper or paint samples

## **DIRECTIONS**

To play this version of Go Fish, make a set of “playing cards” by cutting pieces of colored paper into card shapes—two of each color. Try to find paper that is of more unusual colors than the basic red, yellow, green, and blue, such as turquoise, violet, or magenta. (Origami paper often comes in interesting shades.)

To make this game even more elaborate and to introduce a wide variety of shades to your player, get your “cards” at the paint or hardware store. The sample paint strips displayed there offer many different color variations. Choose very different colors for the younger set and more subtle variations for the older ones. Get two of each color you choose.

Deal out four or five cards to each player and put the rest, colored side down, on the floor or inside a paper bag.

The first player holds up one of her colors for all to see and says, “Does anyone have turquoise?” (or “this bluish color”).

If no one has the matching color, the player has to Go Fish and picks a strip from the floor or out of the bag. (No peeking!) If it matches the one in her hand, she gets another turn. Otherwise, it’s the next player’s turn.

## **WHAT IS BEING LEARNED**

Children are learning about new colors—beyond the basic red, blue, yellow, green, and purple.

Children can learn that there are many variations of blue, for example. One time when I was planning on painting the children’s rooms, I asked them which colors they wanted. My five-year-old said, “Violet.” I was so pleased she had a preference and knew that variation that I agreed, and together we painted her room violet.



## Drive into the Empty Spaces

*I was on a whirlwind workshop tour in New Zealand. I must have done twenty-three workshops in thirty days. We arrived in one town at midnight and the workshop was scheduled for early the following morning. I was happy, but exhausted. Then I got to the venue and found that instead of the usual group of thirty young teachers, there were ten prim teachers with gray hair and sensible shoes. I thought about canceling.*

*Then I heard an inner voice say “Let them play it out.” At workshops I always introduce a wide variety of games, let the teachers play them for a few minutes to get the idea, and then go on to the next idea. “Playing it out” meant that I would instead introduce fewer games and let the teachers play them from start to finish. This would change the workshop from a repertoire of game activities to a workshop about playing.*

*“Playing it out” is what I did that day, and everyone was laughing and romping and playing so hard that we all sat panting and delighted at the end of the time. The workshop I had almost canceled turned out to be the most fun of them all.*

*Drive into the Empty Spaces is one of the games we played.*

### DIRECTIONS

Each player finds a partner. One of the partners is the “car” and the other is the “driver.” The driver puts his hands on the car’s waist and steers her around the room. With every driver moving at the same time, the challenge is to avoid collisions. The way to do that is to “Drive into the empty spaces.” I purposely tell the drivers what to do instead of what not to do (as in “Don’t bang into anyone else!”) because children often don’t hear the word “Don’t.” Instead, you’ve given them an idea that to some kids sounds like fun: “Bang into anyone else!”

Encourage the drivers to drive their cars as fast as they want, swerving



to find the empty spaces. Tell them or show them how they can add to the fun by making horn-honking or silly motor sounds.

Have the partners take turns being the car and being the driver.

If you have a large space, define it to make it smaller by using rope or chairs or instructions to limit where kids can drive (“stay on the rug”). The smaller the space, the more challenging the task of finding the empty spaces.

### **VARIATION**

Put larger groups together to form two or more trains. The person at the head of the train is the “engineer.” Engineers have to find the empty spaces

through which to pull their trains. In this variation, the engineer has to be aware of how much space is needed to maneuver the whole train through that space so that even the “caboose” makes it through safely.

For sound effects, a “chug-a chug-a” noise replaces “vroom vroom” and train whistles replace honking horns.

### WHAT IS BEING LEARNED

Young children don’t yet have a complete awareness of the space around them. They’ll often bang into one another. Any parent can tell you how often they get their toes stepped on by a child’s foot or a nose banged by a child’s flung arm. A child’s sense of how big her body is and how much space it takes up is something that develops over time, especially considering that her body’s size keeps changing!

In this game, an understanding of spatial relationships and an awareness of one’s body are developed. Children need to be aware of where they are going and where the other person is going to avoid bumping into each other. This takes an awareness of space and of one’s relationship to others in that space.

After the first game, you might ask the players which they liked better: being the car or being the driver. Did they prefer being the one in control or the one allowing someone else to make the decisions? Or were they equally satisfying? Both are useful traits, but it’s always interesting to note their preferences.



## Digestive Drama

*Spatial relationships between things include both external and internal objects. Yet it’s difficult to visualize these relationship between things we cannot see, such as the organs in the body or the celestial bodies in the sky. This game takes the concept out of the mental plane and into the physical plane where learners can kinesthetically experience these relationships.*



Group  
activity

*Joe Crone, an elementary school teacher, has his students act out the digestive system process starting with the mouth, going through the stomach and intestines, and ending up out the end. His students choose the various body parts to act out. He even wrote a song about it that is part of his CD, Geometry Park, USA.*

*One day, he ran into a former student of his who said, "I remember your class well. I was the anus!"*

## **DIRECTIONS**

Have children take the roles of the different parts in the digestive process, including the role of the food.

You can chant these words to Joe's song or make up your own words.

Digestion starts in the mouth  
Where the food's chewed up before it heads south.  
The salivary glands make it all wet  
And it's there that the food starts to digest.

The esophagus squeezes the food on down  
And into the stomach, that's where it's found.  
The gastric juices break down the food  
And the stomach muscles churn it up so it can be used.

The pancreas and liver add insulin and bile.  
It's in the duodenum for just a little while.  
The gooey, gooey muck is now called chyme;  
Its nutrients are taken in the small intestine.

It's in the large intestine where the water's taken out.  
The chyme's compacted nicely, of this there is no doubt.  
It passes through the rectum, the anus is at the end.  
The sphincter muscles contract, your bowel movement begins.

[The chorus, which is optional, too:]

Chew it up and swallow those itty-bitty pieces

Take out all the good stuff. In the end it turns to feces.

Churn it up and swallow it, turn it into goo.

Now you get to sing those digestion blues.

### VARIATIONS

- ◆ Other Physical Systems: Circulatory system: Act out the way blood takes fresh oxygen from the lungs and moves through the heart and arteries and returns through the veins.
- ◆ The Universe: Have children act out the solar system. One is the Sun and the others are the different planets revolving around the Sun while the Moon revolves around Earth.

Have children show the Sun and Earth and Moon pathways for one day. Where is the Sun at night? This is a good way to understand what happens in a solar eclipse, when the Moon comes between Earth and the Sun, and a lunar eclipse, when Earth comes between the Sun and the Moon.

- ◆ What Time Is It?: Players are clock faces and their arms are the clock hands. Where are their arms when it is three o'clock? six o'clock? twelve o'clock? twelve-thirty? ten minutes after three?
- ◆ Atom Arrangement: The players act out different molecular structures. How many protons, neutrons, and electrons are there in  $H_2O$ ? How do they relate to each other? How does that relationship change when  $H_2O$  is combined with sulfur to form sulfuric acid?

### WHAT IS BEING LEARNED

Students are learning how objects relate to one another in both internal and external space.

## ALL AGES

### Jump the Shapes

*This is a no-fail game. I have played this game in so many countries with so many different kids that I can guarantee kids will jump for it. This game is also rich in variations. It can be easy; it can be challenging; and it can even help kids learn their shapes, numbers, letters, and colors.*

*One time this game saved me. I was giving my first workshop in Cambodia and I wanted it to go well. My interpreter, my daughters, and I were driven to the orphanage where I expected I would be giving a talk to the director and her staff on child development, the benefits of play, and how to make learning toys from throwaway materials. Instead of just a small group of adults, thirty excited children met our car. They were all there for the talk!*

*I knew there was no way these children were going to sit still while I espoused theory, so it was time for a fast change of plans. I wasn't going to tell them about the benefits of play or what children needed, I was going to show them—right now! My daughters got the kids coloring on newspaper while I quickly drew colorful shapes on six newspaper sections. Then, with the help of the interpreter, we soon had the kids taking turns jumping to each shape while the other children called out the shape's name in their language.*

*The children loved playing this game, so my daughters and I had enough time to look around the room and find things to make into more games (benches lined up to make a balance beam, newspaper scrunched up to make balls, bull's-eyes drawn on blackboards to make targets, and so on).*

Two or more  
people



*At home, you can make this game a bit mysterious the first time you play it. For example, one day when the kids are running around and you want them to focus their energy, do this: start setting up the game. Add to the mystery by not saying, if you're asked, what you are doing. Just murmur an enticing "You'll see."*

*By the time you are done, the children will be gathered round and ready for whatever!*

## MATERIALS

newspaper or typing paper or construction paper  
 markers or crayons  
 tape  
*Optional:* scissors

## DIRECTIONS

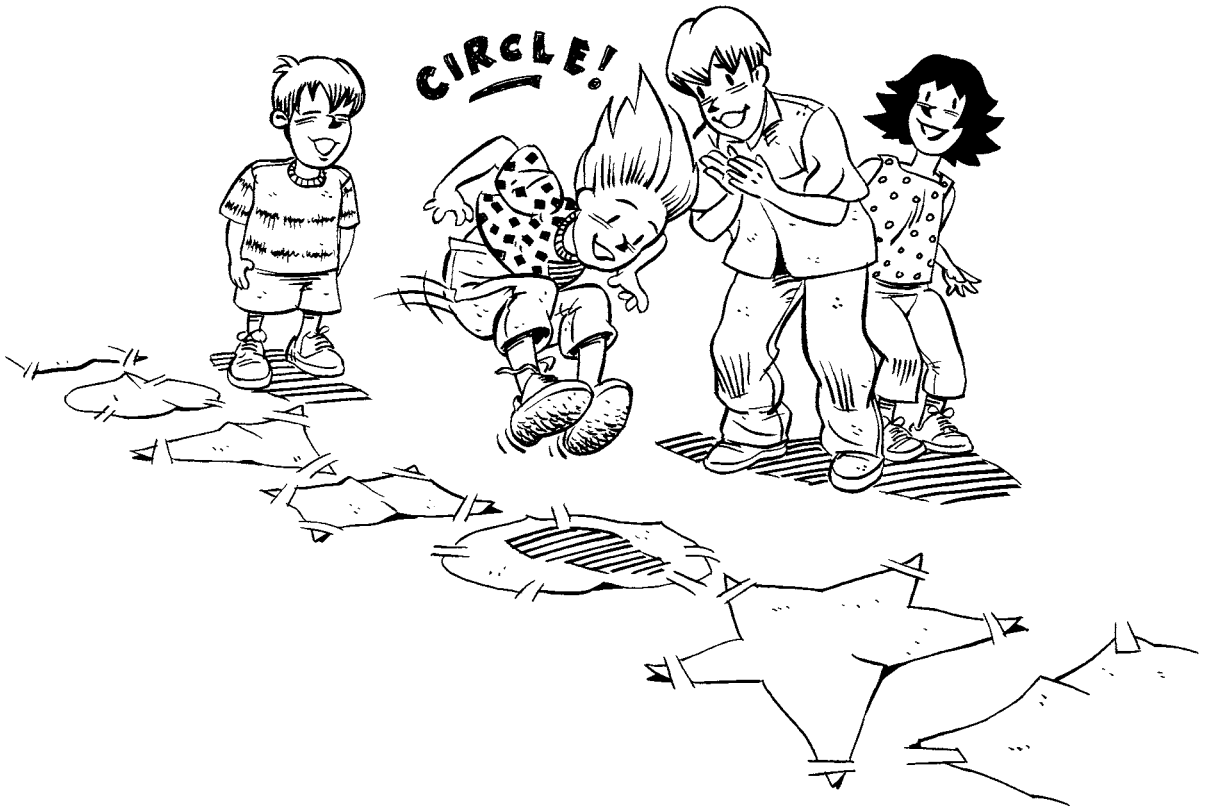
Pull out six to nine newspaper pages. Fold the pages in half and draw a shape on each with markers or crayon. Or, you can cut each page into a different shape. Start with the ordinary shapes—circle, square, rectangle, triangle, and star—and later, or if you have older children playing, add shapes such as pentagons, octagons, hexagons, and rhomboids.

Tape each newspaper page on the floor, one right above the other, forming a vertical line. (The more pages you use, the harder the game.)

Start off simply by jumping forward from one shape to the next, inviting the children to follow you. Call out the shapes as you land on them. Do it a few times, always starting from the first shape and jumping on each shape until the last one.

Then call out different shape names for each child to jump to. For younger children, keep the instructions short ("Jump from the square to the circle"). For older children, make the instructions longer ("Jump from the circle to the triangle to the octagon").

If you want to increase a child's ability to remember, or if you want to make the game more interesting for an older sibling or playmate, make the instructions increasingly complicated, such as "Walk on your heels to the



star, tiptoe to the rectangle, and hop four times on the circle.” Or, “Jump sideways to the square and then backward to the triangle and then over the next three ones and land on the pentagon.” Or, “Hop on your left foot to the square, then twirl in the air and land on the hexagon.”

### VARIATION

Instead of making shapes on the newspaper pages, draw different colors, numbers, or letters on each section.

### WHAT IS BEING LEARNED

There is so much to learn from these games. Children learn about shapes (or colors or numbers or letters), plus they improve their balance by jumping and hopping. They are also learning to move their bodies in a variety of ways.

When you ask players to follow a series of instructions, you're also improving their memory skills—their ability to listen, remember, and do it.

But, most of all, playing Jump the Shapes gives you and the children the awareness of the rich variety of games that can be played with something as common as yesterday's news.



Two or more  
people

## Obstacles Galore

*On a rainy day, you can turn any room into a fun zone with this game. Set up the first course yourself, but once the kids get the idea of how to do it, let them come up with their own ideas. My agile children would come up with ways of moving through the obstacle course that I never would have thought of—and couldn't do if I wanted to! (“Let's see, your plan is that we jump down from the top of the dresser onto the bed, do a somersault from the bed onto the floor, and then wiggle under the bed to get to . . .”)*

### MATERIALS

furniture

*Optional:* bell or tambourine, or drum, or some other noisemaker

### DIRECTIONS

Use the furniture to make an obstacle course.

Think prepositions. You want something to go *under*, something to go *over*, something to go *around*, something to go *between*, and something to go *across*.

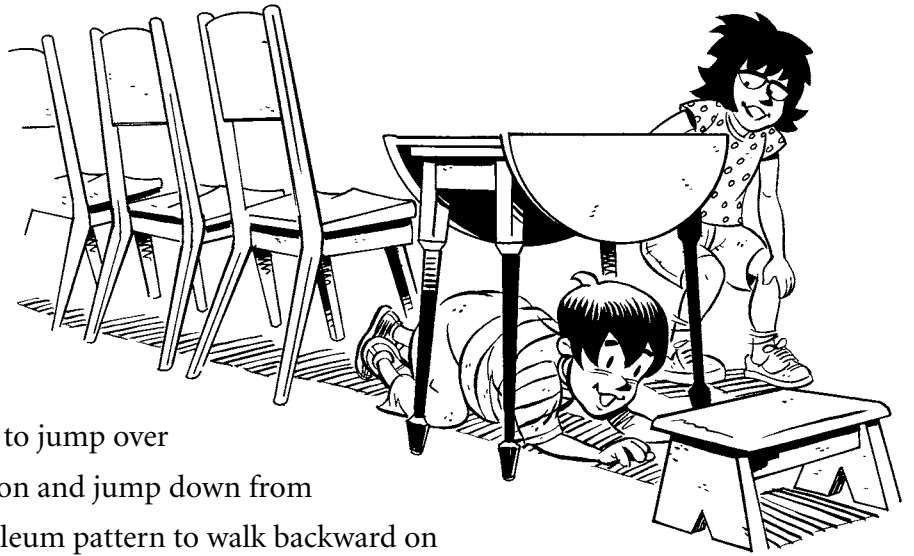
Think directionally: something to climb *up*, something to go *down*, something to go *into*, and something to go *out of*.

Think action verbs: something to *jump* over; something to *climb* on; something to *skip* around; something to *walk* forward, backward, or sideways to; something to *crawl* to or under; and something to *run* to.

Mark the start of the obstacle course with a piece of paper or rug or anything that defines that space as the beginning. This rule helps kids not cut in front of each other and gives some order to the game if many children are playing together. I like to add a bell or noisemaker of some kind at the end to signal a successful completion. I find children really like ringing a bell or shaking a tambourine to announce their triumph to the world. Children can go one after the other or they can take turns going through with everyone applauding each person's success.

Here are some suggestions for obstacles:

- ◆ A table to go under
- ◆ Two rows of chairs to go between
- ◆ A stool to skip around
- ◆ A stack of books to jump over
- ◆ A chair to stand on and jump down from
- ◆ A line in the linoleum pattern to walk backward on
- ◆ A box to sit in and wiggle forward
- ◆ A bench to walk across sideways



## VARIATION

Play the game outside on a nice day, using obstacles like:

- ◆ A fallen log to cross over
- ◆ A tree to skip around
- ◆ A rock to climb up and jump off
- ◆ Sidewalk squares to jump on, from one to another
- ◆ A street lamp to run to, touch, and run back from

## WHAT IS BEING LEARNED

A lot of different types of learning are taking place in this game that will help children and please their teachers and parents. First of all, children are learning about relating objects to one another by making a course. They are learning about their relationship to these objects—for example, that some things are lower than they are and that they have to adjust their body to wiggle under them. Teachers will be glad that children are also learning lessons about prepositions, directions, and action verbs in a way that is meaningful to them. Gym teachers will like seeing children enhancing their motor skills by using a variety of movements. And parents will be glad to see that their children can be inventive and find active ways to entertain themselves.

One or two  
people

## Internal Map

*I don't know about you, but I get lost easily. I don't mind asking for directions, but I wish I had learned at an earlier age how to develop an internal awareness of where I am in space.*

*One way to help children develop this awareness is to have them try to mentally project themselves upward in order to get a bird's-eye view of how things around them are related to each other.*

*A good way to start is with the things in the child's own house or classroom.*

## MATERIALS

piece of paper  
*Optional:* blindfold or large paper bag

## DIRECTIONS

Put a piece of paper on the floor for the child to stand on. Call this paper “home base.” While your child stands on home base, ask him to notice how

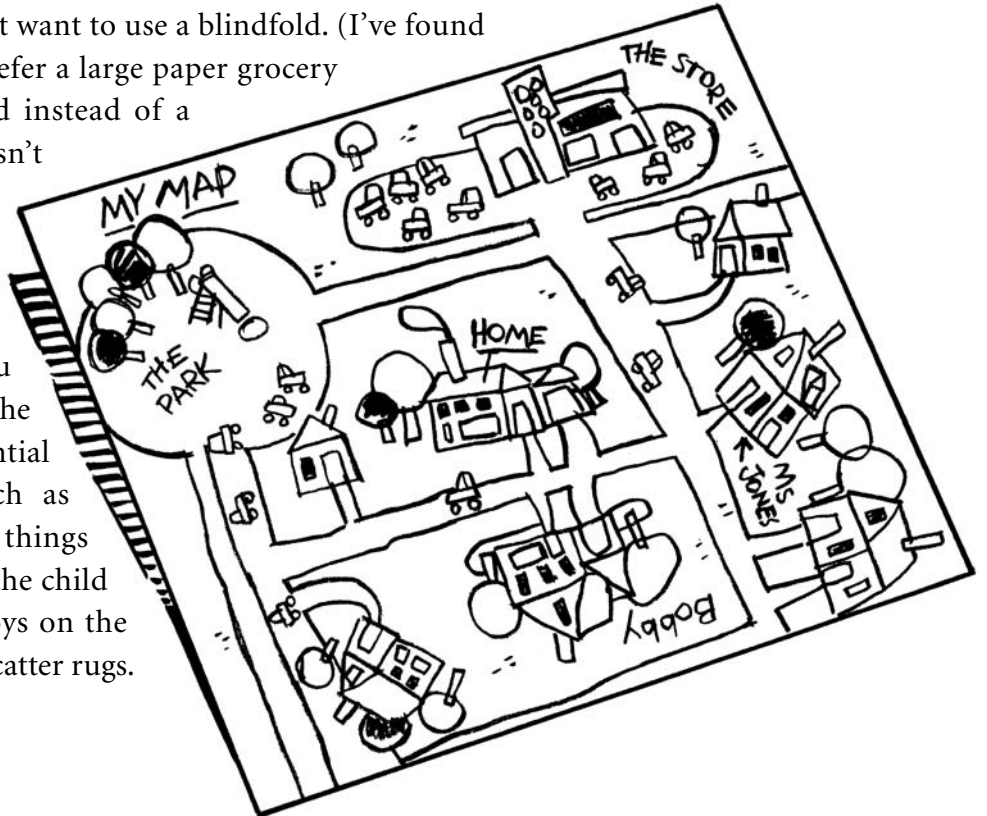
far it is to different objects in the room, such as the bookshelf, the couch, the kitchen door. Then have him notice the distance from the bookshelf to the couch, from the couch to the kitchen door, and from that door to home base.

Next, ask him to close his eyes and walk from home base to each of the objects named, in turn. For example, “Walk to the bookshelf and then back to home base without opening your eyes.”

If he’s heading off in the wrong direction or about to bump into something, give him some help by gently guiding him back on track.

Once he’s made it to each of the first locations, you can make the instructions more complicated. For example, “Walk to the bookshelf and then from there to the couch and from there to the kitchen door and then back to home base.”

Some children might have a hard time not opening their eyes to peek, so you might want to use a blindfold. (I’ve found that many kids prefer a large paper grocery bag on their head instead of a blindfold. It doesn’t slip down or get tangled in their hair the way a blindfold might.) And, of course, you will want to clear the space of any potential shin busters, such as coffee tables, and things that might cause the child to trip, such as toys on the floor or slippery scatter rugs.



## VARIATIONS

- ◆ **Where Is It?:** Scrunch up a piece of paper to form a ball, or use any small object, and place it a distance away from home base. Ask your player to close his eyes and then walk to where he thinks the paper is and pick it up. This is harder than it sounds. Try it yourself when it's your turn.

To make the game more complicated, have the child pick up two or more objects from different locations. The player goes to the first location and from there to the next without opening his eyes.

- ◆ **Where Am I?:** Have children draw a map of the area surrounding where they live.

## WHAT IS BEING LEARNED

Children are developing a sense of where things are in space relative to themselves and relative to each other.



---  
Group  
activity  
---

## Kangaroo Ball

*When children are jumping kangaroos who are either trying to bump or avoid getting bumped by other jumping kangaroos, they'll get plenty of experience in spatial relationships! This game helps children notice where they are in space, what's around them, and what's coming at them.*

*Kangaroo Ball is also a wonderful outlet for excess energy, so it's great for a birthday party when you want something that will burn off the sugar the children just ate. That's a benefit you just don't get from Pin the Tail on the Donkey.*

## MATERIALS

“gentle balls” (simple balls made out of newspaper or plastic bags scrunched up and taped closed, see page 125) or store-bought foam balls

## DIRECTIONS

Each player starts with a ball on the floor in front of her. The players then squat down and, using their knees, pick up their balls. Then, holding the balls between their knees, they jump around like kangaroos. Call out different kinds of jumps for the players to do, such as:

- ◆ short jumps
- ◆ long jumps
- ◆ sideways jumps
- ◆ fast jumps
- ◆ slow jumps
- ◆ jumps over something, such as a piece of paper

Have the players count, if they want to, how many of each kind of jump they can do without dropping the ball.





**VARIATION**

In the regular game, children have to avoid bumping into each other so they don't lose their ball. In this variation, you tell them that they can bump hips (gently) to see if they can get other players to drop their balls while not losing their own ball. Many children will find this variation the most fun of all. But you know your players best. It could invite trouble if the players tend to be raucous.

**WHAT IS BEING LEARNED**

Besides developing their awareness of space so that they don't (or do) bump into others, children are developing their lower body strength by jumping and gripping the balls with their legs. When they try different ways of moving, they are developing their ability to isolate and use different muscle groups.

Two or more  
people



## Popsicle Stick Puzzle

*If you have children, Popsicle sticks are probably pretty common in your life. It doesn't take but a second to wash the sticky stuff off the stick after the Popsicle is gone and put it on the windowsill to dry. Once you've collected four or five sticks, you can make this nifty puzzle. Collect more, or purchase craft sticks at a hobby shop, and two or more can play.*

**MATERIALS**

Popsicle sticks, craft sticks, or tongue depressors  
tape  
felt-tip pens

**DIRECTIONS**

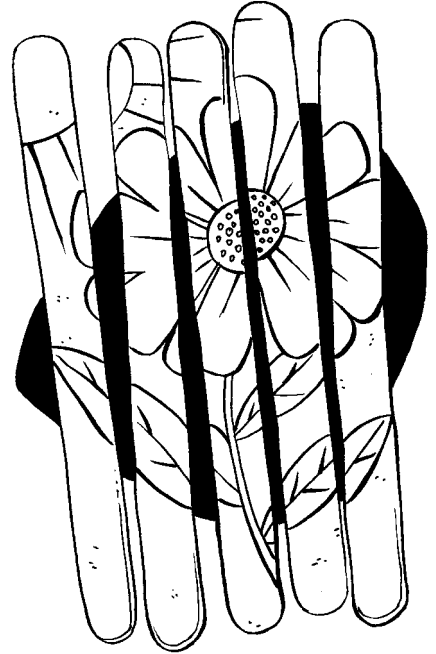
Lay four or five sticks next to each other as if making a raft. Then tape the sticks together on one side. Draw a picture using felt-tip pens, or make a

simple bold design that covers all or most of the untaped side of the “raft.”

Next, untape the sticks and give the pieces to your learner. Explain that he should put the pieces together to re-form the picture.

Put together another set of Popsicle sticks and have your learner draw his own puzzle for you to put together.

If there are many people making puzzles, pass the puzzles around so everyone gets a chance to try each one.



## VARIATIONS

Instead of drawing your own picture, paste a picture from a magazine on the sticks. Then separate the sticks with a sharp knife or scissors.

Instead of using four or five sticks, use many more to make a much larger puzzle. The design can be as simple or as complicated as each designer wants, so this is an activity all ages can play.

## WHAT IS BEING LEARNED

Children are learning that there are parts to a whole. Unlike a regular puzzle, which is about finding the right shape, this puzzle encourages a sense of combining the different elements of a larger picture. By noticing, for example, how a curved line on one piece matches the line on another, they are seeing the continuity of how things relate to each other in space.

## Blind Portraits

*In this game, children will draw each other's portraits. The trick is that they aren't allow to look at their paper while they are doing it.*

*The results are often amusing and sometimes impressive. Maybe this is how Picasso got his inspiration!*

Two or more  
people

## MATERIALS

colored or regular pencils  
paper

## DIRECTIONS

Give your players pencils and paper and have two players, such as you and your child, sit facing each other. Then the two players draw each other without ever looking down at the paper until they are finished drawing.

## VARIATION

Draw something in the room without looking at the paper.

## WHAT IS BEING LEARNED

This activity encourages the artists to keep an internal awareness of where their hand is on the paper in reference to the features or objects they are drawing.

The activity also encourages children to concentrate, focus their attention, and notice details—skills very much needed in school and in life!



Two or more  
people

## Connect to a Star

*Learning activities that use movement are fun, but there is a lot to be learned from just being still. In this visualization game, stillness, imagination, and a belief in one's inner wisdom rule.*

*Connecting to a star, if done in the evening, can help children integrate the day's experiences. In the morning, it's a way to focus and fill their bodies with energy for the day ahead.*

## DIRECTIONS

Ask the players to sit cross-legged with their spines straight and hands relaxed. Give these instructions: "First, let's take four deep breaths. Take a big breath in through your nose and imagine that you are filling your belly up with air; let your stomach expand, then let that air fill up your lungs and

let your chest expand. (pause) Now empty the air out of your mouth and then out of your chest, letting your chest deflate; push the last of the air out of your belly by pulling in on your stomach muscles.”

After the four deep breaths, return to normal breathing pattern and add the following:

“Imagine that there is a shining star right above your head, the kind that radiates starshine from each of its points. One of those points is pouring energy to the top of your head. Take a breath and imagine that energy is coming down through the crown of your head and down your spine, and exhale it right out the base of your spine into the ground under you.

“This energy keeps going down into the earth, all the way down, until it reaches the center of the planet. Then inhale, and all this deep earth energy travels back up the same way and enters the base of your spine. It travels up until it goes back out the top of your head and right up to the star, making the star shine even brighter.

“Then exhale all that bright white energy that comes down from the star right into your head again. It travels down your spine and leaves your body to go back to the center of the earth.”

“Now inhale that earth energy up again, through your spine, and this time breathe out and let it spill out through the top of your head like a waterfall, showering and enveloping your body.

“Do this three more times, going at your own pace, starting with the star above your head and ending with a waterfall of star glitter.”

At the quiet end of this session, suggest to the players that this is a good time to pose a question to themselves, such as: “What should I do about this problem I’m having?” Suggest that they can expect the answer to come—if not right away, then later in some form, such as an overheard remark, a phrase in a book or song, a friend’s advice that feels very right . . .

## **WHAT IS BEING LEARNED**

Children get practice in visualizing and seeing with their mind’s eye. Also, learning to be still and access the quiet intelligence within is a skill we all need all our lives. This game gives children one way to develop that ability.

Two or more  
people

## Label Art

*If you're like me and you enjoy wandering around large office supply stores, you probably know that they have a lot of things that can entertain children. For one daughter's fifth birthday, I bought a file box from an office supply store and filled it with interesting office things: stapler and staples, a variety of pens, index cards, colored tapes, glue sticks, and self-stick labels in a variety of shapes, among other things. You would have thought I had brought her the moon. She and her sister had great fun playing games such as Office with all the stuff. But it was the self-stick labels that really brought out the artists in them.*

### MATERIALS

self-stick labels, such as mailing labels, file labels, colored dots, and Post-its  
paper or index cards

### DIRECTIONS

Buy a variety of labels and let your child make designs or figures out of them by sticking them on a piece of paper or card. For example, he can make a simple stick figure with a round label for a head, rectangles for the arms, and a square for the body. He could make one animal figure or a whole zoo of animals.

There's also no end of abstract designs that can be made.

Suggest to your artist that he use his art to make his own greeting cards, such as for Daddy's birthday.

### WHAT IS BEING LEARNED

This is all about creativity. When there is no right or wrong way to do something, imagination is free to do whatever it wants. Because it is easy to do, young children can play and stick right alongside an older sibling and all can feel a sense of accomplishment.

P A R T   T W O



# Games That Enhance Verbal-Language Skills

These skills involve the knowledge of language, including reading, writing, and speaking. They involve knowing the meaning of words and understanding idioms and plays on words. Children who are strong in these skills are good at playing word games, making up stories, debating, creative writing, and telling jokes. They have good reading comprehension and tend to think in words.

To give children the start they need in verbal-language skills, this section offers pre-reading games, which involve the recognition of letters by sight, by touch, and with the whole body. There are beginner's reading games that start with an autobiographical book, as well as an advanced reader's dictionary game.

Because developing language skills requires an ability to listen well, there are also games in which hearing is very much a part of the playing.



# AGES 6 AND UNDER

## Book in a Baggie

*This is the best idea I've heard of for a quick, fun, and easy book for your little ones that is all about them. I don't know who first thought of putting photos in sandwich bags, but it's one of those great ideas that needs to be passed on.*

*It's also a good way to use those photos that weren't good enough to make the family photo album but are too precious to throw away. If your photos are still in the shoe box and unlikely to ever make it to an album, here's a good motivator to put them somewhere where they will be seen and will become your child's keepsake.*

---  
One or two  
people  
---

### MATERIALS

photos  
plastic sandwich bags  
stapler  
*Optional:* paper

### DIRECTIONS

Have your child help you select family photos that he would like to include in the book. Encourage him to pick a photo for each member of the family, including grandparents and pets. Put a photo, or two photos back to back, in each sandwich bag.

Once you have filled four or five bags, staple the open sides together to





form the pages of the book. You might even want to staple a cover on the book and title it using your child's name, such as "Jacob's Family and Friends" or "People Jacob Loves" or "People Who Love Jacob." You can be sure this will be a book your child will want to see again and again. After all, he is the star!

Include captions to each photo or make a story to go with the pictures in the book so that you have something to read when you look at the book. You can write the captions on pieces of paper and slip them inside the plastic bags or paste them on the outside. Write a sentence or two, such as "Here is Jacob petting doggie Daisy. He loves his dog." Or write it from the child's perspective: "Here I am petting my doggie. I love him." You can make up what to write yourself or let your child decide what the sentence will say. When I let my youngest do that, she wanted me to write under one photo of me looking at her, "This is my mom loving me."

Instead of sentences, you could also write just one word, such as "Grannie," so that your new learner will begin to recognize words and can "read" the book to you. In this case, instead of putting the word on a piece of paper inside the bag or underneath the photo, paste it like a flap over the photo. The child then learns to read the word and lift the flap to see if he was right. (It *is* Grannie!)

## VARIATIONS

For a more elaborate book, take and include photos of your home, your child's bedroom, the local playground, or any other place where your child spends a lot of time.

You could also plan to take pictures that depict events in your child's day from morning to night for a book entitled "Jacob's Life" or "People and Places in Jacob's Day." For example, the first shot could show Jacob waking up, the next having breakfast, followed by going to the sitter's, playing with friends, getting picked up by Mommy, eating dinner with the family, and so on, until it ends with snuggling and reading that good-night story.

If you want your photo book to be more substantial than plastic bags, it's possible to purchase just the pages that go into photo albums without

buying the album. I like the kind that has an adhesive quality to the covering plastic so the photos stay secured to the page. Buy a bunch of these and tie them together with a ribbon.

## WHAT IS BEING LEARNED

There is so much for your child to learn from having his own book. The most important being that he is very important! A whole book that is all about him means that he matters very much and that the person who made it must think so, too.

If you do a book about the sequences in your child's day, it can reduce the possibility of anxiousness when in a new situation, such as being left at preschool or with a baby sitter. Because he's read the book, he knows how it ends: his loved one comes and gets him and takes him home.

When you add words, whether it's a sentence for the older child or a single word for the little one, you are helping your child learn to read.



## Name Matches

*Children learn they have a name of their own when they are quite young. A little later they discover that their name can be written and read. This game aids that discovery.*

— — —  
One or two  
people  
— — —

## MATERIALS

pen  
paper  
scissors  
*Optional:* glue stick

## DIRECTIONS

Write your child's name on a sheet of paper in large block letters.

Write it again on the bottom of the sheet and cut this version out, separating each letter into its own square.

With your child on your lap or next to you, pick up the first letter of her name and help her find the matching letter on the sheet of paper.

If you want, you can have her glue the letter on top of the matching letter with a glue stick. If she is too young to maneuver a glue stick, a little lick on the back of the paper will make it stick well enough for this game.

### VARIATIONS

Add other letter choices so she has to distinguish the letters in her name from all other letters.

Do the same game with the names of other family members.

### WHAT IS BEING LEARNED

Children are learning that their name can be made out of letters, as well as learning individual letter names.

-----  
 -----  
 One or two  
 people  
 -----

## Learn to Read in Five Minutes or Less!

*When working with children in their homes, I have fun bragging to the parents that I can teach their child to read in five minutes, especially if I can tell that the parents are doubtful about their child's ability to learn to read. This is how I do it.*

### MATERIALS

index cards  
 pencil

### DIRECTIONS

On separate index cards, write down the names of the child's family or other meaningful people (or animals) in his life, such as Mommy, Daddy, Susie (the sister), Jim (the uncle), and Rex (the dog).

Start with two cards and announce to everyone, including the child, that he will be able to read these words.

In private, talk to the child about ways to recognize each name. For example, Mommy's name starts with a letter that looks like a mountain. Daddy's name has a half circle in the front. Grandly mix up the two cards as if you're shuffling well and have him practice recognizing the symbols. If his attention has been engaged and excited by the game, don't be surprised if he easily knows the word the first time. If he doesn't, and still enjoys the game, talk a little more about the differences in the words—for example, "Mommy" is long and "Dad" is short. Don't hesitate to supply the correct answer if needed. This is a game, not a test!

When the child is ready, invite in his audience and let him shine. Remember to shuffle with a flourish so no one can claim that the child just memorized the order of the names! When he is ready, add the other names. Point out that Susie's name starts with a letter that looks like a snake and Jim's first letter looks like an upside-down candy cane. Have the child practice recognizing the different names; it won't take long before he is ready for his next performance.

Show the first card with the mountain letter and watch him say proudly "Mommy." The upside-down candy cane letter makes the child proclaim "Jim," and so on.

## VARIATIONS

Make index cards for various objects in the house and tape them onto those objects. Start with just a few words. For example, tape the card "door" onto the door, the word "desk" on the desk, "refrigerator" on the fridge, and so on. Leave the cards taped up and let your child just absorb the words.

One day, make a duplicate set of cards. The game is for your child to find the matching cards. For example, give him an index card that says "door" and let him look around the room and find the matching word. ("You found the word that says 'door'—you are such a brilliant boy!")

**WHAT IS BEING LEARNED**

Children learn that those silly scribbles on a printed page actually stand for words and that words can be read and understood.

They learn to start paying attention to the details of the shape of each letter, noting that each letter has its own shape and sound.

They also learn that it is possible for *them* to begin to make sense of those scribbles, and that is truly an enormously satisfying experience.



---  
One or two  
people  
---

**Alphabet Fishing**

*If you have young children, you probably already have a set of those magnetized letters that stick to the refrigerator. The kids probably played with them at first and in a productive moment might even have arranged them, with your help, into the order of A to Z. Maybe one day you might have made a message out of them. Usually a few get lost and mostly they are just forgotten things on the fridge.*

*Here's a way to use those letters to make a game that I play with preschool children. It's a fun way to learn recognition of letters (and numbers if you have both).*

**MATERIALS**

small magnet  
string  
pencil  
magnetized letters or sturdy paper and paper clips

**DIRECTIONS**

Take a magnet and tie (or tape) a piece of string around it. Tie the other end of the string to a pencil. That is your fishing pole.

Lay the letters down on the floor so that the small internal magnet is facing up. Spread them out so they aren't touching each other.

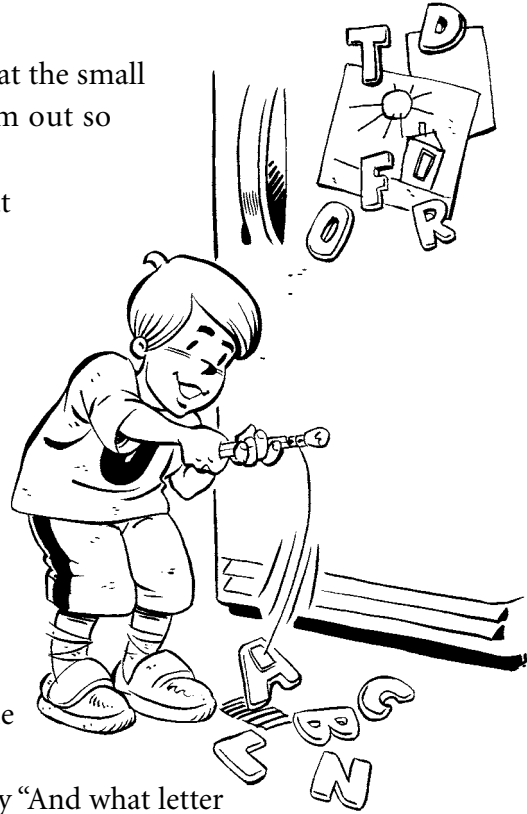
If you don't have magnetized letters, cut some fish shapes out of index cards or other durable paper. Write a letter on each fish and spread them out on the floor or in a box. It's helpful to include the letters that are often reversed by new writers, such as B, D, P, Q, G, and S. Attach a paper clip to each fish.

Have your child stand over the letters dangling his fishing pole and see which letters he catches.

It helps to show excitement over each letter he catches. Lay them out faceup so he can proudly display his catches.

This is not a test. It isn't necessary to say "And what letter is this?" It's more important to get enthusiastic about each letter. "Let's see what you caught! You got an . . . N!" You could pause slightly before you say the letter to give your child a chance to show off the letters he does know.

If you have several players, you can make poles for all of them and have them fish at the same time. The older players can put their letters together to form words.



## VARIATIONS

- ◆ **Sort and Count:** Some alphabet sets have more than one of each letter. This gives you the perfect opportunity to introduce the concepts of sameness and of counting. "Let's see, you caught an A. Now, didn't you catch a letter that was the same as this one? Where is that one? Oh, you're right—here it is. Look, now you have three A's. Let's count them together—one, two, three."

- ◆ **What Letter Is Missing?:** Place a few of the letters in front of the player and ask him to look away or cover his eyes as you remove one letter from the group. When the player uncovers his eyes and looks at the letters, ask if he knows which one is missing.

## WHAT IS BEING LEARNED

This game will help make letters and numbers increasingly familiar and friendly to your learner. You can expand on the game by making connections for him between the game letters and daily life. “Remember that letter S you caught yesterday when you were fishing? There it is again in that stop sign. Look, there are two more of those S’s in that sign that says ‘cross-walk’ and another in that sign that says ‘store’. Gosh, there are S’s all over the place!”



Two or more  
people

## Polka-Dot Letters

*Learning to write letters is a way for children to thrill the adults in their lives, but it can only go so far as a motivator. However, if they write a letter again and again and suddenly produce a magic result, as in this game, that’s an exciting new reason to do it.*

## MATERIALS

crayons  
paper  
paper clip

## DIRECTIONS

Have your little one go over and over the same large letter with many different crayon colors, making sure the last color that is used is black. Or you can take turns, each applying the next coat of color.

Then have the child scratch little circles in the black color with the end of a paper clip or toothpick and watch as the other colors come through. You end up with a polka-dot letter!

### VARIATION

Scratch stripes or crisscrosses or any other kind of shape instead of polka dots.

### WHAT IS BEING LEARNED

This is a good way to reinforce how letters are formed. As you describe the process to your child, you also enlarge his language vocabulary by using prepositions (down, up, around, and so on).

For example, you might say, “Let’s make a polka-dot D, Dylan. It’s the first letter of your name. We’ll start at the top and go down. Then we’ll start at the top and go around. Here, let’s both hold the crayon and we’ll do it together. The top and down; the top and around. The top and down; the top and around. Now, let’s color in the whole letter. Good! Which color should we use next?”



## Sand Letters

*Kindergarten teachers get to make these letters all the time. Why should they have all the fun? Playing this game is a lovely way to spend some time with your children and help them learn the alphabet with art that teaches!*

Two or more  
people

### MATERIALS

- glue
- index cards or heavy paper
- Optional:* paintbrush
- sand, salt, or rice
- Optional:* paint



## DIRECTIONS

Use a glue bottle to squeeze a letter's shape onto an index card or piece of heavy paper. Or paint the glue letter on the paper with a brush.

Have your child cover the wet glue with generous amounts of sand, salt, or rice.

Let the glue dry. When it does, shake off the excess sand, salt, or rice.

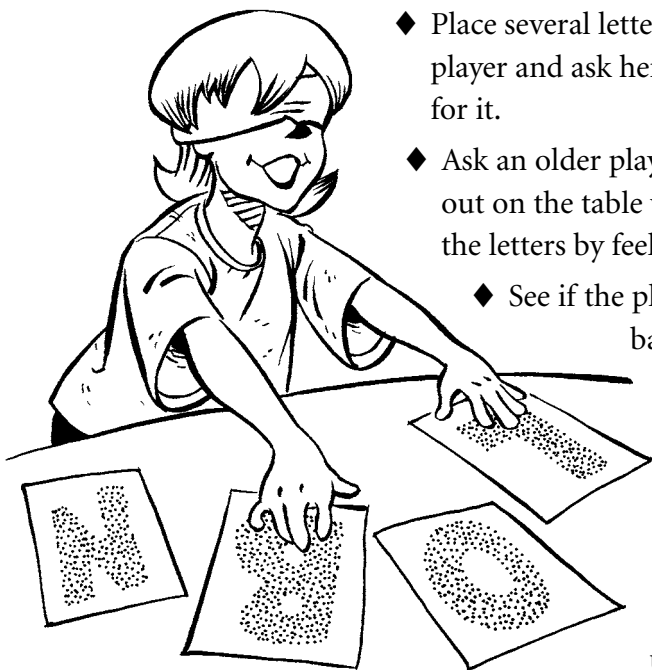
If you want to get fancy, you can mix a little paint into separate piles of the sand, salt, or rice and use this to make rainbow letters. You can also buy colored sand.

Make a whole set of sand letter and use them to help your child learn the alphabet by feeling the letters' shapes.

## VARIATIONS

Here are some games to play with sand letters:

- ◆ Ask the player to put her hands behind her back. Then slip one of the letters into her hands. Can she guess what the letter is by feeling it?
- ◆ Place several letters on the table. Put a blindfold on the player and ask her to find the letter you request by feeling for it.
- ◆ Ask an older player to make a word out of some letters laid out on the table while the blindfolded player has to find the letters by feel.
- ◆ See if the player can identify a letter using only her bare feet, or her cheeks, or her elbow!



## WHAT IS BEING LEARNED

Sand letters are such good tools to teach the alphabet because learners use the sense of touch as well as sight. Whenever more than one sensory pathway is being used, deeper learning is taking place.

## Alphabet Instant Letters

*This game is such a simple and fun way to learn or play with the alphabet that I wonder why it's not available commercially. Maybe it is, but it's so easy to make that no one buys it. The idea came to me in a dream, and it is a dream game because you can play it with your child while waiting at the doctor's office, sitting in an airplane, or anywhere you are stuck for a while and need to entertain yourselves. All you need is a piece of paper.*

One or two  
people

### MATERIALS

piece of paper

### DIRECTIONS

Take a piece of paper and tear or cut out some thin rectangles and a few circles. Tear the circles in half and tear the rectangles in various lengths. If you want to, tear the center out of the half circles so they form the letter C.

If you want to replay the game later, make the pieces last longer by using heavier paper, such as colored construction paper, index cards, poster board, or magazine covers.

Using these pieces of paper, make the different letters of the alphabet.

It's a delightful surprise that you can make every letter with just these simple shapes.

If your child is new at learning letters, you could make the first one for her to copy.

She could make a letter while you look the other way and then you look at it and name it. Take turns.



If your child is young and just wants to play with the shapes, let her make whatever configuration she wants and name the ones that accidentally turn out to be letters or shapes. “You just made the letter L!”

Make little words like “cat” and “hat” or “pen” and “hen” or “mad” and “sad,” where you can change the word just by replacing the first letter. (I’d hesitate to make a two- or three-word sentence because a breeze or a stray hand might mess up the letters and replace fun with frustration.)

### WHAT IS BEING LEARNED

When you saw the Greek alphabet or Japanese characters for the first time, it might have seemed amazing to you that people could read those symbols. Children feel the same way when they see words.

It’s nice to know that those mysterious things called letters that make up words are nothing more than lines and half circles. Once your learner can make them and know them, she’s well on her way to becoming a reader.

If your child is at the stage in his writing when some letters are being written backward, here is a nonjudgmental and active way to help him be aware of the different directions. For example, you could make a letter b and pretend the letter is moving forward: “Zoom—here goes the letter b. Zoom. Zoom. Uh-oh, the b is turning around and going backward! Will you turn b around so it can go forward again. Silly b. It’s going the wrong way.”



Two or more  
people

## Letter Hopscotch

*Hopscotch is a game that many children play, and once they are familiar with how to do the game, you can enlarge what they learn incidentally by using letters instead of numbers.*

### MATERIALS

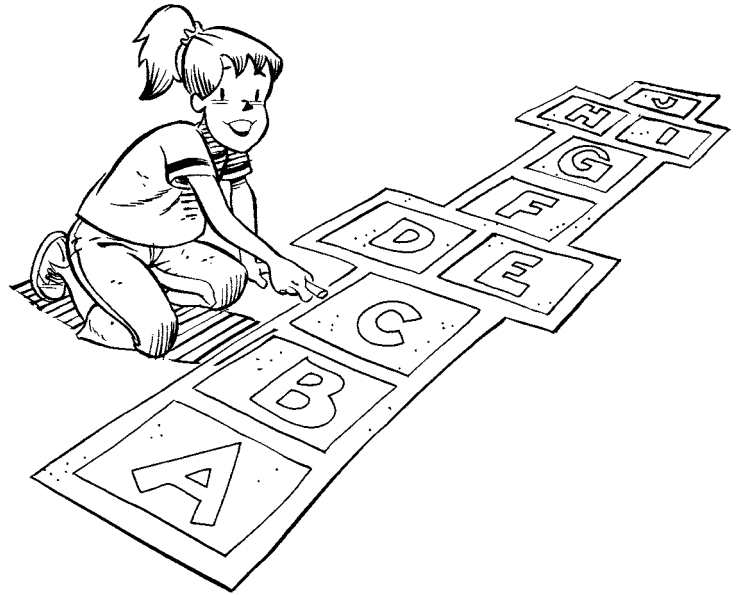
masking tape or stick or chalk  
stone or beanbag

## DIRECTIONS

Make the hopscotch diagram (see illustration). You can make it on the floor using masking tape, outside on asphalt or cement using chalk, or in the dirt using a stick. If you are using chalk or dirt, it is easier to change the letters and play again.

Instead of using the usual numbers inside the diagram, mark letters in the spaces.

Have each player in turn throw a marker, such as a stone or beanbag, to the letter you or another player names. The player then has to jump or hop to all the other letters, leading up to the one with the marker on it, pick up the marker, and jump to the end and then back to the starting point.



## VARIATIONS

You can use the regular hopscotch movements, if you know them, or you can change the pattern of the jumping and hopping to suit each player's abilities or interests. Some possibilities are:

- ◆ Broad jumping from the starting point to the letter named
- ◆ Going in a sequential patterns, that is, jumping on each letter in the order it occurs in the alphabet
- ◆ Jumping only on the uppercase letters or only on lowercase letters

## WHAT IS BEING LEARNED

Children learn to begin to recognize letters and to distinguish upper- from lowercase. They also get practice in balance when they hop and in motor planning when they jump from square to square.

-----  
-----  
Group  
activity  
-----  
-----

## Musical Movements

*In this listening game, each sound calls for a different movement. Add enough different sounds and you've got a memory game, as well!*

### MATERIALS

different musical instruments

### DIRECTIONS

Using musical instruments, assign a movement to each sound. For example, ask the children to twirl when they hear the bell, jump when they hear the tambourine, hop when they hear the flute, bounce when they hear the drum, and so on.

First play each instrument so that the children can rehearse the movements. Then turn your back so they can't see which instrument you are going to play. Play each instrument one at a time for random periods of time so they really have to listen and change their movements when you change instruments. Then try playing two instruments at once so they are, for example, hopping while twirling.

### VARIATION

Have the children take turns playing the instruments. Place the music makers in a line facing you, their backs to the dancers. You be the orchestra leader and point your baton at the child whose instrument you want played. Or the orchestra faces the dancers and you tap the back of the person who is holding the instrument you want played.

### WHAT IS BEING LEARNED

Listening and memory are enhanced with this game. A person's ability to speak is directly related to the ability to listen and remember.

## AGES 6 AND UP

### Sounds True

*If you haven't yet gone digital in your photographing, you might have some leftover empty film canisters. Even if you don't, they are easy enough to find at places that develop film.*

*Using these canisters, you can easily make a game that sharpens your child's listening skills.*

#### MATERIALS

small items found around the house  
about 10 empty film canisters

#### DIRECTIONS

Put an equal amount of each of the small item you chose inside two canisters. For example, put salt in two of them, rice in another two, popcorn in another two, and so on. Other good choices include buttons, gravel, beans, sand, and pennies.

Give one canister of each kind to your player and keep one of each kind yourself.

Shake one of your cans and ask your player to find the canister that makes the same noise.

Next, it's her turn to shake a can and your turn to find the matching one from your set.

Some sounds may be easy to distinguish, such as the difference between the noise pennies make and the noise rice makes.

Telling the difference between the sounds of salt and sand requires more attentive listening.

One or two  
people

**VARIATION**

Take turns making up a beat with your sounds for your learner to play with you. For example: Shake the salt canister twice, the bean canister four times in a simple 2:4 beat. Repeat the beat many times and encourage your youngster to make the same rhythm with her canisters.

**WHAT IS BEING LEARNED**

A major aspect of learning how to articulate new words is the ability to listen and notice subtle differences.

Listening well is also a requisite in the fine art of conversing!



Two or more  
people

**Alphabet Trail**

*Here is a game your children can make with just a roll of shelving paper and colored markers. It can be rolled up to be played again another day or just used once to supply a few hours of fun both in the making and in the doing.*

**MATERIALS**

shelving paper  
colored markers

*Optional:* 26 sheets of paper; tape

**DIRECTIONS**

On a long roll of paper (or even twenty-six sheets of paper taped together), have the children write out the letters of the alphabet starting with A. They can use different-color markers and make letters in different patterns. Some could have polka dots, some could have stripes, some might be checkered, others could have rainbows. Lay the finished product down on the floor and play these games:

- ◆ Jump or hop forward, backward, or sideways from letter to letter in order.
- ◆ Sing the “alphabet song” as they jump, coordinating each letter they sing with the letter that is stepped or jumped on.
- ◆ Start on one letter and jump to a letter named, such as from A to F.
- ◆ Start at A and walk to the letter named with eyes closed (to see if they can remember how far each letter is from A).
- ◆ Guess how many steps it takes to get from one letter to another. For example, how many steps will it take to go from G to X? After they guess, have them walk it to see if they are right.
- ◆ Jump to the letters of the child’s name or any other word.

## VARIATION

Challenge your children to think of their own variations.

## WHAT IS BEING LEARNED

Learning the order of the alphabet with their bodies gives children a stronger internal awareness of this sequence than just memorizing it with their mind would. There are plenty of times in life when we need to remember the order of the alphabet, such as looking up names in a phone book or words in a dictionary. Many of us have to resort to quietly singing the “alphabet song” to ourselves to remember if J comes before or after L. Having a stronger internal sense means you just know it!

## People Pencils

*If you have a physically active child who doesn’t like sitting down with a pencil and paper to practice writing letters, this is the game for you. In*

Two or more  
people



*this game, the child is the pencil and you are the writer, or vice versa. The pencil as well as the writer has its own intelligence.*

### **DIRECTIONS**

One player stands behind the other. The player in back is the “writer” and the player in front is the “pencil.” The writer uses the pencil to write a letter by moving the pencil forward and back and sideways as needed. The writer should start and stop the letter in the same way it would be done with a pencil on paper. It helps if the writer announces before each turn if he is making a capital or small letter or using cursive or block letters. When the writer is done, the pencil guesses what letter he wrote.

For more advanced players, the writer could write three or more letters in a row to make a word, and the pencil has to guess the word. If the pencil is especially clever, the writer could try writing a sentence!

### **VARIATIONS**

- ◆ **People Paper:** With the tip of one finger, the writer writes a letter (or word or sentence) on the other player’s back in the same way it would be written on paper. The paper has to guess what the letter (or word or sentence) is.
- ◆ **People, Paper, and Board:** While the writer is writing the letter on the paper’s back, have the paper print the letter on a chalkboard or paper *at the same time.*

### **WHAT IS BEING LEARNED**

The pencil is learning kinesthetically, inside his body, what a letter “feels” like. The nerves in his muscles and joints send signals to his brain that an A, for example, first moves diagonally one way and then diagonally the opposite way. Like riding a bicycle, things learned by the body are learned forever.

# Finger Letters

Two or more people

Can you spell words with your fingers? In American Sign Language, there is a specific shape you can make with one hand to sign each letter of the alphabet. This alphabet, along with word signing, is fun to learn and useful to know. My daughters and I have used it when snorkeling and to send messages to each other across the room at parties (“Let’s go now”).

It’s also fun to make up your own letter signs, as in this game.

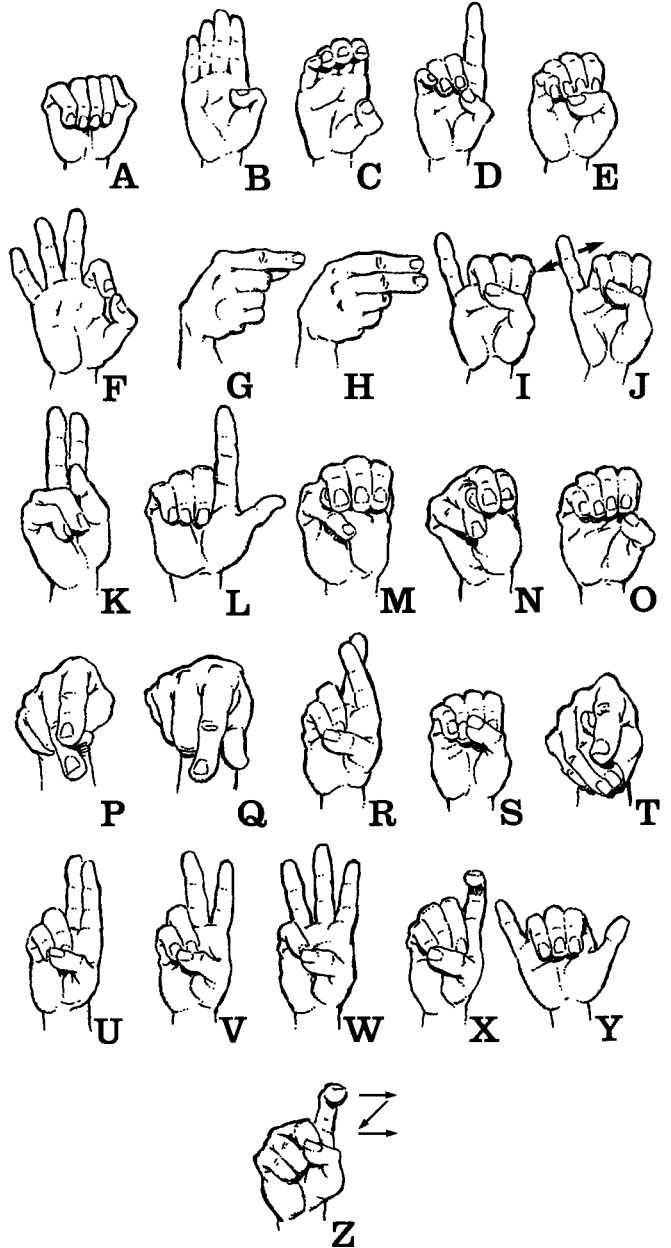
## DIRECTIONS

Take turns with your child forming letters with your fingers. The other player has to guess which letter is being formed.

## WHAT IS BEING LEARNED

Children learn to think about the components that make up each letter: Where does it curve? Where is it straight?

They also get experience in controlling the little muscles in their hands and get a chance to be creative in their thinking.



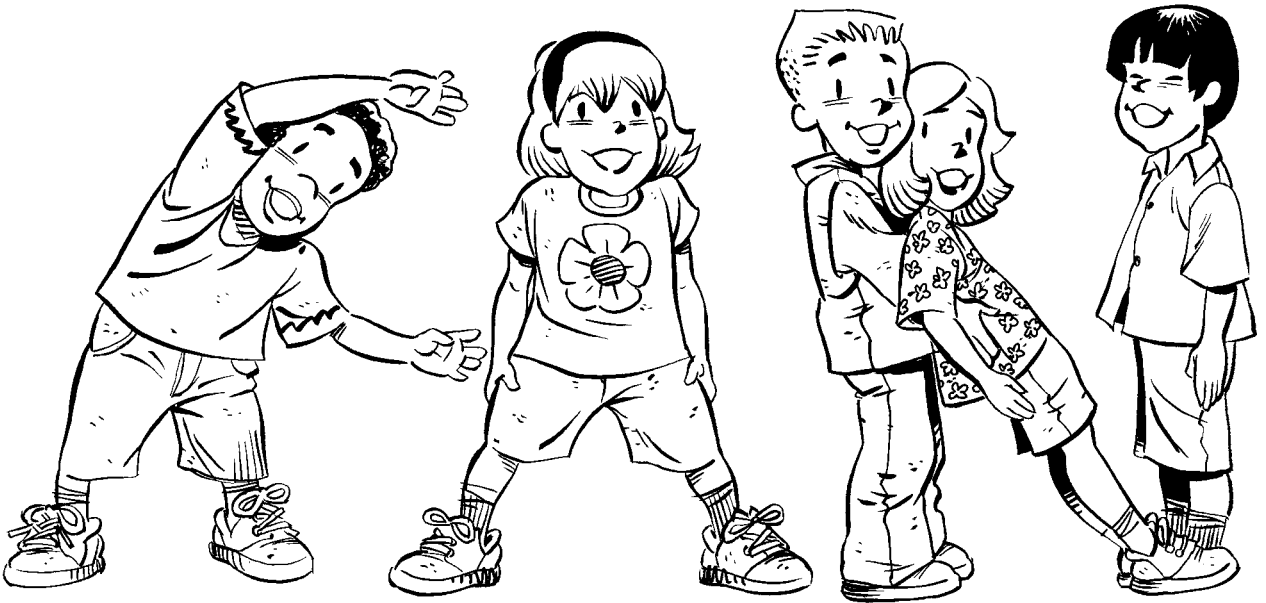
Group  
activity

## Body Letters

*Writing doesn't have to be a solitary activity. In this active game, everyone can play!*

### DIRECTIONS

Players can form teams, work with partners, or work individually to form a letter with their bodies; the other players have to guess what the letter is. For example, it could take four children to make the letter E: one for the vertical line and three for each of the horizontal lines.



### VARIATIONS

Without telling anyone what letter she has in mind, a player arranges other players to form a letter. The players who are the letter have to guess what the letter is.

A more advanced group can use body letters to form words. They can make one letter at a time or, if there are enough players, a whole word at once. Players might need to lie down to form some letters; other letters might require players to kneel, sit, or stand.

### WHAT IS BEING LEARNED

All the muscles in the body get involved in this game—an excellent way to learn how to make letters and words with your whole self!

## Compounding Your Words

*I was once invited to be part of a symposium in which there were many presenters. The rooms for each presentation were really part of a much larger room, but separated by thin partitions. I was unaware of the lack of noise barriers, and our group played and laughed and giggled as usual.*

*Months later I wanted to present a workshop at a conference in New Mexico and I called a university professor whose name I was given as a possible contact. I didn't know her but it turned out that she immediately knew me. She said, "I was at that symposium in the room next to yours and I kept hearing everyone having a good time and wished I had chosen that workshop!"*

*She gave me the job as a conference presenter.*

*Laughter brings rewards of all kinds. Learning while having fun is a reward of its own, and this game, one of the ones we played that day, always brings giggles.*

### MATERIALS

- list of compound words
- paper
- pen or pencil

Group  
activity

## DIRECTIONS

Players break up into teams of small groups or partners. Each team is given a slip of paper with a compound word, such as “windmill” or “paperback,” written on it. The groups take a little time to work out a way to mime the two parts of the word. For example, partners can each do one part of the word. When all of the teams are prepared, they sit down. Then one by one the teams act out their compound words for the other players to guess.

Here are some conventional ideas for compound words you can use: doorknob, mailbox, redwood, chalkboard, seashore, flashlight, waterfall, seashell, butterfly, raincoat, grasshopper, flytrap, bathtub, mousetrap, knothole, airplane, teacup, dragonfly, rainbow, teardrop, paintbrush, toothbrush, staircase, snowfall, snowman, carpool, moonbeam, sweatshirt, armchair

## WHAT IS BEING LEARNED

Children learn that some larger words are made up of two smaller words, which helps them decode larger words.

This game also teaches bigger things. One is how to use one’s creativity to find a way to convey a message to others nonverbally (a particularly useful skill when traveling to countries where you do not speak the language).

Children also gain experience in getting up and performing in front of others. Being the center of attention and having all eyes focus on you is one of the most stressful situations we face. But succeeding at public speaking is also one of the top self-esteem boosters. There is almost nothing more satisfying than knowing you went out there in front of everyone and pulled it off! Acting out a compound word gives players a brief and doable amount of time to be the “star” and feel the glow of success.

## Window Shade Rhyming Games

*I was looking through our office closet for a large sheet of paper. I thought I saw some rolled up in there. Instead I found a broken window shade and I thought, “Perfect! Now this game that teaches rhyming words doesn’t have to be a one- or two-time game that gets worn out from the jumping and hopping. It can be neatly rolled up and played time and time again.”*

*If you don’t have a window shade, use a roll of shelf paper or poster board. They are pretty sturdy, too.*

Two or more  
people

### MATERIALS

window shade, roll of paper, or poster board  
crayons, paint, or felt-tip markers

### DIRECTIONS

On the window shade or paper, draw the letters of the alphabet. Ask each player to jump or hop to the letter that starts the word “fat.” Then ask her to jump to other letters that start words that rhyme with “fat.”

Here are suggestions for other simple rhyming words:

AT words: fat, cat, mat, bat, sat, hat

AN words: can, fan, pan, man, tan, van, ran

AP words: tap, rap, sap, lap, map, cap, nap

AG words: rag, nag, bag, sag, wag, tag, hag, gag, zag

AD words: bad, pad, mad, dad, had, sad

AM words: Sam, ham, ram, jam, Pam, yam

IN words: fin, win, bin, pin, kin, tin

IP words: dip, hip, lip, nip, rip, sip, tip, yip, zip

EN words: den, hen, men, pen, ten, yen

UG words: bug, dug, hug, jug, lug, mug, pug, rug, tug

UT words: but, cut, gut, hut, jut, nut, rut

UN words: bun, fun, nun, pun, run, sun

OG words: bog, cog, dog, fog, hog, jog, log

OT words: cot, dot, got, hot, jot, lot, not, pot, rot

IP words: dip, hip, lip, nip, rip, sip, tip, yip, zip

IT words: bit, fit, hit, kit, nit, pit, sit, wit

EG words: beg, leg, peg

ET words: bet, set, let, get, jet, met, net, pet, wet, yet

OP words: cop, hop, mop, pop, top

## WHAT IS BEING LEARNED

Rhyming, phonics, and the order of the alphabet are all being reinforced in this game. If you have the children hop instead of jump, they are also getting practice in balance because hopping on one foot requires a weight shift and a realignment of the body to find a new center of balance.

## All Ages

### Hot Ball/Cold Ball

*Tossing a ball back and forth with a group of children can easily become monotonous. You can spice up the game and recharge the energy by changing the way the ball is tossed. I call this game Hot Ball/Cold Ball, and that's only two of the ways. . . .*

## MATERIALS

ball or something that can be thrown

Group  
activity

## DIRECTIONS

One person gets to be Caller, and this person explains beforehand what each call will mean. The Caller is allowed to make up new variations, if wanted.

The players form a circle and toss the ball around from person to person.

When the Caller yells out “hot ball,” the players toss the ball *overhand* to each other as quickly as possible.

If the Caller says “cold ball,” the players toss the ball gently and slowly *underhand* to each other until the next command is given.

If the Caller says “crooked ball,” the player has to *lift a leg* and toss the ball under the leg to another player.

If the Caller says “twirly ball,” the player has to *twirl around* before throwing the ball. (There could be a “hot twirly ball” as well as a “cold twirly ball.”)

If the Caller says “sound ball,” the thrower has to *make a sound* before throwing the ball.

Advanced players could have calls like “sound hot twirly ball,” where the players would catch the ball, twirl around, make a sound, and throw it quickly overhand!

## VARIATIONS

There are many possibilities in instructions, and there are also different possibilities in the type of ball chosen. A tennis ball presents a different game than a beach ball. And who says it has to be a ball? Rolled-up socks or a knotted scarf could work, too, making this a game that can be spontaneously played anywhere and anytime.

## WHAT IS BEING LEARNED

Learning to really listen is a skill that can't be overrated. We have all had the experience of hearing someone talking to us but a few minutes later realizing that we don't know what was said. Our ears can hear but if our brain is not simultaneously engaged, we aren't listening.



Hot Ball/Cold Ball motivates players to keep their ears open, minds active, and bodies alert because after they hear the call, they must act on it!

---  
Group  
activity  
---

## Category Toss

*This game can be made very simple for the young ones, more complicated for the school-age kids, and fun for the whole family.*

*Perhaps you've played a similar game in your youth when everyone in the circle starts doing a clapping, snapping pattern and then takes turns naming examples of a category, such as flowers or cities. The idea in that game was to keep the rhythm and only name the example when you snapped your fingers.*

*This version is easier. You just have to toss a ball.*

### MATERIALS

ball, beanbag, or anything easy to catch

### DIRECTIONS

The players sit in a circle, although this game can also be played with just two people.

Decide on a category, such as types of flowers, types of trees, names of friends, names that start with a certain letter, favorite foods, names of shapes, names of planets, names of states, names of countries, things made out of wood, types of furniture, and so on.

For example, let's say the category is movies. Give the first player a ball or beanbag. The first player names a movie and then tosses the ball to another player, who names another movie. The ball is tossed until every player has had a turn or until no one can think of any more examples.

### VARIATIONS

The variations of themes for this game are endless.

You can play this game with a group who are just getting acquainted; it's a way the members can learn more about each other. The categories can be places I've visited, places I want to visit, food I love, food I hate, sports I play, sports I watch, television shows I never miss, movies that made me cry, and so on.

You can also vary the way the ball is passed. It can be rolled, kicked, or bounced or you can make up a rule, such as the ball has to be thrown with the right hand but caught with the left.

What is thrown can also vary. The ball can be a large fitness ball or a beach ball or a tennis ball, or it can be something easier to catch, such as a scarf or a beanbag or a stuffed teddy bear.

## WHAT IS BEING LEARNED

Children get experience in naming and understanding categories. They also get practice in sharpening their listening and memory skills. They need to pay attention to what examples were already said, so they don't repeat them. Categorizing is a more advanced version of matching. Instead of noticing only similarities between two things, the players become aware of similarities among a group of things.



## Dictionary Game

*My daughter Marissa introduced this game to us at a family gathering. It was such fun and only required a dictionary and some creativity.*

*People of all ages can learn new words. One of the words I took was "schadenfreude," which means getting pleasure from the misfortune of others (described in the dictionary as "malicious joy"). I never heard the word before, but the very next day I was reading Time magazine and there it was in an article. Funny how that happens.*

---  
Group  
activity  
---

## MATERIALS

dictionary  
pencils  
paper

## DIRECTIONS

Each player takes a turn looking through the dictionary to find a word that he has never heard of before and suspects that no one else has, either.

Once each player has a word and has written the correct definition on a piece of paper, the games begin.

One person says his new word and all the other players write down a definition. Since usually no one has a clue as to the real definition, the trick is to write down something that sounds likely and will fool the others.

Then the person who knows the real meaning gathers up the slips of papers, including the real definition, and reads them all out loud. The other players individually vote on which one they think is the true definition.

If you want to keep score, the player who fools someone with a phony definition gets a point for each person tricked. Any players who guess the correct definition get three points.

We also gave a point to the person who wrote the goofiest pretend definition if it made us laugh.

## VARIATION

Play the same game without writing or giving points. Just take turns finding words in the dictionary and everyone tries to figure out the meaning.

## WHAT IS BEING LEARNED

All who play this game enlarge their vocabularies. They also get to expand their creativity by making up definitions.

But, maybe more important, the game gives the players an enjoyable way to be together using something as simple as a dictionary.

## P A R T   T H R E E



# Games That Enhance Math Skills

**M**athematical skills include the ability to mentally process logical problems and equations, as well as to understand numbers and their relationship to each other. Math skills are probably the most popularly understood of the cognitive skills and the ones most often found on multiple-choice standardized tests. Individuals who have high mathematical abilities are able to do complicated math problems and process logical questions at a rapid rate.

All of these skills sound impressive but they need to start somewhere. At the first level of mathematical learning, children need to be able to count, to recognize numbers, to estimate, to add, to subtract, and to understand simple concepts, such as that 1 stands for one unit and 2 for two units.

These games use the unusual—drama, breath, straws, and Kung Fu(!)—to teach children these basics.



# AGES 6 AND UNDER

## Straw Counts

*This ridiculously simple activity will keep your toddler occupied and focused for a much longer time than you'd expect. I am always surprised at the different ages who want to play this simple game of putting pieces of straw into a bottle. It must satisfy a deep urge in all of us to start a task and see it so neatly come to completion.*

*When you sit down and play this game with your little one, you can count each straw that gets put in the bottle and reinforce the memorizing aspect of counting.*

### MATERIALS

- scissors
- straws
- empty 8-ounce (250 ml) plastic water bottle

### DIRECTIONS

Cut up some straws into small pieces. The size of the pieces depends on the age of your child. The pieces need to be big enough that they can't be swallowed and small enough so they don't bend easily. For toddlers, I cut them about an inch or two in length.

Take the lid off the top of the bottle and show your little one how she can put each straw piece into the hole. Have her count each piece as she drops it in.

As your learner becomes more adept at this skill, increase the challenge by poking a small hole in the lid just large enough to fit the straw pieces through and put the lid back on the bottle.

One or two  
people



**VARIATION**

Have your child drop buttons into an empty oatmeal or salt container. Make a slit at the top for the buttons to go through. Or you can have her count pennies as she drops them into a piggy bank.

However, note that with the above materials, you need to watch that the child doesn't put the objects in her mouth. With straws, it is possible to cut them long enough that they don't present a choking hazard.

**WHAT IS BEING LEARNED**

In addition to practice in learning to count, children get early experience in eye-hand coordination. Their eyes direct their hands to put the straw into the bottle. They'll soon learn that if their eyes are looking somewhere else, the straw will miss going into the hole.

Also, it's another opportunity for children to practice focusing their attention on a task and completing it, a skill they are going to need their whole life long.



Two or more  
people

**You Can with Cans**

*Aluminum cans are easy to collect and great for games. Try this fun bowling and counting game before you recycle your cans to get double the use out of each can. But if you want the excitement without the noise, use empty plastic water bottles instead of aluminum cans.*

**MATERIALS**

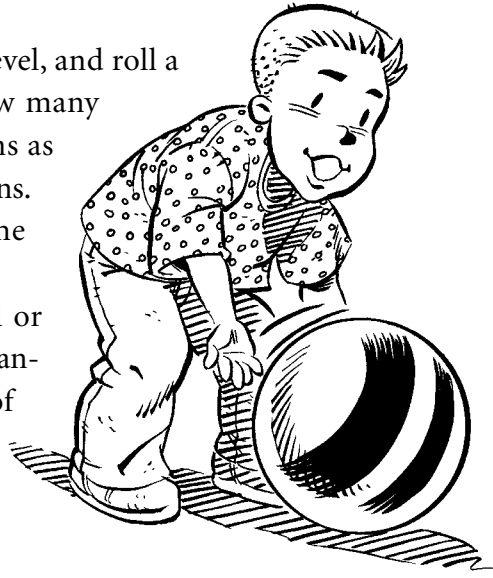
empty aluminum cans or plastic water bottles  
beach ball or beanbag or other ball

**DIRECTIONS**

Stack a few cans on top of each other or set up six to ten cans in a pyramid shape as if they were bowling pins. Have your player stand two to six

feet away, depending on his skill level, and roll a beach ball at the cans. Count how many cans fall down. Take as many turns as needed to knock down all of the cans. Have the child help you set up the cans again for the next round.

If you don't have a beach ball or another rubber ball handy, use a beanbag that players can toss at a stack of cans. If you don't have a beanbag handy, make your own by putting some dried beans in the toe of a sock and tying the top into a knot.



### VARIATIONS

Cover each can with some paper and write a number on each can. Line the cans up and ask your player to aim for can number 2, for example. Or, for the very new learners, simply exclaim their achievements: "Look, you knocked over the number 2 can and the number 5 can!"

For the older learners, write down the numbers that got knocked down and have your player add them up. "Let's see, you knocked down number 3, number 4, and number 7. Let's figure out what your score is for this round."

If you have children of various ages, you can assign them different tasks or have them take turns; for example, the younger one can name the number, the older one can do the adding, and the middle one (the one who already knows his numbers but is not ready for addition problems) can stack the cans back up for the next round. Kids like to have titles, so the person who does the adding is King Counter, the person who stacks the can is Sir Stacker, and the person who throws the ball is Major Thrower.

### WHAT IS BEING LEARNED

Children are learning eye-hand coordination and figuring out how much force is needed to knock many cans down at the same time. They are learning how to count the number of cans that they knock over. They are also



learning to help each other by stacking the cans after each game and the coordination it takes to stack or line up the cans.

If you play the variations, children also learn about number recognition and addition. If they are asked to set up the numbered cans in order, they are also learning the order of numbers.



Two or more  
people

## Cereal Necklace

*Stringing things, such as beads for a necklace, requires the fine motor skill of finger manipulation. In this stringing activity, children will also count their “beads” when they are done. But the best part is that children can munch on their finished necklace all day long.*

### MATERIALS

yarn, string, or fishing line  
cereal that has holes in the middle

### DIRECTIONS

Give your child a piece of yarn, string, or fishing line that is long enough to fit over her head when tied, and have her string pieces of cereal on the yarn.

If you use yarn or string, it can be helpful to younger ones to put a piece of tape on the stringing end so that it's firmer and goes more easily through the hole in the cereal. Tie the ends of the yarn together when she's done to make a necklace.

Have your child count how many pieces of cereal are on the string. Later in the day, before the cereal has all been eaten, count how many pieces are left. Can your child figure out how many were eaten?

### VARIATIONS

If you want your necklace to be lasting, instead of edible, string other things, such as buttons, short pieces of colored straws, or macaroni and other hollow pasta shapes.

Instead of string or yarn, you could use pipe cleaners and turn the project into rings for the fingers or loops to hang around the ears.

## WHAT IS BEING LEARNED

Children get practice in counting and begin to get an idea of the concept of subtraction. In this case, instead of “take aways,” it is “eaten aways.”

Children also get an opportunity to practice their fine motor control.

## Guess Who? Guess What?

*Can you look at a little section of a picture and then guess what the whole picture is? That's the challenge in this game. Take turns with your child being the guesser or have a group of children pair up and take turns choosing pictures and guessing.*

---  
One or two  
people  
---

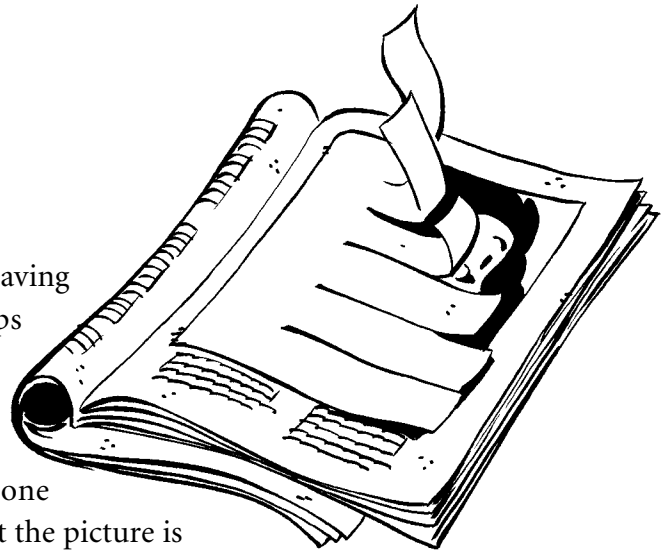
## MATERIALS

scissors  
paper  
magazine

## DIRECTIONS

Cut a piece of paper into horizontal strips, leaving the left-hand margin intact so that the strips are still attached to the paper. This will be your picture cover.

Place the picture cover over one of the magazine pictures and pull back the strips, one by one, and see if your player can guess what the picture is about. Change places and let the player pick out a picture for you to guess.



By taking along this page of strips in a magazine, you'll have an instant game for passing time in waiting rooms or when traveling.

### VARIATION

Use photos of someone your child knows and see if she can identify the person.

### WHAT IS BEING LEARNED

Children are learning an early mathematical concept that a whole is made up of smaller parts. In this game, they see that a whole picture is made up of separate parts and that each part is necessary.

It would be nice to get this concept understood on a global scale so that each of us would realize that everyone is a necessary part of the whole.

## AGES 6 AND UP



### Breath Math

*This game of counting and subtracting focuses on the breath. It has the nice side effect of calming, and children can always benefit from that.*

### DIRECTIONS

Using a stopwatch or timer to mark one minute, have each player count the number of inhalations and exhalations he takes during that minute.

Then ask the players to run around the room, or do jumping jacks or some other aerobic activity, for two to three minutes to get their heart rates up.

Now have the players stop and count their breath again.

Have the players subtract the smaller rate from the larger and see the difference.

One or two  
people

## VARIATION

While sitting quietly, ask the players to count their breaths for one minute. Then ask them to consciously slow their breathing and feel completely relaxed. After five or ten minutes, count the number of inhales and exhales in one minute again and compare the rate to the previous number.

## WHAT IS BEING LEARNED

Little children are practicing their counting and their awareness that the number 1 means one unit of something and 2 means two units, and so on.

Children who are a bit older are getting a chance to understand and use subtraction skills in a meaningful way.

All children are learning that they have some control over their bodies. Even though we think our breathing is an unconscious involuntary reflex, we can see that we can affect our breath with our movements and with our stillness.

---

## Kung Fu Math

*“Teach us Kung Fu!” a group of adolescent boys once shouted in Spanish at my colleague Sandy. Sandy didn’t know Kung Fu from Fuji apples, but since she had Asian features, they assumed she did.*

*We were at a large orphanage called Nuestros Hermanos Pequenos (Our Little Brothers) in Honduras, where Sandy and I were to give a workshop on ways to teach academics using movement games.*

*Sandy explained that she didn’t know Kung Fu but the boys weren’t having any of that. They wanted to learn now! She gave up protesting and lined the boys up in a row facing her. First, she bowed to them in her best Far Eastern manner and they bowed back. Then she taught them the only move she knew: the hitch kick, where you hop on one foot and then kick the*

- - - -  
Two or more  
people  
- - - -

*other one up as high as you can. She held up her hand to give the boys a height to aim for. After the practice, the math game began.*



### **DIRECTIONS**

Ask each player in turn to solve a simple math problem. Math problems should vary in difficulty depending on the player's age. For example, young children could tackle four plus three or ten minus two, and older children could be given problems that require multiplying or dividing.

Once the player figures out the correct answer (with a little help from friends, if needed), he answers it by doing the hitch kick that many times across the room.

### **VARIATION**

Instead of using only karate moves, you can use ballet or other dance

steps and children could answer the math problems using only movement: "How much is six divided by three? Show me the answer in the number of pirouettes." "How many cha cha turns does it take to answer the problem eight divided by two?"

### **WHAT IS BEING LEARNED**

Children are more attentive about doing math problems when they use movements to provide the answers. Young bodies love to move. If you know more karate moves or a repertoire of different movements, your children can also be learning about marital arts or dance steps.

## Math Story

*As any good lecturer will tell you, if you want your audience to remember your point, make it into a story. The same goes for teaching concepts to children. They are more likely to understand and remember if they see, hear, or act it out in story form. Use this story to help children understand addition and subtraction—or make up one of your own!*

*If you're doing this at home where you don't have a classroom of children to use as "props," use something else, such as dolls, action figures, paper cutouts, or fingers.*

### DIRECTIONS

Start the story with one person and then keep adding others to teach about addition. This story is partly based on something my daughter Roxanne came up with when she was seven and was going to a new school the next day. Having a strategy calmed her new-school jitters and helped her fall asleep.

*Once upon a time there was one girl named Anna who was going to a new school. She didn't know anyone there and she was worried that she wouldn't have any friends to play with.*

*So, she came up with this plan:*

*If she made only one friend (bring one child up to join "Anna") and that new friend had a friend (add another child), then Anna would have two new friends. Let's count them—1, 2.*

*Now, if that second friend also had a friend (another child enters), then Anna would have three friends. Let's count them—1, 2, 3.*

*If that third friend already had a friend (add another child), then Anna would have four friends. Let's count them—1, 2, 3, 4.*

And so on and so on depending on how high you want your learner to practice and how many children (or dolls) you have. You can end by saying:

Group  
activity

*So the little girl wasn't worried anymore because she had TEN (or whatever the ending number) new friends!*

You can now, if you want, introduce subtraction.

*After playing awhile, one friend had to leave early to go to her dance class (one child leaves), so Anna just had three friends. Let's count them—1, 2, 3. Then another friend had to leave to go to soccer practice (another child leaves), so Anna only had two friends. Let's count them—1, 2. Then another child went home to be with her new baby sister (another child leaves). Let's count how many friends are left—1.*

*Anna and her new one friend played and played the rest of the day because even just one friend is pretty wonderful, too!*

## VARIATION

Make up any story you like that incorporates numbers.

You also can also act out songs the children know, such as:

Ten little monkeys jumping on the bed  
 One falls off and bumps his head  
 The mommy called the doctor and the doctor said  
 No more monkeys jumping on the bed  
 Nine little monkeys jumping on the bed  
 (repeat above verse and keep subtracting monkeys until)  
 No more monkeys jumping on the bed.

For slightly older children, they or you can make up a story that involves larger numbers. (Sixteen trombone players met six monkeys playing drums and two aardvarks playing banjos. How big a band did they make?)

## WHAT IS BEING LEARNED

Children can count from one to ten at a very young age, but it doesn't mean they understand the concept of one being one thing and two being

two things, and so on. Acting out these kinds of stories makes the concept real and introduces the concepts of addition and subtraction.



## Counting on Estimates

*How many jelly beans are in the jar? How many people were at the party? There are many situations in our lives in which we use our ability to estimate. In this game, we give children some experience in estimating.*



Two or more  
people



### MATERIALS

a bowl of large dried beans, or similar objects

### DIRECTIONS

Put a bowl of dried beans on the table. Players grab some with their hands and keep the beans in a fist in front of them. Then, without looking at the number of beans in their own or the other people's hands, each player makes a guess about how many beans are in everyone's hands all together.

Or they could just guess if the total number of beans in everyone's hands is an odd or even number.

One player then counts up the beans to see who guessed the correct total (or is closest to the correct number), or who was right about it being an odd or even amount.

If there are only a few players, children can learn to be sly and pretend to take a handful but only take a few—"the hand is faster than the eye" kind of trick.

### VARIATIONS

- ◆ Players can guess how many beans there are in the whole bowl and then take them out and count them and see whose guess comes closest.

Instead of beans, you can use buttons or coins. I guess you could



use small candies, but the game could get more and more frantic as the sugar rush kicks in. Hard candies might be better, because it takes awhile to suck on one.

- ◆ Encourage children to estimate the amounts of other things in their lives. For example, they could guess how many steps there are before they walk up them. (If it's a long flight of stairs, guessing and then counting can make the climbing more of a game and less overwhelming.) Guess how many windows there are in the room or pictures on the wall. This is a good way to spend the time when you are waiting somewhere and you need to amuse each other.

### WHAT IS BEING LEARNED

Children are learning to count. They are learning to make educated guesses about amounts. They are also learning what even and odd numbers are.



---  
Group  
activity  
---

## A Number of Number Ways

*The great thing about this game is that there are a number of ways to play it so that different ages and skill levels can play together. Each player gets his or her own challenge and everyone wins.*

### MATERIALS

colored markers

paper

tape

“gentle ball” such as a beanbag or a ball made out of newspaper (see other ideas for gentle balls under Gentle Ball Games, p. 125)

### DIRECTIONS

There is a simple way to do this game if you are playing with just a few children and a more elaborate way if you are playing with a larger group.

Here's the simpler way. See the variation section for the more elaborate way.

Write the numbers from 0 to 9 on separate pieces of paper. Use different colored markers so that you have, for example, a red 1, a blue 2, a green 3, and so on.

Tape the numbers in different spots on a wall.

Give the first player a ball, such as a beanbag or a ball made out of newspaper, and instruct her to use the ball to hit a certain number. Your directions should vary depending on the player's age or skill level.

Here are some suggestions for directions:

- ◆ Throw the ball at the red (blue, green, etc.) number.
- ◆ Throw the ball at the number 4 (6, 2, 5, etc.).
- ◆ Throw the ball at an even number.
- ◆ Throw the ball at an odd number.
- ◆ Throw the ball at the numbers that make 24.
- ◆ Throw the ball at the numbers that make 240.
- ◆ Throw the ball at the number that is the total of 2 plus 3.
- ◆ Throw the ball at the number that results from 5 minus 3.
- ◆ Throw the ball at the number that is the answer to 2 times 3.
- ◆ Throw the ball at the number that is the answer to 6 divided by 3.
- ◆ Throw the ball at the number that is the same as the Roman number IV.
- ◆ Throw the ball at the numbers that make 3,447.
- ◆ Memorize this sequence of colors—red, green, blue. Throw the ball at those three colors in order.
- ◆ Memorize this sequence of numbers—2-7-4-9. Throw the ball at those four numbers in order.
- ◆ Throw the ball at the square root of 4.

Once the children get the idea, they can start making up challenges for each other. Let big sister make up a direction for her baby brother

(“Louie, go take this ball and touch it on that red number . . . over there near the couch.”)

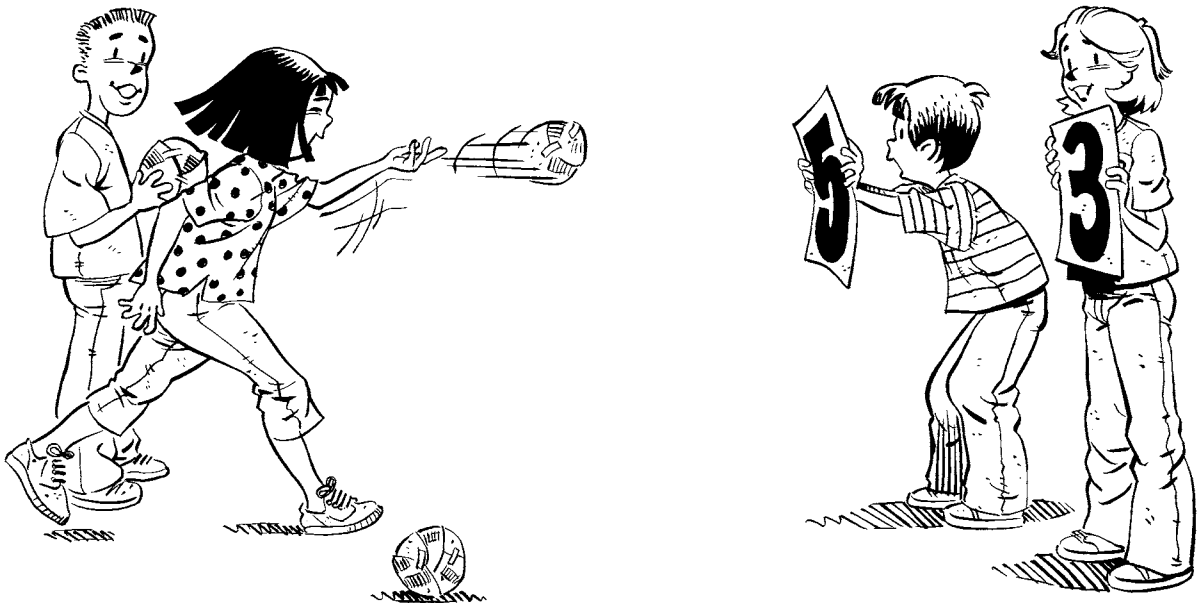
### VARIATIONS

This way is considered more elaborate not only because it involves more players, but also because it requires more preparation and adds the factor of “danger” by putting the kids behind the targets.

Cut up cardboard boxes into separate pieces of cardboard. As in the game above, mark a number on each piece of cardboard using colored markers so each number is a different color.

Each child, except for the player with the ball, holds one piece of cardboard in front of his or her body. The children stand side by side facing the player with the ball.

Using the suggestions above, give each player a direction. If, for example, you say, “Throw the ball at the number that is the total of 2 plus 3,” both the person throwing the ball and the person holding the cardboard that has the number 5 on it need to know that the answer is 5. The person



holding the 5 needs to know because when the ball comes at her, she may need to use her cardboard to protect herself from getting hit.

Getting hit with a “gentle ball” doesn’t hurt. If some children throw a mean fastball, don’t discourage them. Throwing hard and fast is a good skill. Put a paper or carpet square to mark the spot where that thrower stands. For the fast thrower, move that spot back a few feet. Move it closer for a child whose throw is less robust. Children don’t mind when I move some closer and others farther away. I might say something like “And this is your spot. And here’s yours . . .” Everyone is aware that some are stronger than others.

I find that children enjoy this game because it’s a thrilling, and maybe more memorable, way to practice their math skills than sitting at their desks writing out answers. I find that students are much more willing to do math if it involves big movements!

If you’d rather play this game without any “danger” of getting hit with a ball, cut the cardboard boxes in a way that three sections are intact, forming screens that will stand on their own.

Set the screens up in front of the players, and let each child take turns throwing.

If a child throws the ball at the wrong number, don’t make a big deal about it. Just point out something positive, such as “Good throwing. Nice try.” Or “You got the idea but here’s the number 4 over here. Throw it at this number. Right on!”

Or you can tape the numbers to the floor and give the children the same kinds of questions, but instead of throwing at the correct answer, they jump on it.

## **WHAT IS BEING LEARNED**

This game is a way of presenting math lessons disguised as fun. The children who throw are practicing their eye-hand coordination and learning that if they look where they throw, they will be more accurate. The children behind the shield also gain valuable skills. They are practicing focusing, that is, paying attention to the moment. They are learning how to judge a

ball's speed and trajectory in order to anticipate where it is going and what body part they need to shield. The feedback as to whether they are correct is immediate!

## ALL AGES

---  
Group  
activity  
---

### Mr. Clock, Mr. Clock

*If you don't already know this game, you'll be glad to learn it. It is always a giant success with the little ones, and even with the big ones whom you'd think would be too old to play. This general appeal makes it an ideal game to play with a mixed-age group. Try it at the next birthday party or family reunion. You'll be a big hit.*

#### DIRECTIONS

A group of players stands at one end of a large room or field and one person stands at the other. This lone person is Mr. Clock or Ms. Clock, as the case may be.

The group yells, "Mr. Clock, Mr. Clock, what time is it?" And Mr. Clock says, "Ten o'clock" (or any time he wants). Then the group, together, counts out ten steps, walking toward Mr. Clock. The group then repeats the question, and Mr. Clock keeps giving different times until the group is very near to him. At any point then, Mr. Clock can respond, "MIDNIGHT," which is everyone's cue to run like mad back to the starting line with Mr. Clock hot in pursuit. Everyone tagged by Mr. Clock joins his side and also becomes Mr. Clock. The game continues until all but one person has been tagged. That person becomes the new Mr. Clock for the next game.

I find that when there is a group of Mr. Clocks, the children should take turns calling out the time; otherwise the loudest child will always call out the time, and the most excited child will yell out "midnight" while the group is still too far away to tag. If I am on the Mr. Clock side, I touch the shoulder of the next person to call out the time. If that person says something like "five-thirty," we figure that means five and a half steps!



### VARIATION

Instead of Mr. Clock, there could be Mr. Wolf, Mr. Kangaroo, or Mr. Tiger. Children playing with Mr. Kangaroo could jump for each number instead of taking steps. Children playing with Mr. Tiger might do leaps. The running signal word could be changed from “MIDNIGHT” to “DINNER-TIME!”

### WHAT IS BEING LEARNED

The main lesson here is that each number stands for that many steps; numbers are not just words for children to memorize but actually stand for something concrete.

The children who become Mr. Clock learn about waiting for the proper time to call out “midnight,” which may be their first experience in long-range planning!

And best of all, it’s a great reason to run.

One or two  
people

## How Many Steps?

*Walking from one place to another can sometimes be a big chore when you are with little ones. They might like to dawdle, get distracted, or feel overwhelmed by the distance they need to cover and refuse to budge. This game helps children stay focused and moving.*

*I must admit that I play this game myself sometimes when I'm not in the mood to walk as far as I need to, even when I have no child with me.*

### DIRECTIONS

Guess how many steps you will need to take to get from one spot to another. For smaller children, break up the goal into little stages. How many steps from here to the corner? Then, how many steps from the corner to the fire hydrant? Players guess and then see how many steps it actually does take.

Players can count individually, but it's fun to count together.

For older children, everyone playing makes a guess about how many steps they will need to walk for longer distances; for example, the three blocks to the parking lot. Is it a 400-step walk or only 150? The more you play the game, the better you get at estimating.

With older children, you can also figure out how many of the child's footsteps make a foot, then calculate how many feet (or meters) they walked. How many yards is that?

### VARIATIONS

If you are somewhere alone or don't mind appearing a bit silly, you can say "How many giant steps?" or "How many baby (heel-to-toe) steps?" and try walking that way. Not only is this style distracting, it also reinforces for little ones the difference between large and small.

You can also play this game in the house just for the fun of it. How many steps do you think there are between the front door and the back? How many baby steps? How many giant steps? What takes more steps, the

distance between the couch and the kitchen table or between the easy chair and the closet?

## WHAT IS BEING LEARNED

Children are learning to estimate lengths and distance and to develop an internal sense of length and distance. Younger children get practice in counting, and everyone learns a way of making a long walk seem shorter.

## Palm Measuring

*Measuring began before tape measures or rulers were invented. Many different cultures used body parts to measure things, which, of course, is why we still measure in feet. There are still times when measuring with your body comes in handy, such as when you're wondering "Will this table fit into that space beside the couch?" Introducing your children to the art of palm measuring gives them a good start in understanding measurements and a "handy" solution for those times when a measuring tape isn't available.*

Two or more  
people

## DIRECTIONS

Show your child or children how things can be measured according to the size of the palm of their hand. How many palms long is a desk, a book, a pencil? Have the players estimate how many palms long something will be, and then have them measure it with their palms to see how accurate their guess was. Note that if a hand is larger, it will take fewer palms and be a different palm measurement.

## VARIATIONS

- ◆ Use other parts of the body, such as a finger or a foot, to measure. Walk heel to toe to measure the size of a room or the distance from one piece of furniture to another in "feet."



- ◆ Measure each player's palm, foot, or finger with a tape measure and then figure out the actual measurements of the things you measured above.
- ◆ Instead of using body parts, use movements to measure a space. For example, how many jumps does it take to go from one end of the room to the other or from the door to the table?

Always have players estimate the answer ahead of time.

### WHAT IS BEING LEARNED

Children are learning an easy way to measure things. They are also seeing the connection between the abstract world of measuring (“It’s ten feet long”) and the actual concrete experience.

They are also getting experiences in guessing and estimating. Estimating elicits involvement in the activity because we all like to know if we are right or get a sense of how close we were so we’ll be right the next time.



Group  
activity



## Beach Ball Bounce

*This game is a fun and lively way to see the joys of teamwork. Only when children are working together can they control the movements of the ball on the sheet. When the children jerk the sheet up at different times instead of together as a group, the ball falls off. I love it when a child figures this out and says, “We need to do it together!”*

### MATERIALS

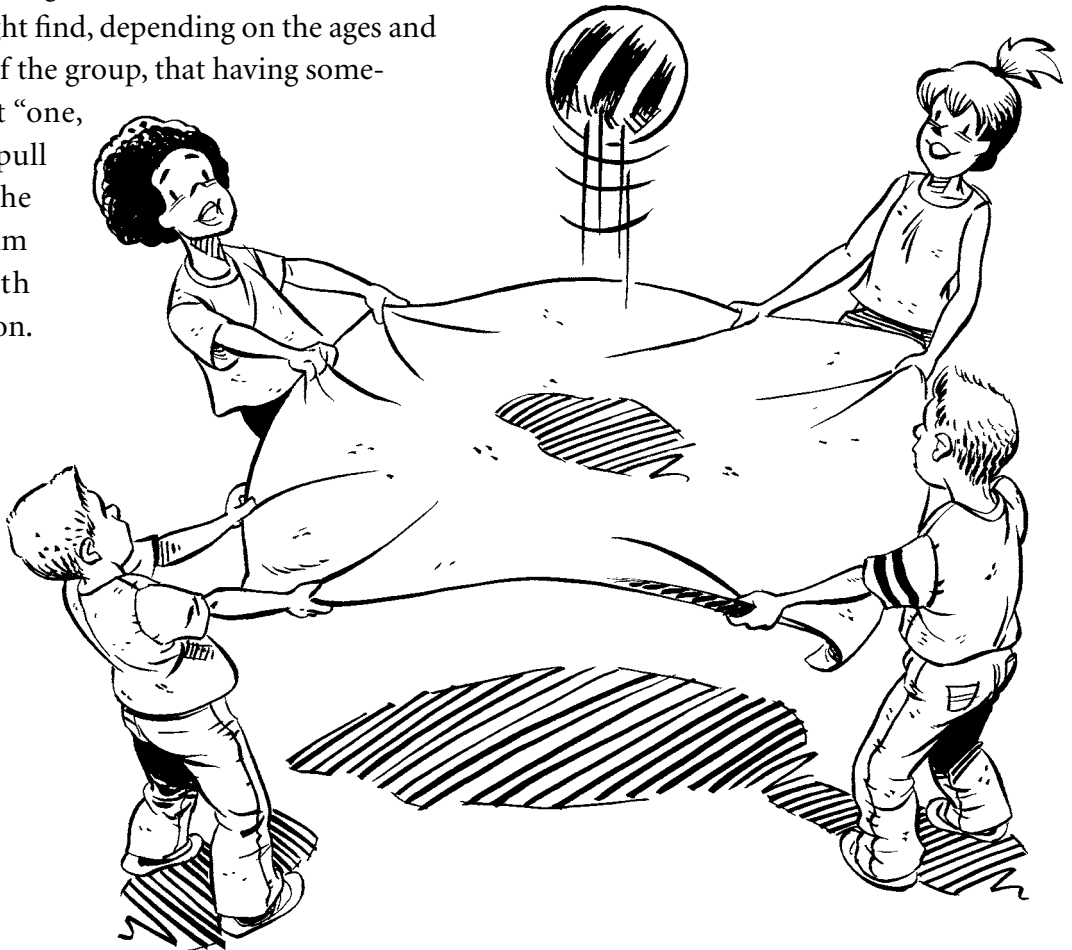
sheet or light blanket  
beach ball

## DIRECTIONS

Spread out a sheet or lightweight blanket and have all the players pick it up by holding on to the edges. Place a beach ball in the middle of the sheet and have all the players lift the sheet up simultaneously so that the ball goes up in the air. Call out the number “One!” When the ball falls back down to the sheet, the players gently jerk up the sheet again and count “Two!” Continue until the ball falls off the sheet, then start over. See if the team can keep getting to higher numbers.

Sometimes you’ll find that on one try, you can’t even get to five and on another your count is over 100! Challenge everyone to work together and keep getting better.

You might find, depending on the ages and sensitivity of the group, that having someone call out “one, two, three, pull up” helps the group rhythm stay smooth and in unison.



**VARIATION**

Don't have a beach ball handy? Try a rag doll, stuffed animal, or small pillow. Whatever it is needs to be soft in case it hits someone, and light enough that it gives a good bounce. These types of ball substitutes have an advantage in that they don't roll away when they land on the floor.

**WHAT IS BEING LEARNED**

Besides the social skill of working together, this game gives children practice in counting and learning that each bounce stands for one number. Children may be able to count to ten or even a hundred and still not understand that 4, for example, stands for four separate things. This game provides another way to understand the real meaning of numbers because each number stands for the bounce of the ball.

## P A R T F O U R



# Games That Enhance Kinesthetic Skills

**K**inesthetic skills are those that involve having control of the body's movements, including balance, agility, grace, and a sense of how one's body should act and react in any physical situation. Some individuals are natural athletes and have strong bodily skills even before formal training. However, all of us, no matter where we start, can improve our kinesthetic skills with practice and varied experiences.

Children who are strong in their kinesthetic intelligence need to move. They love to touch and learn best by doing. They are adept at activities that involve gross and fine motor activities, such as sports, dance, arts, crafts, theater, fixing mechanical things, and using the computer.

From birth, children need to learn about their bodies and how to move them. We can help them with this process, using nothing fancier than such things as a balloon, a tube sock, a blanket, some toothpicks, and ourselves.

Many of the easy games listed can be played with just you and your little one. Many of them can be played with you and anyone else who wants to join in. We all benefit from learning to move our bodies well.



# AGES 6 AND UNDER

## Human Hoop

*Tossing the ball around with Dad in the backyard must be high on the list of all-time-great childhood moment for any child who has had this experience. But there is more than one way to play ball. If your child isn't quite ready for the major leagues, try this variation of ball playing. It can be done with little ones and it can be done indoors on a rainy day.*

One or two  
people

### MATERIALS

newspaper

“gentle ball,” such as a beanbag or a bunched-up newspaper (see ideas for types of gentle balls in *Gentle Ball Games*, p. 125)

### DIRECTIONS

Lay down a newspaper for the foul line and become a human basketball hoop for your child by using your arms to form a large circle. Encourage your player to throw the ball in the “hoop” from the foul line. Move slowly around the room to ensure that she gets some throws in from all sides. (This also gives her some practice in using her eyes for scanning.)

Of course, you may sometimes get hit in the face by those “rim shots,” but no one said parenting would be free of occupational hazards! To minimize danger, I encourage children to toss gently underhand for this game.

If the thrower is a little less skilled, she can still be successful if the human hoop is clever enough to move quickly into the right position to give the ball a clean shot.

### VARIATIONS

If you have a full skirt on or a large shirt, hold it out in front of you and use that as the basketball hoop. Other possible “hoops” include holding a

basket, a wastebasket, a milk carton cut in half, a plastic gallon bottle cut in half with the handle left on, and an upside-down traffic cone.

### WHAT IS BEING LEARNED

This is an opportunity for children to practice their eye-hand coordination, but it also has another advantage: In this game of basketball, both the thrower and the basket can be active.



---  
One or two  
people  
---

## Jolly Jumps

*If you want a fast distraction for a grumpy child or a child who is misbehaving, try this game. Distraction is the best method for dealing with a child's negative mood or to get him to do something other than what he is doing. It beats saying "no" or "don't" or "cheer up," especially since those words often produce the opposite results. And once he's jumping, it'll be hard for him not to be jolly!*

### DIRECTIONS

Give your child the friendly challenge: "Hey, can you jump up and turn around in the air?"

Demonstrate by jumping and giving your body a half turn so that you land facing in the opposite direction.

"Can you do a quarter turn?" (Land facing one side or another)

"How about a full turn?" (Do a complete revolution in the air before landing)

### VARIATION

Once your child has the turns accomplished, add this challenge:

"Let's do a pattern. First we do a small quarter turn and from there a half turn and then finish with a full turn. Ta da!"

**WHAT IS BEING LEARNED**

Children are learning a skill called motor planning. They have to internally program their muscles to accomplish the plan their mind has requested. This is the same kind of skill that will help them figure out the best way to climb a tree, for example, and the safest way to get down.

-----

## Just You and Me and a Balloon

*These are sweet games to play with your munchkin when all you have is a balloon and a lovely space of time together.*

-----  
 One or two  
 people  
 -----

**MATERIALS**

balloon

**DIRECTIONS**

Both of you sit on the floor with your hands propped behind you so that you can lift your legs. Push or gently kick the balloon back and forth between you with your feet.

Next, lie on your backs with your heads touching. Pass the balloon over your heads to each other. Then bring your feet over your head and pass the balloon to each other using only your feet to hold the balloon.

**VARIATIONS**

- ◆ Balloon Walk: Kneel so that you and your darling are eye-to-eye. Stay close so that you can snuggle the balloon between your bellies and move sideways across the room without losing the balloon.

Try other ways of moving with the balloon in between you, such as

- ◇ Going to the other end of the room with one person facing forward and the other backward



- ◇ Moving in a circle
- ◇ Putting the balloon in different positions, such as between your hips or heads
- ◆ **Balloon Massage:** As your little one lies on the floor, roll the balloon over her body. Use just the right amount of pressure so that she feels it and it makes her smile.

If your partner is under three, this is a good time to reinforce the names of body parts. (“Ms. Balloon is rolling over your chest . . . and now she’s heading down your arms. . . . She loves your yummy body” or whatever words come to you.)

Take turns and let your sweetie roll the balloon over your body, too.

## WHAT IS BEING LEARNED

The central theme of all these balloon games is being aware of one’s body. Whether it’s using their feet to pass the balloon or holding it against their hips or having it rolled over their tummy, the game helps children notice their various body parts and feel them working separately.



## Blanket Ride

*I first discovered this game when I was working with a child who had muscular dystrophy. I had to come up with activities that would increase his muscle tone and his balancing skills.*

*In his preschool class I laid a lightweight blanket down for him to sit on. As he sat on it, a classmate spontaneously (and maybe a bit mischievously) began to pull it. I joined in and pulled, too. The ride the boy got taken on was perfect for enhancing his balancing skills as he kept adjusting his trunk muscles in order to stay upright.*

*Then some of the other kids, seeing the fun in progress, wanted a turn. Some wanted a blanket ride. Others wanted to be the ones who pulled the*

Two or more  
people

*blanket, the first boy among them. As he helped pull the sliding blanket around the room, he was strengthening his muscles. Whether he was sitting for balance or tugging for strength, this activity gave me my two goals with one game!*

## MATERIALS

blanket or sturdy cloth

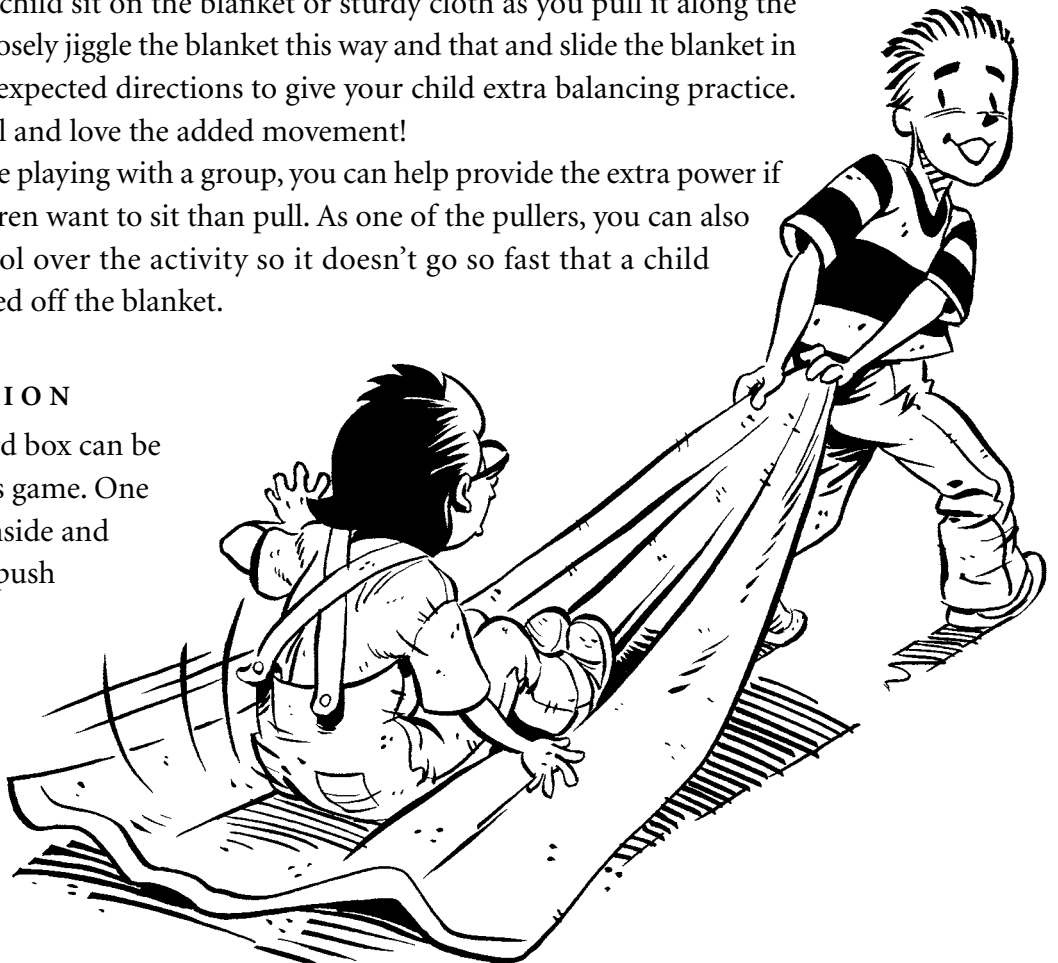
## DIRECTIONS

Have your child sit on the blanket or sturdy cloth as you pull it along the floor. Purposely jiggle the blanket this way and that and slide the blanket in various unexpected directions to give your child extra balancing practice. He'll squeal and love the added movement!

If you're playing with a group, you can help provide the extra power if more children want to sit than pull. As one of the pullers, you can also keep control over the activity so it doesn't go so fast that a child gets knocked off the blanket.

## VARIATION

A cardboard box can be used in this game. One child sits inside and the others push or pull it across the floor.



**WHAT IS BEING LEARNED**

When sitting on the blanket, children are learning to continually adjust their trunk muscles so they stay upright while being jiggled and propelled in different directions.

When pulling, children strengthen their muscles, especially in their arms and legs.



Two or more  
people

**Balloon Baseball**

*I don't like to play baseball. Okay, I hate to play baseball. It is something about this little hard ball coming dangerously fast at me and I'm supposed to somehow bat it away with a skinny piece of wood or, worse, catch it. I don't like things happening that fast. So you can see why this baseball game played with a balloon instead of a ball speaks my language. It's also just right for the toddler or beginning baseball player who may, unlike me, grow up to love the sport.*

**MATERIALS**

rolled-up newspaper, cardboard tube, tape, plastic bottle with dowel,  
or toy bat  
balloon

**DIRECTIONS**

Make a bat out of anything handy, such as the cardboard tube inside a paper towel roll or a rolled-up section of yesterday's newspaper secured with tape. Or find something around the house that's an appropriate size and shape for a child's bat. I especially like using an empty 2-liter plastic bottle, the kind soft drinks come in. Cut a dowel to fit inside the opening of the plastic bottle. Wrap some duct tape around the dowel and bottle opening to keep it secure and, voilà, you have a nifty bat (or hockey stick or golf club).

You could, of course, also use a toy bat.

Give the bat to your player and toss the balloon at her. The slow movements of a balloon floating toward her gives her plenty of time to line up her bat, swing at the “ball,” and get the satisfaction of connecting.

You or the other players then have plenty of time to catch the balloon as it leisurely floats down.

### WHAT IS BEING LEARNED

This game is about learning that your eyes direct the movement of your hands. In this case, the movements are in slow motion, so it’s easier for children to get their hands to do what they want.

If you want to get the point across to your little one, ask her to swing at the balloon when she is looking the other way and then to swing at it when looking directly at it. It will help her see the effectiveness of watching what she is doing.

---

## Holes-in-Your-Sheet Toss

*At last—a use for a worn sheet other than as a ghost costume on Halloween!*

### MATERIALS

- scissors
- old worn sheet
- ball

### DIRECTIONS

Cut a hole in the middle of the sheet and hang it from something like a clothesline or the branch of a tree.

Have your child stand on one side of the sheet while you stand on the other.

Ask your child to toss the ball to you through the hole. Then you throw the ball back to him.

- - - -  
One or two  
people  
- - - -

You could make holes of varying sizes in the sheet, so that there are extremely easy shots through large holes as well as more difficult ones through smaller holes. This also adds to the fun of the game because the person on the other side of the sheet doesn't know from which hole the ball will appear.

### VARIATION

- ◆ **Hula Aims:** Hang a hula hoop and toss the ball back and forth through the hoop with your player. The hoop provides a larger visual cue to a new ball-thrower as to where to throw the ball than the sheet does.

### WHAT IS BEING LEARNED

This game requires more precision than the usual toss or target game, so children learn to focus their attention and improve their eye-hand coordination. If you play the game with many holes, a player's reflex response is also sharpened because he doesn't know which hole the ball will come through.



Two or more  
people

## The Bunny Game

*Jumping as far as you can seems to be a challenge many children love. Maybe we are born with a desire to move like our animal friends, especially the bunny.*

### MATERIALS

tape (masking or electrical or colored)

paper

*Optional:* tape measure

**DIRECTIONS**

Tape a piece of paper down on the floor for the child to jump from. Give your child the “bunny challenge” and ask her to jump like a bunny, as far as she can, from that spot. Put a piece of tape down where she lands. Then ask her to try again and see if she can jump farther the next time (like a kangaroo, perhaps). Give her lots of tries.

If you want to add the useful lesson of how to use a tape measure, measure the distance that is jumped each time.

**VARIATION**

Instead of jumping from a still position, have your bunny take a running start and then jump from the spot.

**WHAT IS BEING LEARNED**

Children are experimenting with their balance and the use of their powerful leg muscles. Play this game a bunch of times and those muscles will get stronger and stronger.

**Domino Blowing**

*Every parent knows about setting up dominoes in a line so that when the first one falls, it knocks down the next, which knocks down the one after that, and so on down the line. In this variation of knocking over dominoes, you teach your child how to line them up and blow them down.*

— — — —  
One or two  
people  
— — — —

**MATERIALS**

dominoes  
party blower or straw

**DIRECTIONS**

Show your child how to set up the dominoes so that they are side by side instead of behind each other. If your child is young, start with five or six dominoes and demonstrate how to set them up. Using a straw or a party blower (the toy that you blow on one end and a piece of paper uncurls at the other end), have your child blow the dominoes down one by one.

**VARIATIONS**

If your child is a little older, teach him how to set up dominoes so that they are lined up behind each other in the traditional way. Have him blow at the first one so that it falls backward and watch as the rest of the dominoes fall down in sequence.

Use more and more dominoes as your learner gets better at the game, and experiment with setting the dominoes up in different patterns.

**WHAT IS BEING LEARNED**

Although the game is about blowing them down, the real lesson is in setting the dominoes up. Little hands need to learn precise motor control to carefully set up the dominoes side by side so none get knocked down too soon. (The level of precision needed increases when the dominoes are set up behind each other.)

Blowing adds the element of breath control as children learn how softly to blow to make only one domino fall.

**Bubble-Wrap Jump**

*If you buy or receive something that is wrapped in bubble wrap, your children are in luck. The prospect of jumping off a chair onto bubble wrap is so inviting to children that even the most timid are willing to try.*

---  
One or two  
people  
---

*This jumping game will delight the players but might make you a little nuts with the noise. Just remember that it's a temporary disturbance—the bubbles will soon all be deflated. Meanwhile, your children have gained a fun opportunity to work on motor skills.*

## MATERIALS

bubble wrap  
chair

## DIRECTIONS

Place the bubble wrap on the floor in front of a chair or bench. Let the children jump off the chair and onto the wrap and hear the snap of the bubbles bursting.

They will soon learn that it requires a certain forcefulness to jump hard enough to break the bubbles.

## WHAT IS BEING LEARNED

Children are developing their leg strength and body balance and, if more than one player is playing, the fairness of taking turns.

---

## Styrofoam Hammering

*If you have access to Styrofoam blocks, the kind that are often used as packing material, and you have a little child, a small hammer, and some golf tees or nails, you have the ingredients for a very fun activity for your child.*

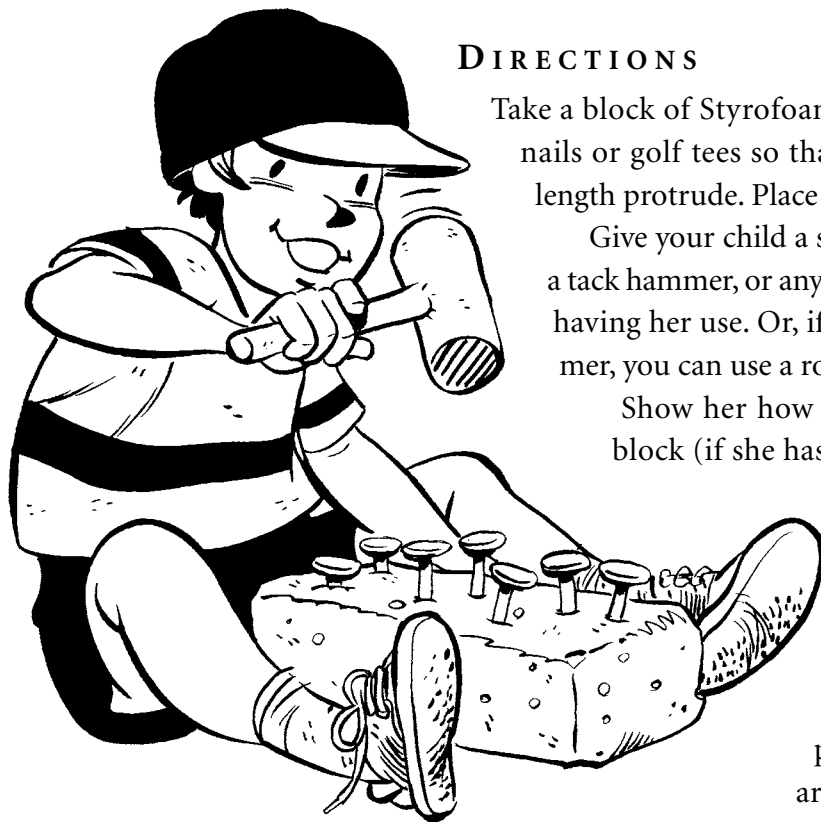
*Styrofoam blocks provide just the right amount of resistance to hold the nail upright but respond immediately to any hammer blows, so the beginner only has to hammer lightly to see results.*

— — —  
One or two  
people  
— — —



## MATERIALS

Styrofoam block, such as from packing material  
nails or golf tees  
small hammer or rock



## DIRECTIONS

Take a block of Styrofoam and press in the tips of the nails or golf tees so that the heads and most of the length protrude. Place the nails 2 to 3 inches apart.

Give your child a small toy wooden hammer, or a tack hammer, or any hammer you feel comfortable having her use. Or, if you don't have a small hammer, you can use a rock.

Show her how to hammer the nail into the block (if she hasn't already immediately seen the possibility and started without your demonstration).

Show her how she can pull the hammered nails back out of the Styrofoam, place them in another, unused area of the block, and hammer again.

## VARIATION

You can also use these foam blocks with screws and a screwdriver.

## WHAT IS BEING LEARNED

There's nothing like hammering to hammer home the concept of eye-hand coordination. To be effective, you have to watch what you are doing!

## Rare Races

*I find that if I want children to do what is needed, as in “We need to go home now, so go get in the car,” I get better cooperation if I frame the request differently. “Let’s do the Sideways Slide and see who gets to the car first,” or “Let’s see how fast we can get to the car walking only on our heels.”*

*Rare Races introduces children to new possibilities for doing things that make them more fun. It’s the kind of game Mary Poppins would really love!*

Two or more  
people

### DIRECTIONS

The next time you want your child or a group of children to go somewhere, have fun by challenging them to try a new type of movement.

Possible movement styles are:

- ◆ Toe Races—racing on tiptoes only
- ◆ Heel Races—racing on heels only
- ◆ Toe Toe, Heel Heel, Toe Toe, Heel Heel—a rhythmic variation of them both
- ◆ Squat Race—racing in a squat position
- ◆ Outside Edges—racing on the outside edges of the feet
- ◆ Inside Edges—racing on the inside edges of the feet
- ◆ Backward—running or walking facing backward
- ◆ Sideways Sliding—racing by facing sideways, leading with one leg and sliding the other leg to meet that leg
- ◆ Gallop Race—running facing forward but always leading with the same leg
- ◆ Hopping on one foot
- ◆ Hopping on the other foot
- ◆ Hopping backward

- ◆ Skipping forward
- ◆ Skipping backward
- ◆ And then there is my all-time favorite: holding hands and skipping together . . . (sigh)

### VARIATION

Let children make up their own “How-else-could-we-get-to-the-car?” racing style.

### WHAT IS BEING LEARNED

Children are learning how to add fun to an ordinary task. It’s a lesson that will have long-term benefits for them and eventually the lives of their children. Imagine, the games you play today will also reap joy for your grandchildren!

On the physical level, children are learning how to control their bodies to make them move in specific ways. They are also dealing with and strengthening their sense of balance as they put their bodies through unusual movements.



---  
One or two  
people  
---

## Lost in Rice

*Here are some quiet games that can keep children occupied for a long time on their own and are also fun to play with others. As the children play with the rice in different ways, they will be focusing their senses of touch, sight, and hearing.*

### MATERIALS

bag of rice  
box or bucket  
small things found around the house

## DIRECTIONS

Pour a bag of rice into a box or bucket. The more rice you use, the more fun it will be.

Gather up pairs of a variety of small household objects, such as spoons, paper clips, poker chips, pennies, pencils, and so on.

Bury one of each pair in the rice.

Give one item to your player to feel and ask her to find the matching item that is hidden in the rice. Encourage her to find it using only her sense of touch. If very small children want to cheat and look with their eyes, that's okay, too.

Depending on your child's age or skill level, you can hide only one object at a time, just a few, or all of them at once.

For the slightly older child, hide a group of treasures in the rice. Tell her that you have hidden ten (or whatever number) objects and see if she can find them all. (Those magnetized alphabet letters that stick to the refrigerator work well for this game.)

Next, let your child hide objects for you to find!

## VARIATIONS

- ◆ **Rainbow Rice:** If you want to make this game into a whole day's wonderful project, have your child help you color the rice different colors. You can do it one of two ways: Take a bowl of white rice, mix in some paint, and stir it until all the white rice is equally colored. Spread this mixture out on a newspaper and allow it to dry thoroughly. Make batches of several different colors.

Or, instead of using paints, use food coloring. (This is preferred if you have children who are likely to want to put the colorful rice in their mouths.)

Colored rice is captivating. I have yet to meet the child who doesn't want to play in it.

- ◆ **Rice Rattles:** You can turn the colorful rice into a musical instrument or a baby rattle by pouring it into two clear containers. Tape the

containers together, their openings facing each other, using a strong tape, such as duct tape. The result is a shaker that makes a great sound.

I like to use clear film canisters for the baby rattle because it is just the right size for a baby's hands. Babies delight in watching the rice go from one end to the other.

For older children, plastic see-through cups work fine.

- ◆ **Sand Treasures:** If you have a sandbox, try this variation. Go around the house and gather things like erasers, large buttons, empty thread spools, film canisters, costume jewelry, pens, and so on to hide in the sand.

Count the number of things you have collected. Ask your child to close her eyes because you are going to bury (ten) secret things in the sandbox and she has to find them all.

### **WHAT IS BEING LEARNED**

Children are learning how to “listen” with their fingers. The game requires them to be very quiet inside so they can “hear” what their fingers are telling them. Any time we can help our children learn to be calm and quietly focused, we are giving them a great gift.

Looking for something requires concentration and focusing, as we all know too well. If we get distracted, we can look in the same drawer many times and not see what we are looking for and then later find it in that very drawer. Giving a child this opportunity for success in finding hidden things increases her confidence as well as her ability to pay attention and stay focused in the moment. And no small gain for you is that you have someone who can use this skill to help you find where you last left your keys!

If you have played the variation where you have buried a certain number of objects and she has to find them all, she also gets experience in counting.



## Envelope Shapes

*Everything has its own shape, which can be determined by sight or by touch. In this game, children use both senses to identify common objects.*



One or two  
people



### MATERIALS

common small household objects  
envelopes  
dark crayon

### DIRECTIONS

Put a flat, textured object, such as a comb, in an envelope. Have your player try to guess what the object is by feeling it through the paper of the envelope. Then to see if he is right, or if he can't guess, have him do a rubbing. A rubbing is done by rubbing a dark crayon back and forth over the paper directly over the object until the shape seems to magically appear. Almost anything with a texture can be rubbed. (I've even seen rubbings of fish!)

Use different objects in different envelopes.

Idea possibilities:

- ◆ Things found around the house, such as a paper clip, different coins (dime, penny, quarter), a toothpick
- ◆ Things found in nature, such as a leaf or a piece of bark

You could talk about what shapes the objects have. For instance, the coin is a circle, the comb is more like a rectangle, and some leaves are like ovals.

### VARIATION

- ◆ **Mystery Bag:** Use a tissue, handkerchief, sock, or anything similar as a bag and hide something small you have handy, such as a comb or lipstick, in it. Ask your child to feel the outside of the bag and guess what object is in it. Or put several objects in the bag and see if he can pull out the one you choose without looking.

This is a good way to pass the time when you're waiting somewhere, such as at the airport or doctor's office, using objects from your purse or pocket.

### WHAT IS BEING LEARNED

Children are developing their sense of touch. When children are babies, they put everything in their mouths because it is their lips and tongue that are the most sensitive parts of their bodies. Later they learn that their fingertips can give them the same information without the risk of tasting something unpleasant. Feeling is a learned skill, and this game is one of the ways children can increase their sensitivity.

As children get older, they can get more and more sophisticated with their sense of touch. Help them increase their sensitivity by feeling the difference between a penny and a nickel or a toothpick and a small stick or different kinds of leaves.

Rubbing the shapes increases children's awareness of textures.

## ALL AGES

-----  
 -----  
 One or two  
 people  
 -----

### Foot Writing

*Playing this silly game helps develop the agility of children's feet, as well as their eye-foot coordination. It also gives the players (including you) a chance to do something they probably never did before.*

### MATERIALS

pencil or crayon  
 paper

**DIRECTIONS**

Have each player put a crayon or pencil between the big toe and the second toe of one foot and write letters on a piece of paper.

**VARIATION**

Draw pictures with your feet!

**WHAT IS BEING LEARNED**

Because this game takes a bit of practicing to get the desired results, it encourages concentration and focusing. It also helps train the foot to follow the directions of the eyes to develop better eye-foot coordination.

---

## Footprint Game

*This game takes a bit of preparation. But since the kids do the prep work, they're involved from moment one, which increases the scope of the things they learn along the way.*

**MATERIALS**

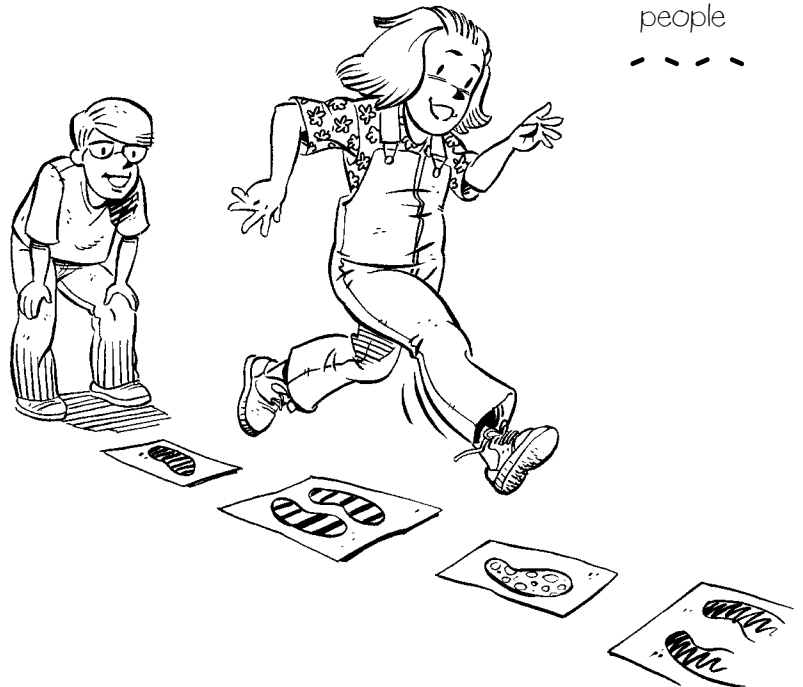
paper

crayons or colored markers

*Optional:* clear Contac paper

**DIRECTIONS**

Give each child a piece of paper to stand on while she (or you or another child) outlines her foot (or both feet). Have the children





make many footprints, sometimes outlining both feet on one piece of paper and sometimes outlining only one foot.

If they want to, players can color their foot outlines. Have some fun with this part by suggesting ways to make some unusual footprints, such as polka-dot feet, or a rainbow foot, or stripes, or whatever tickles their imagination. (If you want to use these foot patterns for more than one game, cover them with clear Contac paper or laminate them.)

Set out the course by laying the footprints out in a long line in singles or pairs.

How the players move from one piece of paper to the other depends on whether there are one or two footprints in front of them and how large the spaces are between the pieces of paper.

So if the first paper has two feet on it, the player jumps onto the paper with both feet. If the next one has only foot, the player hops onto it with either the right or left foot, depending on which foot was drawn (don't be too fussy about this distinction with younger children). If the footprint papers are laid down close together, it indicates small jumps or hops; if they are farther apart, it encourages long jumps or hops.

Let each player have a turn setting out the course for the others to follow and making up new rules, if wanted, such as "You have to jump and do a full circle in the air before you land whenever you get to rainbow feet."

## VARIATIONS

Make outlines of hands, sometimes one hand, sometimes both hands, and lay them out with the footprints. When players go though the line, they may have to hop on one paper and then, while balancing on one foot, reach down and put two hands on the paper in front of them. Then they have to jump over that paper to the two footprints on the next paper.

Again, children can take turns laying out the papers so that they can directly affect the movements required.

Instead of using separate sheets of paper, you could also make a series of foot- and handprints on a long roll of butcher or shelf paper. Make more than one variation.

## WHAT IS BEING LEARNED

Little ones learn how to outline their foot or another's foot on paper, which takes paying attention to the whole task and understanding the goal.

They also practice the hand-eye coordination task of “staying within the lines” (more or less) when coloring the foot.

All children get a chance to express their creativity by coloring the foot- or handprints in their own unique ways.

All children also get practice in jumping and hopping skills, which involve balance and strength.

And children get experience with following directions and the use of symbols; for example, a picture of one foot means to hop on that foot.

Older children get an opportunity to conceptualize and plan a course for others, taking into consideration factors such as how far the other kids can hop or jump, how many hops can be made in a row, how to incorporate the handprints into the movement, and so on.

---

## Going Bats

*I once did a workshop at a school for the deaf in Laos. I didn't speak a word of Laotian and none of the teachers spoke English so they couldn't translate my words into sign language. But by making simple bats out of rolled-up newspaper, we were able to play dozens of games without any communication except our body language. We started by having everyone get together in a circle. I threw my bat into the air and caught it. Soon everyone did the same, and then I threw it in a different way. Everyone did what I did. My helpers and some of the kids came up with other ways of throwing the bat, and everyone imitated them.*

*We had a great afternoon playing one game after another using these bats. Sometimes they were playing with such excitement that I made up the phrase “gross motor frenzy” to describe it.*

- - -  
Two or more  
people  
- - -

*We played the last game in a circle, softly blowing a feather from one person to the next, calming everyone.*

*As we were leaving, the children came outside and made a sign with their fingers that I knew well. It means “I love you.”*

*Here are some of the other games that we played with the bats.*

## MATERIALS

newspaper  
tape

## DIRECTIONS

Roll up newspaper to form a bat and tape it closed. Try these different ways of tossing the bat and make up others.

- ◆ Hold the bat vertically and throw it from hand to hand.
- ◆ Toss it up in the air with the left hand and catch it with the right hand.



- ◆ Toss it up in the air with the right hand and catch it with the left hand.
- ◆ Toss the bat up and give it a half spin and catch the other end.
- ◆ Give it a spin so it twirls in a circle in the air before catching it.
- ◆ Drop it on your foot and kick it back up and catch it.
- ◆ Drop it on your knee and bounce it back up and catch it.
- ◆ Hold the bat horizontally and throw it up and catch it.
- ◆ Throw it up to increasingly higher distances. How high can it be thrown and still be caught?
- ◆ Balance it on your head, bend your head, and catch it.
- ◆ Bend your elbows at 90 degrees. Place the bat by your elbows and then straighten your arms. Catch the bat before it rolls off your arms.

## VARIATIONS

- ◆ **Jump the Bats:** Lay the bats an equal distance apart as if they are the rungs of a paper ladder on the floor. Have the players start in front of the first bat and jump over each one.

When the newness of the game begins to wear off, vary the distance between the bats so that the children have to vary the length of their jumps.

- ◆ **Aim the Bats:** Draw a target circle on a piece of paper and tape it to the wall. Or draw a circle on a chalkboard or dry-erase board that is already attached to the wall.

Have the players stand a few feet back from the target circle, aim the bat as if it were a spear, and throw it at the target.

Vary the distance the players stand from the target to increase or decrease the difficulty of the challenge.

Play around with using different targets. If you are playing outside, the target could be an aluminum can on a fence post or an empty milk carton on a table or a hula hoop hanging from a tree branch. Let the children come up with their own ideas for targets.

- ◆ **Bat Balance:** Have players balance their bats vertically on their open palms. How long can the bats be kept upright? How long can they be kept upright while walking?  
Can bats be balanced on one finger? One foot? One knee? One elbow?
- ◆ **Bat Reflex:** Have players hold the bats vertically with one hand in front of them. Then they release the bats and see how quickly they can catch them with the other hand.  
Or have one player hold a bat vertically in front of another player at eye level. On the count of three, drop it. How quickly can the other player catch the bat?  
If you want, mark the spots on the bat where your players catch them each time. Try it a few times to see if the results improve with practice.  
Have players try each hand and see whether there is a difference between them.
- ◆ **Bat Flexibility:** Players start by holding the bats horizontally in front of their bodies, around thigh high. Then they bring the bats up and over their heads, behind their backs and legs, and finally step over them and end with the bats in the original starting position.  
Have players do this move a few times to maintain their flexibility.
- ◆ **Bat Balance-Beam Walk:** If you've played a lot of games with your newspaper bats and the bats are looking pretty wilted, you can get one more game out of them by laying them down end to end and asking your players to walk on them like a tightrope. Unlike a regular tightrope, however, you can make yours have all sorts of angles, which encourages children to watch where their feet are going!

### WHAT IS BEING LEARNED

Each game has its own special kinesthetic learning experience: eye-hand coordination, eye-foot coordination, strength, balance, flexibility, and, oh yes—how to have a good time with a rolled-up newspaper.

## Gentle Ball Games

*There are lots of ways to play ball games that don't involve a hard ball coming at you at a fast pace, and there are many kinds of kinder, gentler balls, as well.*

*I was never big on games like Dodge 'Em, where children had to get out of the way of a hard ball that was being thrown at them. I'd feel the sting of a ball that bounced off my body and I'd think, "Why is this fun again?"*

*What I like best about these game is that everyone, regardless of age or skill level, can play them together. Each player becomes involved with the individual task of throwing her own ball, and that takes so much focus that most players won't bother comparing their skills with those of others. Everyone is trying for her personal best, and that personal best keeps growing with each practice.*

### MATERIALS

“gentle balls”: either homemade out of plastic bags or newspaper or beans in a sock, or store-bought beach balls, foam balls, beanbags, scarves, or pillows

### DIRECTIONS

Make gentle balls or, best of all, have the players make their own.

- ◆ Newspaper Balls: Scrunch up one or two pages of newspaper into a ball shape and put some tape or cloth around it to keep that shape. The more pages used, the bigger the ball.
- ◆ Plastic Bag Ball: Put a few plastic bags into one bag and twist it closed. Tie it tight using the handles of the bag. (There's no way to do this one wrong; just tie it any way you can to keep it closed and in a ball shape.)
- ◆ Beanbags: Throw some dried beans into the toe of a sock and make a knot in the top of the sock.

Two or more  
people



Standing on  
One Foot

If you use store-bought balls instead, here are some things to consider.



Catching with Nondominant Hand



Clapping before Catching

- ◆ Beach balls are great for younger children because they are large, lightweight, and easier to catch than small balls.
- ◆ Foam balls and balls such as Koosh balls are good for grasping. If they have dangly things hanging from them, children get more things to grasp at.
- ◆ Beanbags are great because they feel good and never roll away.
- ◆ Scarves, which can be used in throwing games, too, fall so gently when they are tossed in the air that the catcher has a longer time to make the catch.
- ◆ Pillows, scarves, and rag dolls are all easy to grasp and make it easier to learn how to catch with one hand.

After everyone has a ball, call out these instructions and give the players time to try out each idea.

- ◆ Throw low and catch with two hands.
- ◆ Throw higher and higher, catching with two hands.
- ◆ Throw the ball up and clap one time before you catch it. Clap twice. Clap three times.
- ◆ Put the ball on your head. Bend your head forward and catch it.
- ◆ Catch the ball while standing on one foot.
- ◆ Start low and catch with one hand, your dominant hand.
- ◆ Catch with your nondominant hand, putting your preferred hand in your pocket or behind your body.
- ◆ Catch the ball underhand by letting it fall into a cupped hand.

- ◆ Catch the ball overhand by grabbing the falling ball out of the air.
- ◆ Put the ball on the backs of your hands. Toss it up and catch it.
- ◆ Catch the ball with one eye closed. Catch it with both eyes closed!
- ◆ Throw the ball up high, turn around in a circle, and catch it.
- ◆ Lie down and throw the ball, then stand up to catch it.
- ◆ Walk and keep the ball in the air by bouncing it off the backs of your hands.
- ◆ How far can you throw the ball? Can you throw it farther the next time?

### WHAT IS BEING LEARNED

These games give children another opportunity to practice eye-hand coordination. Watch a very young child throw her first ball and you'll see her eyes looking one way and her hands throwing another. She doesn't yet know that it's her eyes that direct her hands and that "watching what you are doing" really does make a difference. Learning eye-hand coordination paves the way for such later skills as writing words, putting the tiniest tile into an intricate mosaic, or measuring the exact ingredients for a complicated sauce.

When we are directing with our minds and watching with our eyes, we can accomplish anything we want with our hands.

---

## Do Your Own Thing

*Here's an opportunity for children to show off their creative selves using movement. You can make up your own ways for your children to move or use some of the ideas below. Either way, it's fun for everyone.*

### MATERIALS

pieces of paper or newspaper

- - - -  
Two or more  
people  
- - - -



## DIRECTIONS

Put some pieces of paper or newspaper on the floor and start by asking each child to go from piece to piece using the method of locomotion you call out. You can vary the request depending on the age or coordination skills of your players. Next, let the players make up moves for the others to do.

Possibilities, listed from easy to hard:

- ◆ March from one paper to another.
- ◆ Walk on tiptoes from paper to paper.
- ◆ Jump and clap hands with each jump.
- ◆ Jump sideways with hands on hips.
- ◆ Jump backward with hands on knees.
- ◆ Jump forward two and jump back one.
- ◆ Jump from paper to paper with closed eyes.
- ◆ Land on each paper in a squat position.
- ◆ Hop while patting head and rubbing belly.
- ◆ Jump and twirl in a full circle in the air with each jump.
- ◆ Do a karate kick with each jump.

## WHAT IS BEING LEARNED

When playing Do Your Own Thing, children get experience with a variety of movements and get to use their creativity to make up their own movement ideas. When they are imitating each other's movements, they need to notice how the others are moving (what are the legs doing, what is the position of the arms, what is the facial expression) and internally figure out how to mimic that movement.

## Leap, Run, and Slalom

*This game is like Do Your Own Thing in that it uses that wonderfully ubiquitous material, newspaper.*

*You can also use recycled photocopy paper or even used envelopes. Feel free to modify the materials with whatever is handy and fits the motor skills of your players.*

### MATERIALS

any kind of paper

### DIRECTIONS

Lay one piece of paper down and call it “home base.” Explain that each player starts from there. Then lay another piece down in front of home base. Each player leaps over that piece, starting from home base.

Keep adding pieces of paper, one at a time, until the player needs to jump over them all!

The challenge in this game is progressive. I find that kids get excited and want me to put all the papers down right away so they can immediately leap over them all! But it’s best to do it a piece at a time so they can feel the difference between using all their strength when leaping and using just a little.

There are two ways to do the leaping. One is for the players to take a running start. This would mean that you would put the sections farther from home base. The other way is for players to jump from a standing position. In this case the sections should be placed directly in front of home base.

Try both ways.

### VARIATIONS

- ◆ **Slalom Run:** Lay pieces of paper out in a line, each one about 12 inches from the other. The children run from the first to the last by weaving in and out between the sections like a slalom skier. The object is to see how fast they can go without touching the sections.

Two or more  
people

Other ways to play are:

- ◇ Bounce a ball while weaving between the sections.
- ◇ Kick a newspaper ball around the sections.
- ◇ Have two children go together, the one behind holding the waist of the one in front. (This is a good technique to use for the child who doesn't know how to slalom run and can learn by holding on to someone who does).
- ◆ Choo-Choo Slalom: Have several players line up to form a train, which weaves in and out between the sections. The engine of the train has to be sure she leaves enough room for the rest of the train, especially the caboose, to make it around the sections without touching them.

## WHAT IS BEING LEARNED

When playing the leaping game, children are learning about modifying their force. This is especially good for kids who don't know how to "pull their punches" and sometimes hit harder than they meant to.

When playing the slalom game, children are learning to internally plan their movements so they can keep changing directions as needed. Physical and occupational therapists call this ability "motor planning," and children who keep bumping into people and things need work on this skill.



Two or more  
people

## Jumping Joys

*Kids love to jump. Besides the instant joy of defying gravity and being airborne, there's a technical reason. When we jump, or, more precisely, when we land from a jump, our whole proprioceptive system is stimulated. Since this is the system that sends information from our joints and muscles to our brain, jumping sends the message: "We are all here now!" After I play a jumping game during morning circle at preschools, children are much more alert and present.*

*This game is about jumping over a rope that keeps getting progressively higher and then going under a rope that gets progressively lower. In the thirty-five years I've played with children all over the world, I must have done this game thousands of times. It's always a sure winner.*

## MATERIALS

rope, string, or long scarf

*Optional:* paper or tape

## DIRECTIONS

You can play this game with one child or with a group.

Tie one end of a piece of rope or string or a long scarf to something solid and hold the other end. Or use two people, each holding an end.

Start with the rope down low. Ask your players to get a running start and jump over the rope, one at a time. (You might want to mark the starting spot with a piece of paper or tape.) Then raise the rope a smidgen and



ask them to do it again from the same side. Keep making the rope progressively higher until it is too high for anyone to jump over.

Children sometimes get so excited with this game that they want to turn right around and jump again and could end up bumping into the person running from the correct direction. Rather than tell them what *not* to do, give them rules. Either tell them when they've finished jumping to go around the person holding the rope and back to the start or wait until everyone is on the same side. (Remember to give the person holding the rope a turn or use that job as a way of including someone who is unable to jump.)

Needless to say, if it looks as if a player is not going to make it over the rope, lower the rope.

After the players have all jumped as high as they can, have them go under the rope, limbo-style, if they want, until everyone has had a turn. Start with the rope up high, then keep lowering it until the players have to crawl on their bellies to get under it without touching it.

Sometimes it's fun to pantomime that the rope is hot (zzzzz!) and they better be careful not to touch it! Children enjoy this kind of dangerless danger.

## VARIATIONS

- ◆ Use two ropes so that the players have to jump twice—once over each rope. Vary the height of each rope so that the players have to jump high over one and jump low over another, or jump over one and go under the other.
- ◆ Hold two ropes level but apart so that the player has to jump over a wider area. Call it a creek. Move the strings farther apart and call it a river that the children have to jump over without falling in and getting wet! Want to try for an ocean? Or put some pieces of paper in the middle and call them stepping-stones and have the children leap from one to the other and then over the rope.
- ◆ Use three ropes and let your inventiveness be your guide!

## WHAT IS BEING LEARNED

Children are learning how to modify their energy to accomplish a goal. It takes more energy to jump over a higher rope than a lower one.

They are also learning how to control their energy. If they have to jump over one rope and then crawl under the next one, they have to halt their momentum and change it to fit the next task. In the therapy trade, we call that motor control.

They also have to plan their movements. If they are to go under a rope that is lower than it was previously, they have to organize their movements so that they are closer to the ground. The official name for this is motor planning.

Whether they are modifying, controlling, or planning, this game helps children learn even more about moving through space and making their bodies do whatever they want.



## Ballooning Inside

*Playing with balloons can be magical, like playing with air wrapped in color. Bring out a balloon and everyone—children and adults alike—can't help but light up a little. Here are a variety of ways of playing with a balloon.*

### MATERIALS

balloon

### DIRECTIONS

Start with the old traditional how-many-times-can-the-players-hit-the-balloon-and-keep-it-up-in-the-air-before-it-touches-the-ground game. Any number of players can play together to cooperatively keep the ball up in the air.

Every time the balloon touches the ground, start from number 1 again. What's the highest number you can reach?



Two or more  
people

## VARIATIONS

Use different body parts to hit the balloon. For example, bat the balloon with only your head, or elbow, or one finger.

Play balloon volleyball by stringing a piece of rope between a stable object on one side of the room and a stable object on the other side. The height of the rope depends on the size of your players. Form teams with one team on each side of the rope, and bat the balloon back and forth over the rope.

Keep the rules really loose. If little ones hit the balloon under the rope to the other side or even run with it to the other side, that counts. The only rule is to have as much fun as possible!

## WHAT IS BEING LEARNED

Children learn eye-hand coordination and teamwork, and everyone learns that playing together can often be more fun than watching television.



## Instant Relay

*A quick and easy relay game can be played with pieces of newspaper or any type of paper.*

*One thing is standard in a relay game: It goes from Point A to Point B and then returns to Point A.*

*How one gets from Point A to Point B is up for grabs.*

## MATERIALS

paper

## DIRECTIONS

Put one piece of paper down to mark Point A, the starting point, and another to mark Point B, the goal.



Group  
activity

Each team of three should have its own set of markers so that no player has to wait too long for a turn.

How close or far apart Points A and B are depends on the skill and energy of your group or your mood. You might want the kids to run a long way to get them physically ready to do something quiet next. You might want to make it shorter so that they concentrate more on the quality of their movements and not on speed or endurance. It's all good.

This could be a competition or each team could get points if everyone on the team finishes—somewhere between fifty and a zillion points and everyone wins.

Here are some possibilities for the relay. The players could also take turns making up their own set of fun rules:

- ◆ Each player runs from Point A to Point B, hops around Point B, and runs back to Point A to tag the next player on the team.
- ◆ Each player walks backward from Point A to Point B, skips around Point B backward, and runs back to Point A to tag the next player on the team.
- ◆ Each player skips from Point A to Point B, jumps over Point B, and hops back to Point A to tag the next player on the team.
- ◆ Each player gallops from Point A to Point B, stands on Point B and sings out his name, then marches back to Point A to tag the next player on the team.
- ◆ Each player “bear walks” from Point A to Point B (a bear walk is like a crawl, except that you extend your legs and walk on flat feet), stands on Point B while touching his nose to his toes, and twirls back to Point A to tag the next player on the team.

And so on!

If you'd like to use a relay baton, you could easily make one out of rolled-up newspaper.

## **WHAT IS BEING LEARNED**

Moving in a variety of movement patterns enlarges one's internal motor



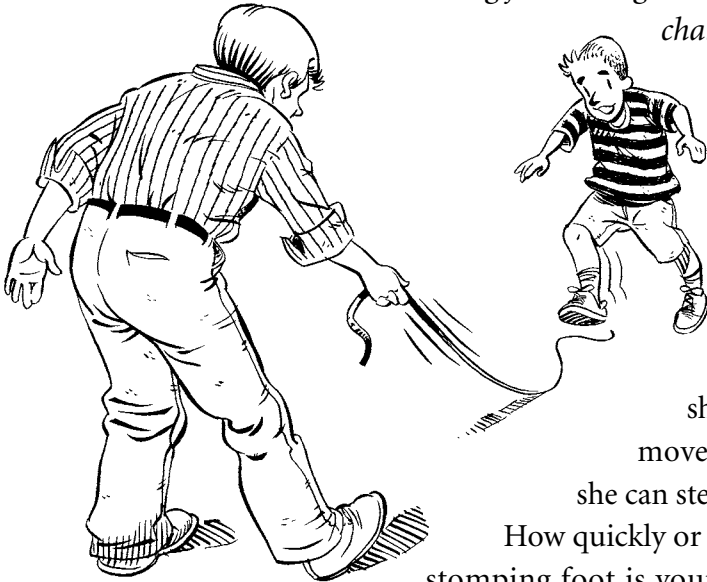
vocabulary. The more ways one learns to move one's body, the more awareness is acquired.

Children also get to strengthen their memory skills by remembering the rules: What comes first? What happens when I stand on the square? How am I supposed to move to get back? This is a great practice for a lifetime of needing to remember sequences. ("First I'll stop at the store, then the bank, then turn in the proposal, then . . .")

Two or more  
people

## Wiggly Snake

*If your children are too young to jump rope or if your rope jumpers are looking for a new game, try Wiggly Snake. I always find that the challenge entices children to play it.*



### MATERIALS

rope

### DIRECTIONS

Holding one end of a rope, let the other end trail enticingly on the floor. Gently shake your end so that the rope wiggles as it moves. As you walk around, ask your child if she can step on the wiggly snake and make it stop.

How quickly or slowly you move the rope away from the stomping foot is your call. You have the ability to make the game wonderfully challenging or annoyingly frustrating or stupidly easy. You can always start easy, until both you and the players get the sense of the game, and then up the challenge.

**VARIATION**

If you have more than one player, have each player take a turn controlling the rope. Each person's unique style will affect the game. Remind the rope holder that the rope must stay in contact with the ground. No one can step on a rope in the air!

**WHAT IS BEING LEARNED**

Children are learning about eye-foot coordination and about balancing. They are also improving their reflexes, because they have only a milli-second to stomp on the rope before it moves on.



## Tube Sock Throw

*I like this game because it takes two seconds to make the ball. Children can just play around with it or they can practice and get really accurate at hitting targets with it.*

Two or more  
people


**MATERIALS**

3 or 4 tube socks or knee socks

**DIRECTIONS**

To make the ball, roll up a couple of socks and tuck them into the toe of a tube sock or knee sock. Players hold the top of the sock, swing the ball around their heads, then let go and see how far it goes.

Players can throw the ball to each other or throw it alone and measure the distance thrown each time.

They can also aim at a target and learn how to really direct a tube sock!

**WHAT IS BEING LEARNED**

In addition to eye-hand coordination that children learn from any throwing and aiming game, they learn how much force is needed to throw a farther distance.

Two or more  
people

## Target Ball

*You know the little thrill you get when your crumpled piece of paper goes in the wastebasket on the other side of the room? These games provide the same little thrill of success.*

*When my youngest child was two years old, she toddled over to me with her empty yogurt container and a walnut and suggested we play a target game with them. I knew this kindred spirit had gotten the message on the fun of aiming for a target.*

### MATERIALS

paper or tape  
common objects found around the house  
easy things to throw, such as foam balls, beanbags, walnuts, acorns, or Ping-Pong balls

### DIRECTIONS

Place a piece of paper or tape on the floor to mark the spot from which the player throws. The player can sit or stand on the marker. Lay down a variety of targets at varying distances from the marker. Place some targets close to the player so that they are very easy to hit and others at progressively more challenging distances away. Use some targets that have wide openings and others that are smaller.

If there is more than one player, put down more markers so the players can throw at the same time if they want to.

You can give a point score to each target, but make the scoring humorous to avoid excessive competition between two or more players. For example, the wastebasket could be worth a zillion two points and the dishpan a gazillion points!

Here are some suggestions for targets:

wastebasket  
dishpan

bucket  
boxes  
coffee can  
shoes  
upside-down chairs  
rope coil  
hula hoop

## VARIATIONS

Target games are great to play outside with things that are easy to find, such as an inner tube, a bicycle tire, a coiled garden hose, street signs, a hole in the ground, big rocks, and telephone poles.

## WHAT IS BEING LEARNED

Children learn the eye-hand coordination lesson of making the ball go where they want it to.

They are also learning that a target game can be made out of anything, and they are getting practice for that big moment when they slam-dunk a crumpled ball of paper into the wastebasket across the room.

## Hold Tight/Let Go

*Feeling the difference between being tense and being relaxed is not always as obvious as you might think. Sometimes our shoulders can be up by our ears and we may not be aware of it until someone points it out.*

*This physical awareness of how we are holding our bodies can be developed by experiencing consciously what a relaxed body feels like, muscle by muscle.*

Two or more  
people

**DIRECTIONS**

Say the following instructions to your players, or record them onto a tape and play it back so that you can join in the activity.

“Lie down on your back and close your eyes. Just lie there for a moment. You don’t have to do anything or go anywhere. This is a quiet moment for you just to lie there and do nothing.”

Pause.

“Now I want you to scrunch up your forehead like you are very worried. Make your forehead very wrinkled. Scrunch it up tight, tighter, tighter . . . now let it go. Let it totally go so that it feels like water spreading out.”

Pause.

“Now scrunch up your whole face, press your lips together, suck in your cheeks, squint your eyes, wrinkle your forehead. Make your face tight, tighter, tighter . . . and now let it go. Let it completely relax so your cheeks feel loose and your eyelids feel droopy and your face is totally relaxed.”

Pause.

“Now bring your shoulders up toward your ears. Make them very, very tense. Pull them up tight, tighter, and even tighter . . . now let them drop. Completely let go of them and let them fall back into the floor so you have no control of them at all. Let them just lie there, completely relaxed.”

Pause.

“Now tense your arms. Make energy shoot from your shoulder, down your arms, and out your hands. Your arms are so stiff that they don’t even touch the floor anymore. Tense them more, more, more . . . and now let them go. Completely let all tension out of your arms so they are lying on the floor and feeling like they are melting through the floor, completely relaxed.”

Pause.

“Tense your chest and back. Feel like you are turning into a robot and your back and chest are getting stiffer and stiffer and stiffer. Now let it go and just let your body fall into the floor, completely letting go of your spine.”

Pause.

“Now tighten up your legs and feet—both legs, both feet. Point your toes hard, harder. Make your legs and feet so tense and tight that they no longer touch the floor—tight, tighter, tighter. Now let them go. Let them go completely so you feel they are melting into the floor, completely and totally relaxed.

“Just lie there and feel a wave of relaxation wash over you so your body feels heavy and almost separate from you. Let your body completely melt into the floor while you do nothing except watch your breath go in . . . and out . . . and in . . . and out. For the next few moments, do nothing but watch your breath, letting your body completely relax.”

### WHAT IS BEING LEARNED

Children are learning to be aware of how they are feeling by noticing the difference between a contracted muscle and a relaxed muscle. This inner awareness will help them know when they are feeling stressed, and this game will give them a method for releasing that tension.

---

## Eyedropper Art

*I often bring an eyedropper and a jar of water in my bag of tricks when I'm working with a child on fine motor control. I find that children are fascinated with the challenge of putting a small tube in water and making it fill up. Their ability to copy my example, follow my instructions, or figure it out on their own also gives me a sense of their cognitive development.*

*Recently, on a hot day, a child and I discovered that we could fill up our eyedroppers with water and squirt them at each other! Talk about fun!*

### MATERIALS

- eyedropper
- paint or food coloring in water
- paper

- - - -  
Two or more  
people  
- - - -

## DIRECTIONS

Using an eyedropper filled with paint or colored water, try these art projects:

- ◆ Drop some paint from just above the paper. Keep dropping paint from higher and higher distances, and notice the difference in the results.
- ◆ Drop a few drops of different colors of paint on the paper, then fold the paper in half. Open the paper to see a symmetrical design.
- ◆ Drop a big drop of one color of paint on the paper and then speckle it with little drops of another color.
- ◆ Drop paint on different surfaces, such as dry, wet, or damp paper or wax paper or aluminum foil. How are the results different?
- ◆ Drop puddles of paint on the paper and then tip the paper in various ways to make the paint run.

## VARIATIONS

There's no end to the possibilities for thing to paint with. Try sponges, cotton balls, powder puffs, toothbrushes, shoe brushes, cotton swabs, and corks. Or just put a blob of paint on a piece of paper and blow at it with a straw!

Instead of just painting on paper, try painting on burlap, wood, cardboard, grocery bags, and rocks.

## WHAT IS BEING LEARNED

This is a fine motor and cognitive activity that encourages creativity. Children, using their finger muscles, learn how and when to squeeze the eyedropper bulb in order to fill it up and empty it so that they can create art.

## Toothpick Sculptures

*A box of raisins and a handful of toothpicks can keep children entertained for a long while and bring out their creativity. Bring some in a plastic bag on the next airplane ride or lay the raisins out on the kitchen table and make sculptures together. If all that happens is that your child wants to spear the raisins and eat them, that's worthwhile, too. Raisins provide a good source for the daily iron requirement.*

Two or more  
people

### MATERIALS

toothpicks  
raisins

### DIRECTIONS

Combine cut-up or whole toothpicks and raisins to make abstract sculptures or models of animals, people, or buildings (see illustration).

### VARIATION

You can use softened dried peas or mini-marshmallows instead of raisins.

### WHAT IS BEING LEARNED

Young children are getting a chance to practice coordinating the small muscles of their hands.

All children are getting another opportunity to develop their creativity. They are learning





how to take an idea and manifest it. With these simple materials, the time between the thought and the manifestation is satisfyingly quick.

Two or more  
people

## Stone Painting

*My Australian friend Jane, who homeschools her four children, showed me this nifty little trick of painting on rocks using water instead of paint. It makes whatever you write look like calligraphy. If you don't like what you did, your "mistake" dries up and vanishes, but in reality everything you paint this way looks good!*

### MATERIALS

paintbrush  
water  
dark flat rock

### DIRECTIONS

Have children dip the paintbrush in the water and try out different designs on the rock. Let them use their imagination to draw whatever they want.

### VARIATIONS

This is a good way for little ones to practice writing their numbers or letters.

Older children could take turns making designs that you or others try to copy.

### WHAT IS BEING LEARNED

This activity exercises the small muscles of the hand and the large muscle of imagination. Children can feel free to try out any design because whatever is created is for that moment and then disappears. It is a lot less intimidating than paper.

Using the variation of having children make letters and numbers gives them a safe place to experiment with writing.

Using the variation of copying each other's designs gives the players an opportunity to notice details and direction.

---

## Penny Flick

*You're sitting in a restaurant waiting for the food to come and you can feel the children are starting to get restless. Stop the disruption before it even starts with a captivating and quiet game of Penny Flick. It's a game with many variations, so you can keep introducing new ways to keep the children happy and busy right up until the food comes!*

*Or play this game at home after everyone's finished eating, the dishes are off the table, and you want to prolong and savor the family moment.*

*I've also successfully played this game with small groups of senior citizens. No one, it seems, can resist a chance to flick a penny.*

- - - -  
Two or more  
people  
- - - -

### MATERIALS

pennies

### DIRECTIONS

Give all the players a penny and show them how to move the penny along the table by flicking their index finger and thumb or pushing it with just their index finger or the side of their thumb. They can use whatever finger method works best for them. The method doesn't matter. Introduce one or more of the games below or make up your own:

- ◆ All the players flick their pennies into the center of the table and try to get the pennies to bump into each other.
- ◆ Players sitting across from each other flick their pennies toward each other, trying to get them to touch.

- ◆ Two objects, such as the salt and pepper shaker or just two other pennies, are set up a short distance away from the flickers as “goal posts.” The players have to flick their pennies between the two objects. Keep making the goal posts closer together to increase the challenge.
- ◆ Using a straw or spoon handle as a hockey stick, call the penny a “puck” and bat the puck back and forth between the players.
- ◆ Make a line of pennies and have the players try to hit each penny and knock it out of line.
- ◆ Make a line of pennies with at least an inch of space between them, and have the player try to flick her penny through each of the spaces. Make the first space the largest and each following space progressively smaller.
- ◆ Place a penny on its edge, give it a little push, and watch it roll. See how far it can go without falling over.
- ◆ Try rolling a penny with each hand at the same time.

### **VARIATION**

Instead of pennies, scrunch up a tiny piece of napkin or newspaper into a ball shape. Bottle caps also work well.

### **WHAT IS BEING LEARNED**

The small muscles of the hand are getting a workout in this game, along with the awareness of how to assess the energy output of those muscles to produce the desired results.

P A R T F I V E



# Games That Enhance Interpersonal Skills

I nterpersonal skills are the ability to interact with others, understand them, interpret their behavior, and feel comfortable in their company. As social animals, we tend to thrive and grow when involved with others and need these skills to exist socially. Children who are strong in interpersonal skills seek out the company of others and are easily able to interpret others' body language, facial expressions, and tone of voice, and to respond accordingly.

The games in this section are ways for you and your child to play together and with others. Children need easy, no-stress, hang-out time as a way to connect with their social selves. The group games are cooperative, where the social action is cheering for each other, having a common goal, or moving in sync. All the games show children the delightful side of being social.




# AGES 6 AND UNDER



## Who's in the Box?

*A large box arrives in your life. Maybe your new computer was inside, or a large printer. Do you throw it away? Hold everything! If you have a crawler, toddler, or young preschooler, first it's time to play Who's in the Box?*



Two or more  
people



### MATERIALS

large box

### DIRECTIONS

Set the box on its end so that the front flaps open like a pair of French doors. Ask your snookems to go inside the box and close the flaps.

Then knock politely on the flap and say, "Who's in the box?"

At this point he will probably push open the flaps and show his smiling, giggling face, and you, of course, will say with great surprise, "Why, it's (child's name)!"

Don't be surprised if your young player wants to go inside the box and do it again—and again—and again—and again . . .

### VARIATION

A version of this game can be played in a school setting. It's a fun and unusual addition to the usual morning circle games.

Place the box in the front of the class. Ask the players to put their heads down to cover their eyes or turn their backs to the box. Then, when their eyes are covered or their backs are turned, pick up one child, put him into the box, and close the flap.

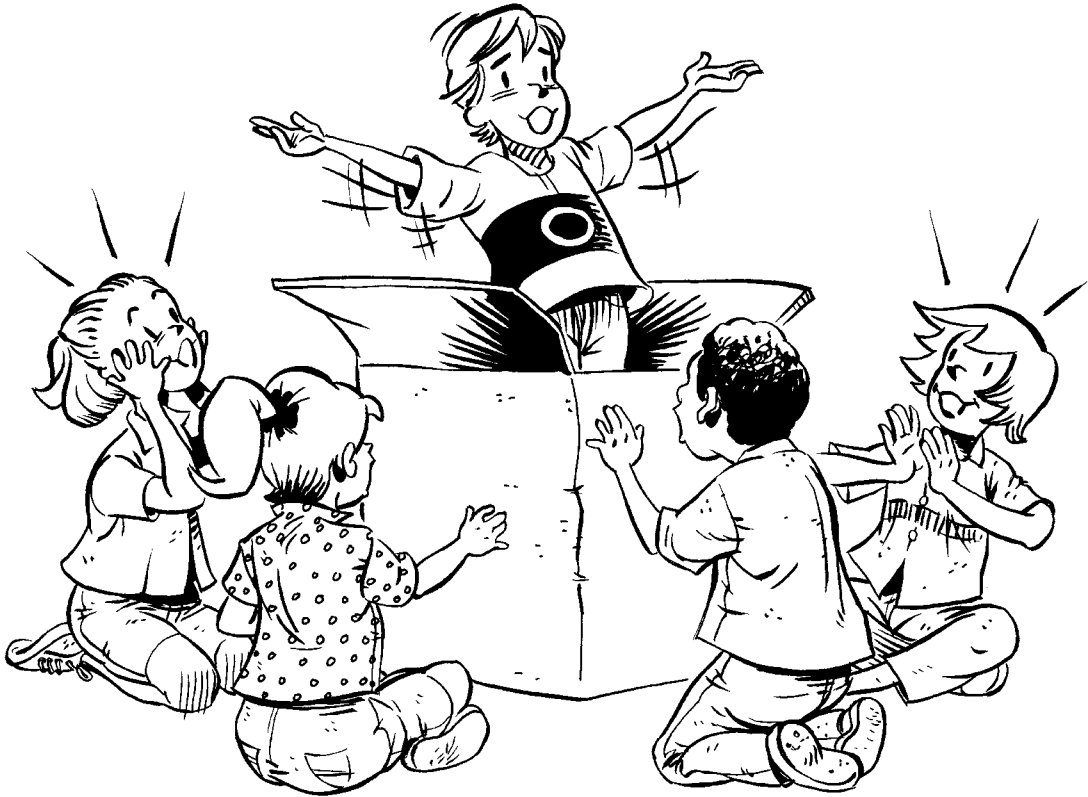
Tell the children they can look now. Have the children look around and notice who is missing, then guess who is in the box.

To also work on timing and rhythm, I have them chant before they announce their guess:

“Knock knock, who’s in the box?

It’s \_\_\_\_\_!”

Then we all clap and shout as that child emerges from the box.



### WHAT IS BEING LEARNED

This game is really a bigger version of Peekaboo, the perennial favorite. As you’ve no doubt found in any child development book, this type of game is a way for children to learn the idea that people and objects still exist even when they can’t be seen.

A baby who panics when Mom gets out of the car to come around and open the door doesn’t know this yet. As little ones begin to get this concept, it is easier for them to be left at day care or at home when you leave for

work. They know you still exist somewhere else and they'll see you again. Peekaboo!

Children who are past the Peekaboo stage still like to go inside a box and have their own little world where they don't have to say "boo" to anyone!

In the school setting, children are expanding their social awareness beyond themselves and a few others to noticing everyone who is in their class that day, as well as everyone who is missing.

They also get to have the thrill of feeling noticed when they pop out of the box and everyone enthusiastically applauds.

---

## A Stone's Throw

*If you like to take a walk with your child and go off the main road to sit beside a creek, you'll like playing A Stone's Throw. This throwing game will give her a delightful experience in playing with another.*

*I was playing this game one day with a four-year-old child with Down syndrome. To take the sting away from possible misses (my aim is not that great, either), I began saying "Got one!" and "Missed one!" with the same enthusiasm. I found him quick to imitate my tone, and I noticed we would giggle just as much at the misses as at the successes.*

### MATERIALS

pebbles

### DIRECTIONS

Gather up a pile of pebbles and then take turns throwing them at a nearby rock. If you're not at a creek, it doesn't matter; this game can be played in town by throwing pebbles at a lamppost, a fence picket, or even a wall.

To make the game more even, the person with the weaker or less accurate throw can sit closer to the target. (Don't feel bad if that person is you.)

— — — —  
One or two  
people  
— — — —



Pick different targets to aim at or see how many you can hit with your eyes closed.

### WHAT IS BEING LEARNED

Some children are loners by choice. Some children tend to play by themselves because they haven't had much experience in playing with others. As busy parents, we can still help our children discover the rewards of playing with others by taking a walk and playing a friendly game like A Stone's Throw.



---  
One or two  
people  
---

## Poker-Chip Play

*Putting things into other things is a baby's idea of a good time. They delight in taking everything out, such as all the toys in the toy basket, and later in their development, they delight in putting everything back in (we hope, anyway).*

*This game feeds that desire to empty things and adds an extra challenge to the putting things back, which makes it even more interesting.*

*A surprising thing about this activity is that although it is meant for the toddler, I have found that many children even as old as ten relish playing this game. I think it's something about the satisfaction of putting things neatly away and getting it all done. Perhaps it is also about feeling in control of things that disappear.*

## **MATERIALS**

clean plastic container with lid  
poker chips

## **DIRECTIONS**

Take an empty yogurt, cottage cheese, or similar type of container with a lid and cut a slot in the top that is slightly bigger than a poker chip.

Place ten or so poker chips inside the container and put the slotted top back on. Let your baby shake the container and delight in the interesting noise it makes.

Then help him take the top off and discover the treasure inside! After he has had time to explore the chips, which might involve tasting, throwing, and tossing, show him how to put the chips through the slot and back into the container. It's a skill he'll use later when he is putting his pennies into his piggy bank.

## **WHAT IS BEING LEARNED**

On the cognitive level, baby is learning about "object permanence," the understanding that things don't disappear when you don't see them but are somewhere else. This game, where chips disappear into a slot and then reappear when the top is removed, is a very reassuring lesson.

Babies also learn how to maneuver an object to fit into a specified space. If you turn the container so that sometimes the slot is horizontal to your learner and sometimes vertical, he learns how he has to maneuver his wrist to make the poker chip match up.



## A People Sandwich

*This game is guaranteed to bring giggles. It's all about making a sandwich using some children as the ingredients. The other children then get to pretend they are "eating" that delicious sandwich. Yum.*

### DIRECTIONS

Have the children stand in a circle. Announce that you are going to make a sandwich, and pick one child to stand in the center of the circle and be the bread. Then ask, "What else shall we put in this sandwich?" If at first the children don't come up with ideas, suggest some: "Let's add some cheese." Then pick another child to be the cheese and put her directly in front of the child who is the bread. Continue with the ingredients, such as ham, pickles, tomato, lettuce, and so on, and end with another piece of bread. Each time, place the child in front of the last ingredient. You can be the one who picks the child who will be each ingredient, but you'll probably find that they are jumping up and down excitedly to be the next piece. You might also find, like I did, that a child might call out an ingredient that isn't usually in a sandwich, such as rice. Go ahead and put some rice in the sandwich!

After the sandwich is made, everyone pretends to eat it, smacking their lips and making chewing sounds. (This is what brings the giggles.)

Then start all over and make a new sandwich!

### WHAT IS BEING LEARNED

Children are experimenting with a fun way to play with each other. Playing pretend is an important skill. Everyone pretending together reinforces their sense of being part of the group.

Of course, there is also the culinary lesson of what goes into a good sandwich!

## The Same Inside

A new child was joining the Head Start school and his mother was very worried. Her four-year-old son couldn't speak or hear or walk, but he had feelings, and his mother was afraid that the children would find him too odd to understand and befriend. She asked the Special Ed teacher, his aide, and me to come up with some way to introduce him to the group.

We did a puppet show. Our puppets were simple—just happy children's faces taped onto Popsicle sticks, but one of the smiling faces was inside a paper wheelchair. The puppet children in the play's script asked all sorts of questions. In the end they realized that although Nathan wasn't the same as them on the outside and did many things differently, inside he was just like them.

### MATERIALS

easily made puppets

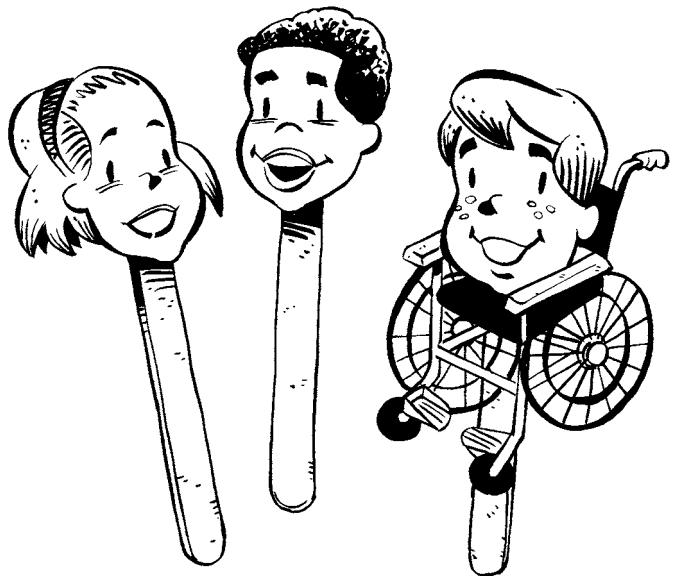
### DIRECTIONS

Have the children make simple puppets to represent themselves out of easy-to-find materials. For example, tape faces to Popsicle sticks or draw faces on the fingers of a work glove.

If you want to make one puppet have a physical challenge, make an appropriate addition: sunglasses for a blind child, little button in the ear of a deaf child, chair with paper wheels for the child who uses a wheelchair, and so on.

You could make the play be about the children playing a game, such as Duck Duck Goose, and then have them

Two or more  
people



wonder aloud why this one child is not playing. Have them ask the child questions.

Here are some examples of the ones we used:

One puppet: Why don't you get up and run?

Nathan puppet (played by Nathan's aide): Because my legs are not strong enough yet.

Another puppet friend: Why do you sit in a chair?

Nathan puppet: Because it is easier to move around with wheels.

Another puppet friend: Can you talk?

Nathan puppet: I can't talk yet, but I can show you how I feel. Watch me. Say "Hi" to me.

(The whole group said "Hi" and we turned the puppet face around so that an even bigger smile face showed.)

Puppet friend: Do you like to play?

Nathan puppet: Oh yes, just like you.

Puppet friend: Do you like toys?

Nathan puppet: Oh yes, just like you.

Puppet friend: Do you love your mommy?

Nathan puppet: Oh yes, just like you.

Then we sang this song to reflect the play's theme (to the tune of the *Beverly Hillbillies* theme):

We're different on the outside but the same inside.

Some of us are skinny

And some of us are wide,

Some of us are tall

And some of us are small,

And as we knows

We all wear different clothes.

We're just different on the outside,

We're the same inside.

Some days we've been happy

And some days we've cried,

Some days we feel silly  
 And sometimes we get mad.  
 And that's because we're just the same inside.  
 We're different on the outside, but the same in the end.  
 We all love our mothers  
 And we all love our friends.  
 We all love the ocean and the trees and the sand.  
 And that's because we're all the same inside.  
 We're different on the outside, but the same inside,  
 A little different on the outside and the same inside.  
 Our hearts are the same  
 But not our hides.  
*But* it's okay, we're all the same inside.

### WHAT IS BEING LEARNED

Accepting diversity seems to be the challenge of this century. In order to have lasting peace and love, we are going to have to accept each other and ourselves just as we are. Children with special needs often provide other children with their first chance to meet someone who is different and yet, they soon find out, a lot like them. They like to play. They like to laugh. They want to have fun, too. We want children to learn that we are different on the outside, and isn't that interesting? We are the same inside, and isn't that nice?

---

## Lily Pads

*This game is a fun no-loser version of Musical Chairs with many possible variations and opportunities for kids to interact.*

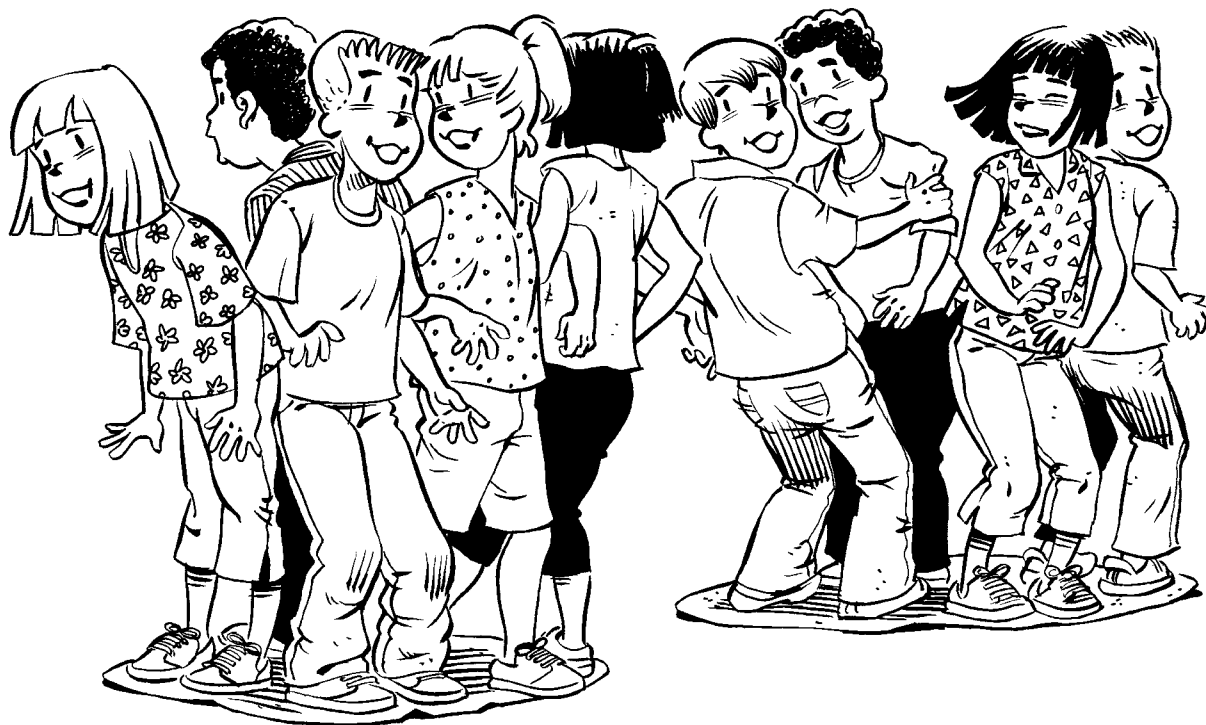
### MATERIALS

newspaper

---  
 Group  
 activity  
 ---

**DIRECTIONS**

Lay down newspaper sections on the floor so each child has his own. Explain to the group that these are not really newspapers, they are lily pads, and that they aren't really kids, they are frogs. (Of course—what else?) Have each frog stand on a lily pad while you put on music or sing a song. While the music is happening, the frogs have to jump around, froglike, until the music stops, at which point they have to madly race to any pad. You will have, of course, removed one pad. But in this game the padless player isn't out. Instead she has to share a pad with another frog. When the music, or your singing, starts up again, you can suggest different ways they must move each time—skipping, walking backward, hopping, and so on. As you take more and more pads away, the remaining pads will get very crowded. So that everyone can fit, the rule is that some part of each frog's body has to touch the pad.



**VARIATION**

Instead of lily pads, you can go back to Musical Chairs, but change the rules to make it into a no-loser version: remove the chairs, not the people. Play as you would normally by removing the chairs, but no one is out. At the end there will be a big pile-up on one chair. (You can warn everyone ahead of time that at the end there will be a pile of people so that those who don't want to get squished can opt out. )

**WHAT IS BEING LEARNED**

This game encourages physical closeness, which has a way of making kids feel friendlier toward one another. Most people enjoy physical touch, but group situations are not commonly set up for this to occur. Young boys tend to meet this need by wrestling with their peers. Girls often hug.

In the Lily Pad game, children get the opportunity to be physically close and also to help each other. Success in this game is working together to get everyone on the last pad so they all can win.

**AGES 6 AND UP****Stepping on Tails**

*This high-energy group game is good for burning off excess sugar energy after birthday party treats. In the classroom, it's a good activity to precede quiet sit-down tasks.*

Group  
activity

**MATERIALS**

- scissors
- ball of string



## DIRECTIONS

Cut a piece of string for each player that is long enough to hang, dragging along the ground, when tucked into a waistband.

The object of the game is for the children to run after each other and try to step on each other's dragging strings, causing the strings to fall out. Children try to collect as many "tails" as they can while still keeping their own.

Children can also work in pairs in which they agree to go after certain players together and to protect each other's backs from attack.

No one is ever "out" of the game. Even if a child's string is stepped on and caught, he can still go after others. However, the one with the most strings can be declared "The One with the Most Strings." This title avoids that winner/loser mentality while accurately stating what happened.

(If a child is wearing a dress, first tie one string around her waist and tuck the hanging string into that.)

## VARIATIONS

- ◆ Instead of string, you could use crepe paper streamers or ribbons.
- ◆ Children could grab the string (or crepe paper or ribbon) with their hands instead of stepping on it with their feet.

## WHAT IS BEING LEARNED

Socially, children are learning to be aware of each other as they look for who lost their string and who still has a string to step on. When playing in pairs, they have a sense of connection with each other and a responsibility to watch out for each other.

Children are also learning to improve their agility and eye-foot coordination. Like eye-hand coordination, eye-foot coordination teaches children that their eyes direct where their foot goes. Children who trip over obstacles in their path are still working on that awareness.

The game also reinforces spatial awareness by being aware of what is happening in all directions. Children need to not only focus on stepping on another string, they also have to be aware of who is coming and in what direction for their string.

## Push Me/Pull You

*This is a game that speaks to females, I've noticed. It's a game in which you get to pit all your physical strength against another. We women don't get many opportunities to do that. We lift weights; we carry heavy boxes; we pick up children. But unless we are taking a self-defense class, we rarely get the chance to do one-on-one challenges. Of course, we prefer to do it in a friendly way, and that is exactly what this game does.*

Group  
activity

### DIRECTIONS

Pick partners who are about the same size and shape. Have them stand with the length of their sides touching.

Then ask them to press against each other, shoulder to shoulder, trying to make the other person move sideways.

The first one who makes the other move, even a few inches, is declared the winner.

### VARIATIONS

Since we all have different strengths, I like to continue this game introducing, each time, a new combat position. Have each pair try them all. They might find that they are weak in the arms, but their butts rule!

Also, try partnering children who are different sizes. Smaller children can be sometimes be stronger than bigger ones.

- ◆ **Hand to Hand:** Partners face each other and put their arms in front of them, their palms touching. They both push forward and try to push the other person backward.

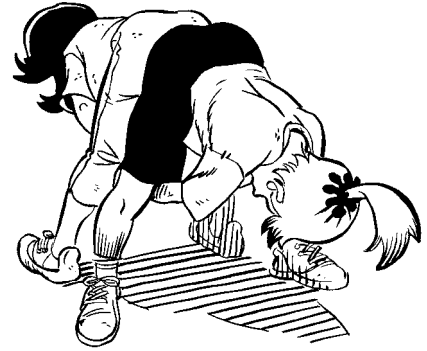


Hand to Hand



Back to Back

- ◆ Back to Back: Partners stand back to back and hook arms. They both try to walk forward, pulling their partner with them.
- ◆ Butt to Butt and Push: Partners stand back to back and bent over so their rear ends are touching. Each tries to walk backward, pushing her partner forward.
- ◆ Butt to Butt and Pull: Same as above except when they are bending over, have them reach their arms between their legs and hold each other's hands.



Butt to Butt and Pull

- ◆ Link Elbows: Partners link elbows and pull to see who can pull whom first.
- ◆ Hip to Hip: Partners lean away from each other with the top of their bodies and push against each other with their bottom half. Try both sides. See if one side is stronger than the other.
- ◆ Balance Challenge: Any of the above while standing on one leg.



Hip to Hip

### WHAT IS BEING LEARNED

Although a lot of muscle testing and strengthening is going on, when people pit their all against another, a personal connection is created, even if only temporarily. This is because they both intensely shared a moment together. They were in the same physical and mental state at the same time.

It's the reason that often after boys have a physical fight, they're later seen walking with their arms around each other.

## ALL AGES

### Shoe Mountain

*When the kids are bored but antsy with energy, here is a quickie that is guaranteed to win the hearts of all ages. Your twelve-year-old will be just as excited to play this game as your two-year-old.*

Group  
activity

#### MATERIALS

shoes

#### DIRECTIONS

Make a pile of all the shoes you can find in a large cleared space in the room. Tell the kids that this is not a pile of shoes (silly them to think that!), but is actually a huge mountain. They have to start from a distance away and run toward the mountain and then, with one gigantic leap, make it over the top of the mountain to the other side.

It adds to the thrill if the others provide a “drum roll” by slapping their hands on the floor, a table, or their knees as the next leaper makes her run. When that person is in the air, call out her name and applaud when she lands.

#### VARIATIONS

Hold out a rolled-up newspaper at the end of the run so the players have to end their run by ducking under the roll. This increases their skill because they have to modify their movements to include this change of momentum. Vary the height of the roll so that players have to adjust to different

levels. Announce what you are doing by saying, “This time, I am going to make it even lower!”

Instead of a rolled-up newspaper, you can use a long scarf that is held by two players. This could be the responsibility of a parent and a child who may be feeling too shy or physically unable to play but wants to be a part of the game.

### WHAT IS BEING LEARNED

Emotionally, children feel a part of the group when they play this game. During the “drum rolls,” they get everyone’s attention as they start the run. Then they get the thrill of hearing their name yelled at the height of their victory when they make the jump. Then they receive applause at the end for their success. What could be better?

Socially, they are learning to take turns and that if they wait, their turn will come. Two people can’t jump at the same time. If they leap from opposite directions, they’ll soon learn that two objects cannot be in the same space at the same time!

Motorically, children are learning how much energy, or “oomph,” they need to use in order to leap off the ground. They learn to anticipate at which point in their running stride they need to “take off.” Watch children of different ages play this game and you’ll see that this is a skill learned through practice. You might see younger learners leaping beside the shoe pile rather than over it as they begin to practice the skill of leaping higher.



— — — —  
One or two  
people  
— — — —

## Life Is a Kick

*Never underestimate the fun of kicking a rock. Many a time, my daughters and I made a long walk shorter by kicking a small rock ahead of us all the way. The person the stone landed nearest to would be the next one to kick it forward.*

**MATERIALS**

something to kick

**DIRECTIONS**

Play the game described above when walking down an uncrowded sidewalk or in the park. If a stone isn't available, there is always something to kick—a fallen acorn, a stray pinecone, even a crumpled-up cigarette pack will work.

See how far each player can kick the object on his turn.

Try kicking with the right and with the left leg to notice which leg is the best at kicking.

Pick a large object ahead, such as a tree or lamppost, and see if the kicker can aim at and hit that object.

**VARIATION**

A variation on this game can be done at home using a soft gentle object, such as scrunched-up and taped newspaper (see Gentle Ball Games, p. 125, for more ideas). Practice kicking the ball back and forth to one another.

**WHAT IS BEING LEARNED**

One interpersonal skill is called “shared attention.” Developmentally, children go from parallel play, where they each do their own thing next to each other, to the level of attending to the same things.

Kicking a rock together strengthens this skill and promotes teamwork, as well. You share the same goal and take turns reaching it.

This game also encourages eye-foot coordination.

Two or more  
people

## Doodling Doodles

*It's fun to doodle, to make little pictures that seem to spontaneously appear when you've got a pencil and a piece of paper and a moment to let your inner creativity come to the surface.*

*Maybe some evening after the dinner dishes are cleared, your family can play Doodling Doodles. A big part of the fun of this game is making the doodles themselves.*

### MATERIALS

paper or index cards  
pens

### DIRECTIONS

Give everyone some pieces of paper or index cards and ask them to start by making any doodle that they want. A scribble is fine, an abstract design, a stick figure, whatever comes out. If you want to get more elaborate, use different color pens. Next, each player makes a copy of whatever she doodled on a second card. If there are fewer players, have each player make more doodle pairs.

When the doodle cards are done, lay them out, facedown, on the table, and play the Memory Game.

The first player turns over one card and then another. If the two cards match, she takes them both. If not, she turns them both back over so that they are facedown again.

The next player does the same. As the game continues, players begin to remember where the different doodles are located and can find the matching ones.

The player with the most matches gets to lay the cards out again for the next game.

Very young players can team up with a parent or older sibling.

**VARIATION**

This game can also be played as a simple matching game between you and your young child. Start with only six doodles and lay them on the table. Give your player the six matching doodles and have her put the matching one on top of the one that is the same.

**WHAT IS BEING LEARNED**

A simple game requiring only materials made together on the spot can remind us of the satisfying pleasures of human connection.

In this game children are learning to note the details of the doodle they made and using their fine motor skills to purposely duplicate it.

They are also getting a chance to exercise their memory.

-----

## Cooperative “Pin the Tail”

*This game is something like the old Pin the Tail on the Donkey, except children are trying to complete a drawing of a person. And, unlike the original version, children aren’t left blindfolded wandering around the room while the others giggle at their inaccuracy. Instead, they get a little help from their friends.*

-----  
Group  
activity  
-----

**MATERIALS**

- crayon or felt-tip marker
- large piece of paper (shelf paper, poster board, or butcher paper)
- tape
- blindfold

**DIRECTIONS**

Outline a child’s body on a large piece of paper. Tape the outline to a wall.

Blindfold each player, in turn, and give him a crayon. His task is to add one part, such as eyes or ears or hair or rings or shoes or whatever, to





the drawing, as requested by the other players. The other players' job is to help the blindfolded person draw the part in the right place by saying things like "more to the right" and "go up" or "you're getting warmer." (You can work out beforehand the type of clues to use.) The next player is then blindfolded and adds another part to the picture. Continue until everyone has had a chance to add a part.

Don't be surprised when the children's directions purposely add the eyes to the kneecaps and put the nose on the neck. Children have a thing for the ridiculous, but the laughter at the result is shared by all, instead of being directed at one person.

### VARIATION

The possible variations on this idea are limited only by one's imagination.

### WHAT IS BEING LEARNED

Working on a shared project is one way children learn cooperation. In this group game, children get the experience of having a positive result come from listening and following directions as well as giving directions.



Two or more  
people

## A-Step-at-a-Time Toss

*I like this variation on the game of catch because children start with success and stay within what I call the "success range." This game gets easier and more challenging depending purely on results.*

**MATERIALS**

“gentle ball,” such as a beanbag or crumpled-up newspaper (see Gentle Ball Games, p. 125, for more ideas)

**DIRECTIONS**

Starting with two players standing close together, have them toss a gentle ball back and forth. Every time a successful toss is made, each player takes a step backward, enlarging the distance between them. If one of them misses, they each take a step closer, and so on.

**VARIATIONS**

There are many ways to toss a ball between two partners. Try some of these:

- ◆ Toss the ball underhand.
- ◆ Toss the ball overhand.
- ◆ Both players turn their backs to each other, bend over from the waist, and toss or roll the ball back and forth to each other through their legs. (This stance is a good way to get fresh oxygenated blood to the brain!)

Older children could try tossing two balls in different ways:

- ◆ One person tosses one ball underhand and the other person tosses a ball overhand at the same time.
- ◆ One person tosses one ball underhand and the other person tosses a ball overhand, but the second person waits a beat before throwing.
- ◆ One person throws both balls so that the other one has to catch a ball with each hand.

**WHAT IS BEING LEARNED**

Children learn the strategy of modifying an activity to include the elements of success and challenge. They learn to start an activity with what comes easily and feels successful, then to add enough challenge to sharpen the

skills but not so much as to get discouraged. A-Step-at-a-Time gives children concrete practice doing this together with a partner.

Children also practice eye-hand coordination and learn the necessary skill of anticipating the trajectory of a thrown ball so that they know where to put their hands in order to catch it. Even older children need work on this skill when they are thrown two balls at the same time.

Two or more  
people

## Newspaper Bonnets

*If you've got some newspaper and a roll of tape, you can make instant bonnets. I've played this game with children at an orphanage in Cambodia, children at an upscale Montessori school, adults at an Indian reservation, adults at a Micronesian university, and many other places, and I find it crosses all cultures and delights everyone.*

*One Head Start class made them at Easter time and then paraded around the school showing off their Easter bonnets!*

### MATERIALS

newspaper

tape (regular or masking)

*Optional:* decorations, such as paint, sequins, and feathers; and glue

### DIRECTIONS

Place one open sheet of newspaper on your child's head. Hold the newspaper to her head by putting tape around the newspaper at the crown of her head.

Scrunch up the paper that sticks out underneath the crown of tape. You can scrunch the paper up in various ways to create different looks. If you roll it up, you get a derby look; if you scrunch it sideways, you get the pirate effect. Experiment with different ways (see illustration).

## VARIATION

Don't stop there. Children can make their bonnets unique by decorating them with paint, sequins, feathers, confetti, pom-poms, yarn, or whatever is available.

## WHAT IS BEING LEARNED

Children who are having the bonnets made on their heads are learning that if they sit still and don't squirm, something a little amazing will come of it (and isn't that a good thing to know!).

Children who are taping the newspaper onto another child and scrunching up the sides are working with their fine motor finger control and strength.

Children who are decorating their bonnets are practicing their creativity.




---

## Walk This Way

*I've played this game with little ones to get them to follow me and go where I wanted them to go. Once at a Head Start outing, the children were running all around and we wanted them to walk back to the school. We started playing Walk This Way, and instead of chaos we had a parade of kids marching, skipping, and waving their arms all the way back to the school.*

*I've also played this game with sophisticated teenagers who were soon making up fun dance steps to imitate.*

- - - -  
Two or more  
people  
- - - -

## **DIRECTIONS**

Players take turns walking in the front of a line doing whatever movements they want. For example, the lead player can walk like a duck or an elephant or can make up original movements like skipping backward with hands on his hips. Everyone else follows in line imitating that movement.

It's interesting to see how a person's choice of movements often reflects his personality. One person might do a graceful sideways sliding movement while another prefers a snappy forward two-step.

I have found that it's better with little ones (one to four years) for someone older to be the leader, because sometimes younger children can't immediately think of something and the momentum of the game stops. Keep the energy going and moving forward together, and the fun never stops.

## **VARIATIONS**

Have the children stand beside each other instead of behind, and the feeling becomes more like a chorus line than a parade.

Play this game at the beach where each step leaves an imprint in the sand. The players try to step in the leader's footprints. The leader can jump, hop, take big steps or leaps, and the other players can "read" the footprints and follow!

## **WHAT IS BEING LEARNED**

There's a sense of camaraderie and well-being that goes with feeling in sync with everyone else. When children are in rhythm with others, it lessens the feelings of separateness and strengthens the sense of togetherness.

It's also a thrill for them to do a movement and having everyone do what they do. Imitation is still a form of flattery.

Children are also learning the kinesthetic skill of seeing someone else perform a movement and then finding the correct muscles in their bodies to make that same movement.

## Bat Square Rhythms

*This is a game I learned in New Zealand when I was introducing bat games to a group of Maori. The rolled-up newspaper bats reminded them of a game they play with sticks that involves chanting and timing.*

*I've since introduced their version at many workshops, encouraging participants to choreograph their own original versions. The variations on this can be endless, so I love to see all the possibilities participants invent.*

Group  
activity

### MATERIALS

newspaper  
tape

### DIRECTIONS

Four players are needed; they sit in the shape of a square with each pair of players facing each other. Each player is holding a bat vertically.

At an agreed-upon count, each player tosses her bat to another person. For example, everyone counts 1-2-3-4 and, on the count of 4, each player tosses the bat to the person on her right. The players repeat this pattern many times, then switch to another pattern.

For example, players can change the pattern to tossing the bat to the person across from them on the count of 3, and so on. There are endless possibilities, such as:

- ◆ Players use chants or different sounds to indicate the moment to throw.
- ◆ Players pound their bats on the floor to the beat of the rhythm chosen.
- ◆ Players throw their bats to the left, or across, or change direction depending on the sounds made.

- ◆ Players twirl their bats as they throw them to the other person.
- ◆ Players stand or kneel instead of sitting while playing.
- ◆ Players tap each other's bats instead of tossing them.
- ◆ Attach bells to the bats so they jingle when thrown.

## WHAT IS BEING LEARNED

Working with a small group to choreograph a pattern and then having it work out puts people in sync with others, which is a great feeling.

Rhythm and timing are not just musical skills, they are also needed in smooth cursive writing and fluid speech.



Two or more  
people

## Hum a Tune

*No matter how patient I think I am, nothing tests me more than waiting in a long line or inching along in snarled traffic.*

*I found that one way to stay calm and to keep the kids and me amused is to play these quick guessing games.*

## DIRECTIONS

Take turns humming a tune while the other players try to guess what it is. The player can hum as little or as much of the song as is needed for others to guess. After guessing correctly, everyone can sing the song all the way through or, at least, as many of the words that they can remember!

## VARIATIONS

- ◆ Say a Phrase: Say the first lines to the song or some phrase from the song instead of humming the tune.
- ◆ Write in Air: Each player takes a turn writing a number in the air using a stick or his finger. The other players have to guess what

that number is. The player can have his back to the group or face the group if he is able to draw the number backward. Double- and triple-digit numbers add to the challenge.

- ◆ **Draw in Water:** Draw a number or letter in water. Write a word.

## WHAT IS BEING LEARNED

These games require concentration as players listen to or look at what another is doing. Any time we get an opportunity to focus our attention, we sharpen our ability to stay in the present moment where learning takes place.

These games also teach children that we can choose how we feel. In this case, we can be irritated by a situation or we can play. The choice is ours.

---

## Who Is This?

*Here's a good game to play at any gathering of children who are familiar with each other. I have played it many times at preschools and often amazed the children and the teachers with how well even young children really know each other.*

### MATERIALS

blindfold

### DIRECTIONS

Put a blindfold on the first player.

Once the child's eyes are covered, the group sings this song:

"Who is this, who is this? Can you tell us who this is?"

Group  
activity





(I sing it to the tune of the old Campbell's soup commercial. If you're not old enough to remember the Campbell's soup tune or don't know it, make up a tune of your own or just chant the words.)

As the children are singing, I pick a child from the group to come up and stand before the blindfolded child.

The blindfolded child then reaches out and touches the child in front of her. She feels his hair, the contours of his face, and his clothes and then guesses who that person is.

If the player is having a hard time identifying the other (or you're not comfortable with all the touchy-feely stuff), have that person say something and add voice recognition to the game. (With older players, the person can disguise his voice and add to the challenge.)

Once the person is identified, that person becomes the next blindfolded player and the group sings the chant again while you pick the new person to be identified.

### **WHAT IS BEING LEARNED**

Children are becoming aware of details in others, such as hair length and height. They are also developing their ability to "think" with their sense of touch or hearing. They are stimulating their ability to notice the clues that senses other than sight tell them about their world.

# Index

This index is designed so that you can choose a game by the materials you have handy.

*Recyclables* include cans, newspapers, plastic bags, and Popsicle sticks.

- |                            |                                |
|----------------------------|--------------------------------|
| Bubble-Wrap Jump, 110      | Life Is a Kick, 164            |
| Carry Game, 19             | Lily Pads, 157                 |
| Cereal Box Puzzles, 16     | Match the Lids, 18             |
| Do Your Own Thing, 127     | A Number of Number Ways, 88    |
| Gentle Ball Games, 125     | Popsicle Stick Puzzle, 40      |
| Going Bats, 121            | Sounds True, 61                |
| Going to the Store, 23     | Straw Counts, 77               |
| Instant Relay, 134         | Styrofoam Hammering, 111       |
| Jumping Joys, 130          | Who's in the Box?, 149         |
| Kangaroo Ball, 38          | Window Shade Rhyming Games, 69 |
| Leap, Run, and Slalom, 129 | You Can with Cans, 78          |

*Household Materials* are likely to be found in or around home or school. They include string, rope, blankets, and beans.

- |                           |                                    |
|---------------------------|------------------------------------|
| Alphabet Fishing, 52      | Dictionary Game, 73                |
| Ballooning Inside, 133    | Domino Blowing, 109                |
| Balloon Baseball, 106     | Envelope Shapes, 117               |
| Beach Ball Bounce, 96     | Eyedropper Art, 141                |
| Blanket Ride, 104         | Full of Beans, 20                  |
| Book in a Baggie, 47      | Holes-in-Your-Sheet Toss, 107      |
| The Bunny Game, 108       | Hot Ball/Cold Ball, 70             |
| Category Toss, 72         | Just You and Me and a Balloon, 103 |
| Cereal Necklace, 80       | Lost in Rice, 114                  |
| Counting on Estimates, 87 | Musical Movements, 60              |

*(Household Materials continued)*

- Obstacles Galore, 34
- Penny Flick, 145
- Poker-Chip Play, 152
- Sand Letters, 55
- Shoe Mountain, 163
- Stepping on Tails, 159
- Stone Painting, 144
- A Stone's Throw, 151
- Target Ball, 138
- Toothpick Sculptures, 143
- Tube Sock Throw, 137
- Wiggly Snake, 136

**Paper includes construction or plain white paper as well as crayons or markers.**

- Alphabet Instant Letters, 57
- Alphabet Trail, 62
- Book in a Baggie, 47
- Color Dots, 10
- Doodling Doodles, 166
- Everyone Wins Bingo, 15
- Foot Writing, 118
- Footprint Game, 119
- Go Fish for Colors, 24
- Guess Who? Guess What?, 81
- Internal Map, 36
- Learn to Read in Five Minutes or Less!, 50
- Letter Hopscotch, 58
- Match Me Up, 12
- My Very Own Color Book, 7
- Name Matches, 49
- Polka Dot Letters, 54

**No Materials games need no more equipment or preparation than your smile.**

- Breath Math, 82
- Color Run, 8
- Digestion Drama, 28
- Drive into the Empty Spaces, 26
- Finger Letters, 65
- Hold Tight/Let Go, 139
- How Many Steps?, 94
- Human Hoop, 101
- Instant Relay, 134
- Jolly Jumps, 102
- Kung Fu Math, 83
- Math Story, 85
- Mr. Clock, Mr. Clock, 92
- Palm Measuring, 95
- People Pencils, 63
- A People Sandwich, 154
- Push Me/Pull You, 161
- Rare Races, 113

- Remarketing fees
- Late payment charges
- Collection telephone charges
- Deal rewrite fees
- Equipment redelivery charges

The profit opportunity areas available to a leasing company may vary depending on the type of transaction, the level of credit risk involved, the dollar size of the lease transaction, and the business practices of its competition. For example, in the case of multi-million dollar leases of typically high residual value equipment, a substantial portion of lease profits come from the equipment ownership tax benefits and the end-of-lease equipment sale, or re-lease, proceeds. In small ticket transactions, such as \$10,000 to \$50,000 leases, the lessor expects little or no profit from end-of-lease sales. Instead it looks to its lease interest rate spread—the difference between its cost of funds and the interest rate implicit in the lease, and documentation and deal review charges.

The following discussion of lease profit areas has been primarily taken from earlier material throughout this book and summarily provided below to enable the reader interested in looking at involvement in equipment leasing to have all key aspects pulled together for review.

## 1. Basic Lease Profit Areas

The principal lease transaction profit areas are interest charges, equipment tax benefits, and residual earnings. Not maximizing any one can significantly reduce the potential for transaction profits.

### a. Interest Charges

The obvious way to make money in an equipment lease is through financing profits. Financing profit, sometimes referred to as financing spread, is the difference between a leasing company's cost of money and the lease interest rate charged. The higher the interest rate charged, the greater the financing profit.

**Illustrative Example** *Financing Profit:* Assume a lessor borrows money at a 9% per annum interest rate and charges a lease interest rate of 11%. Its financing spread is 2% per annum. By increasing the lease interest rate to 12%, its financing profit increases to 3%.

► **Lease Marketing Tip** Prospective lessees, particularly small ticket lessees, are often more sensitive to their monthly rent cash outflow than to the lease interest charged. So, offering a longer lease term (stretching out the period of lease payments from, say, three years to five years) can maintain solid, or increase, financing profits and provide an acceptable lessee rent payment dollar amount. For example, assume that a lessor's cost of money is 9% per annum, and that its desired financing spread is 3% per annum. Assume also that the equipment involved will have a zero end-of-lease value. In this case, the monthly, in arrears, payment on a three-year lease of a \$400,000 lathe would be \$13,286. If the prospective lessee finds the \$13,286 monthly payment too high, stretching the lease term to five years, at the same lease interest rate (9% + 3% = 12%), would drop the monthly lease payment to \$8,897. Stretching out the lease term provides an opportunity to build in higher financing profits in a lease, while still keeping periodic cash flow

payments relatively lower. For example, increasing the lease interest rate charge to 15% over the same five-year term would result in a monthly lease rent of \$9,516.

Market competition, reasonableness, and sometimes state usury laws limit how much financing spread a lessor can build into its lease rate. Typically, the smaller the lease dollar size, the higher the lease interest rate charged. For example, interest rates on \$5,000 to \$50,000 equipment transactions generally range from 12.5% to 24% per annum. As transactions approach \$100,000 and over, simple interest rates are generally in the 10.5% to 13.5% range. Once the deal size hits \$1,000,000, rates can run 2% to 4% below the lessee's equivalent long-term borrowing rate. In the latter case, for example, a \$4,000,000, 12-year aircraft lease for a lessee that borrows long-term money at 11% per annum could run from 7% to 9% per annum.

### ► Observations

- A lower lease rate in a larger equipment transaction is not as bad as it may appear, because greater absolute dollar profits are available. For example, a profit of 2% on a \$1,000,000 lease is \$20,000, whereas it is \$200 on a \$10,000 lease.
- The competitive nature of the multimillion dollar lease transaction market often forces lessors to price their lease rates with little or no financing spread profit, making them to look to other transaction aspects, such as tax benefits and equipment residual proceeds, to offset minimal or nonexistent cash flow.

► **Recommendation** Although leasing companies are not generally regulated by federal or state laws, times are changing. Before setting what may be a high lease interest rate, have your lawyer check the governing state laws. A few states have enacted, or are considering implementing, rules which protect lessees. For example, unconscionable profit laws, referred to as usury laws, originally designed to protect individuals have, in Texas, been extended to corporations in installment sale-type financing. Included are low fixed price purchase option leases. If your lease runs afoul of state law, a lessee may be able to cancel the lease agreement and walk away without penalty. If you discover after entering into a lease that you have inadvertently charged a lease rate higher than governing law permits, it's always a good idea to approach the lessee with an offer to reduce it, using a plausible business excuse such as you have decided to make this financing rate adjustment to certain preferred customers.

### b. Equipment Tax Benefits

The tax aspects of equipment leasing are detailed in Chapters 5, 6, and 7. Often, particularly in multimillion dollar equipment leases, the tax benefits available to a lessor are a critical component in computing anticipated transaction profits. In fact, good credit companies considering the multimillion dollar lease transactions typically demand that lease rates reflect—and therefore pass through to a lessee in the form of relatively lower rent charges—at least a portion of the transaction tax benefits. Determining how to take into account the transaction tax benefits is a complex process. Fortunately, the many lessor profit (sometimes referred to as “yield”) analysis software programs make the job considerably easier. See Chapter 9 for a discussion of the lessor yield analysis approach.

As explained in earlier chapters, by leasing equipment, a lessor, as equipment owner, has the right to claim equipment ownership tax benefits such as depreciation and any available investment tax credits. In the case of leveraged lease transactions, there are certain other tax write-offs, such as the interest charges on the long-term equipment loans. A

lessee, on the other hand, typically cannot claim any equipment ownership tax benefits, but is entitled to deduct for the rent payments as a business expense.

➤ **Observation** By taking into account equipment-related tax benefits, a lessor is able to offer lower rents while maintaining its profit objectives. For example, typically a lessor offering an annual lease rate of 10% could reduce its lease interest rate to 8% without reducing its economic return, by incorporating depreciation benefits into its rent pricing.

### c. Residual Earnings

In pricing a lease transaction (setting the lease rents), an ideal lessor objective is to have sufficient lease term rents to return its entire equity investment, repay any equipment loans, and provide a solid profit, with any end-of-lease sale or re-lease (often referred to simply as “residual”) earnings simply as windfall profits. In other words, to set the lessee lease rents using a zero equipment residual assumption. In small ticket equipment transactions this is typically possible. In multimillion dollar equipment lease transactions, largely due to market competition, it is typically not possible.

## 2. *Additional Areas of Potential Lease Profit*

A leasing company can earn significant profits from less obvious transaction aspects such as interim rent, prepayment penalties, casualty occurrences, insurance cost markups, upgrade financing costs, documentation fees, filing fees, maintenance charges, repair costs, excess use charges, equity placement fees, debt costs and placement fees, commitment fees, nonutilization fees, remarketing fees, late payment charges, collection telephone call charges, deal rewrite charges, and equipment redelivery charges. Paying attention to each potential profit area can produce attractive additional economic returns.

### a. Interim Rent

One way many lessors build in extra profit dollars is providing for interim rent. Sometimes called precommencement, or stub period, rent, it is rent that is payable for a period running from the start of the lease to the beginning of its primary, or main, term. For example, a seven-year lease transaction might provide for the primary term to begin on the first day of the month. If the equipment is not delivered and accepted under the lease contract on the first of a month, there will be an interim rent period. If equipment was delivered, for instance, on January 7, the seven-year period would begin February 1, with an interim term running from January 7 through January 31. If the lease rents are computed on the basis of the primary term rents, the stub period rent is a windfall profit.

### b. Prepayment Penalties

A typical net finance lease may not be canceled for any reason, thus guaranteeing the lease profits, subject of course to a rent payment default. Some prospective lessees, however, want the right to terminate a lease early if the equipment becomes obsolete or surplus to their needs. This request can be an opportunity for profit. Generally, when a right to terminate a lease early is granted, it is permitted only upon payment of an amount equal to a predetermined termination value. By ensuring that the amount which a lessee must pay upon any lease termination not only makes a lessor economically whole, but also has a premium built in, say 5% of equipment cost, the benefit of the original bargain can be preserved—with a profit.

Generally when an early lease termination right is granted, the lessor incorporates a termination payment schedule into the lease, with each applicable termination payment expressed as a percentage of equipment cost for each rent payment period when a termination could be exercised. Payment of the appropriate termination value amount on any permitted rent date allows the lessee to terminate a lease as of that time. For example, a monthly lease might provide for a termination payment of 85% of equipment cost when the sixth rent payment is made, 83% of equipment cost when the seventh rent payment is made, and so on.

Properly structured, payment of a lease termination value will return the entire remaining equipment investment, with its anticipated profits at least to the date of termination, provide funds to pay off any equipment purchase loans, and add an additional profit, the exercise penalty.

### c. Casualty Occurrences

An equipment casualty occurrence brings a lease to its end. In the same manner as an lessee-elected early lease termination, provision must be made for the protection of a lessor's investment and profit, at least to the date of the casualty occurrence.

Typically, leases contain casualty loss provisions that require the lessee to pay a pre-determined casualty value payment. These payments are usually prescribed by formula in a lease provision or in a casualty payment schedule. They, like termination payments, are designed to make a lessor economically whole, including payment for loss of anticipated residual profits. For example, a monthly lease might provide, in the event of an equipment casualty occurrence during a specified rent payment period, for the payment of a casualty value amount equal to 98% of equipment cost any time during the second rent payment period, 96% of equipment cost any time during the third rent payment period, and so on.

In structuring an equipment casualty payment obligation, the lessor can build in a reasonable profit to compensate for loss of its long-term investment opportunity. When casualty payments are expressed as a percentage of equipment cost in a casualty payment schedule, one way to do this is to increase rock-bottom casualty loss payments by a small percentage, say 2% of equipment, added on each specified casualty value percentage.

### d. Insurance Cost Markups

Equipment insurance is a must in any equipment lease, and generally the lessee is required to provide the coverage through its insurance carrier. Although care must be taken by a lessor not to run afoul of any insurance regulations, providing the insurance itself and passing the cost on to the lessee, with a markup, can create another lease profit opportunity. For example, a lessor might charge \$14 a year for a \$2,000 casualty insurance policy costing \$8 a year, making a \$6 profit. On a \$20,000,000 equipment portfolio, this means \$60,000 annually. A lessor with insurance volume purchasing power can offer equipment lease insurance at a markup, while still providing rates equal to or lower than that available to most lessees.

There is another added benefit to a lessor providing the insurance coverage; doing so eliminates the need to administratively track compliance with the insurance coverage requirement of a lessee.

### e. Upgrade Financing

Equipment upgrades, when a lessee adds to or modifies existing leased equipment, can provide an opportunity for leasing profit. If the upgrade is not readily removable or

has no stand-alone value, generally the existing lessor is the only one willing or able to finance it. In these situations, the lessee has two choices: to purchase upgrade with its own funds or agree to whatever lease rate the lessor offers. If, as is the case in many situations, the upgrade is deemed under the terms of the lease to become the property of the lessor because, for example, it becomes an integral part of the leased equipment and cannot be removed without damage to the existing equipment, then paying a higher financing cost may still be cheaper than purchasing an upgrade which automatically becomes the lessor's property.

#### f. Documentation and Filing Fees

Many lessees, particularly those leasing small ticket items of equipment such as fax machines and small telephone systems, will pay, with little or no objection, transaction processing, documentation preparation, and security interest filing fees. Small lease transaction documentation fees generally run from \$50 to \$200 per transaction. Security interest filing fees, such as state Uniform Commercial Code filing fees, are generally nominal, ranging from \$15 to \$25. The more fees a lessee pays, the less a lessor's profit erosion.

#### g. Equipment Maintenance and Repair Charges

Requiring a lessee to pay for all normal equipment upkeep, such as maintenance and repairs charges, protects a lessor's investment by ensuring that the lessor's profit is not eroded by unexpected maintenance and repair costs. A lessor able to shift the full cost burden of equipment maintenance and repair to a lessee in effect creates profit by eliminating resale or re-lease rehabilitation expenses when the lease term ends. In a typical finance lease arrangement, the lessee assumes all equipment upkeep expense. In other types of equipment leases it is a matter of negotiation.

Lessors willing and able to provide equipment maintenance and repair service, even in connection with a finance lease, may realize an opportunity for additional profit. Many computer vendors, for example, offer these types of services and have created substantial collateral lease revenues.

Implementing strict equipment maintenance and return provisions is another way to help ensure the highest potential profits. Provisions that require the lessee to return equipment in good operating condition ensure that end-of-lease equipment sale or re-lease values are the highest possible.

#### h. Excess Use Charges

The better the condition leased equipment is in when returned, the greater the potential for the highest possible end-of-lease sale or re-lease profits. One way to ensure the best possible return condition is to put use restrictions on the equipment, which, if exceeded, call for penalty charges payable at the end of the lease. Automobile lessors typically have annual mileage limitations, which, if exceeded, require the lessee to pay additional rental charges to make up for potentially reduced end-of-lease sale or re-lease value. Leased aircraft are also often subject to use restrictions. Excess use charges can produce extraordinary profits.

#### i. Equity Placement Fees

A lessor able to sell a portion, or all, of its equity investment in a lease to another equity investor can earn fees for providing the investment opportunity. To ensure this option is available, a lease agreement must explicitly permit the sale of some or all of the lessor's interest in the equipment and the lease without consent by the lessee.



#### j. Leveraging a Lease Investment with Third-Party Debt

At times, leasing companies borrow a portion of the funds necessary to purchase the equipment from a third-party lender in transactions referred to as leveraged leases. By properly leveraging a lease investment with third-part debt, a lessor can increase its economic return. The key to being able to do this is to ensure that the lease agreement explicitly permits the assignment of the lessor's interest in the equipment and the lease to a third-party lender without consent by the lessee.

#### k. Commitment and Nonutilization Fees

Commitment and nonutilization fees are another area for leasing profits. Lessors frequently ask lessees to pay a commitment or nonutilization fee when equipment is to be delivered in the future.

Commitment fees, nonrefundable in nature, are designed to compensate a lessor for holding funds available. These fees help reduce the risk of lessor yield deterioration through adverse changes in its borrowing cost. Commitment fees are typically imposed when equipment deliveries are more than six months away, but many lessors ask for them when deliveries are not that far off. A fee of this nature must be paid up front and can range anywhere from 0.5% to 2% of equipment cost.

Nonutilization fees are, in effect, a penalty for not using the lease funds that a lessor held available for future delivered equipment. This type of fee can be less onerous, because it is payable only if the equipment is not leased and because it is due when the commitment period is over. For example, a lessor may require that the lessee pay a fee equal to 2% of the available funds unused at the end of, say, five months. If all committed funds are used, the lessee owes nothing.

#### l. Remarketing Fees

Equipment remarketing fees are a way for equipment lessors to increase lease profits. For example, a lease may require that a lessee pay a predetermined fee to the lessor if the lessee elects to terminate a lease early, or at the end of the lease, in connection with the lessor's remarketing (the sale or re-lease) of the equipment. These fees are in addition to any other charges which may be payable, such as termination penalties or costs to repair equipment according to the condition required under the lease agreement.

#### m. Late Payment Charges

Leases should always incorporate lessee late payment charges. If, for example, rent is not paid when due, there should be a penalty added to the late payment. Lessees often tolerate penalties in excess of the actual time value of money cost. In fact, some late payment penalties run as high as 5% to 10% of the rent charge.

#### n. Collection Telephone Charges

Although not strictly a profit opportunity requiring the lessee to pay for any cost of ensuring timely lease payments, many lessors, particularly small ticket lessors, require lessees to pay telephone charges on collection calls. Anything that reduces overhead is indirectly a lessor profit item.

#### o. Deal Rewrites

A lessee requesting a change in the structure of a lease, referred to as a deal rewrite, may agree to pay a deal rewrite fee for the privilege, for example, of having its lease extended. This can provide substantial profits, particularly in small lease transactions.

p. Redelivery Charges

Equipment redelivery charges are another area of profit opportunity. It is not unusual for a lessee to agree to return the leased equipment at the end of the lease to a designated return point, free of charge to the lessor. And it is not unusual for a lessor selling or re-leasing the equipment to a third party to obtain a delivery fee from the third party from the lessee's location of use. Some lessors get lessees to agree to pay for all such shipment charges regardless of where the equipment is designated to be shipped by the lessor, and then get the purchaser, or new lessee, to pay a delivery charge as well.

## D. Considerations for Setting Up a Leasing Operation

Starting a leasing company is an involved process, and a detailed explanation is beyond the scope of this book. However, if you are considering establishing an equipment leasing activity, the following overview will assist you in determining threshold considerations. In making such a threshold assessment, you should take into account all aspects of leasing that have been discussed earlier in this book, such as the financial, tax, legal, accounting, and business considerations. In addition, you must think about the actual mechanics of starting and running a successful leasing operation, including the day-to-day administrative aspects of running a leasing business, obtaining adequate funding for lease transactions, marketing your financing, credit evaluation, documentation processing, state sales and use tax compliance, equipment appraisal and repossession, handling rent delinquencies, and working with outside counsel in the event a lawsuit is necessary.

The following discussion is a brief overview of the primary start-up and operational considerations necessary for establishing and running a leasing operation. Because of the many individual company variables, it is not possible to address all possible aspects that a particular company should consider.

### 1. *There Must Be a Solid Competitive Reason for Being in the Leasing Business*

In determining whether to start a leasing company in today's competitive environment, a company or individual should have a reason to start a leasing company that goes beyond the mere desire to get into the equipment leasing business because it sounds interesting or profitable. And that means that unless you have something unique to offer, such as filling a financing niche that has not been fully addressed by other leasing companies, or your company has a vast appetite for tax shelter offered by depreciation benefits of owning equipment, the road to success can be very difficult. On the other hand, if you or your company has a valued-added reason for entering the equipment leasing business, the story can be different, such as if your company is an equipment manufacturer or vendor looking to make leasing available for your customers. In addition, if you have significant contacts with equipment vendors who do not have effective financing in their marketing package, entering the leasing business may have competitive merit without offering something unique. For companies or banks already in the financial service business, entering the leasing market using the existing customer base can also make sense, even though the financing programs are not market unique.

In a nutshell, before you jump into the leasing business, make sure that you have defined your market and that there is a niche to be filled, or you have a value-added benefit to offer in the traditional market.

## **2. Are Competitive Interest Rate Loans Available?**

Clearly, you must have access to adequate funds at competitive interest rates if you plan to competitively enter the leasing business. Unless you or your company has readily available internal funds, getting the necessary debt and equity funds to purchase equipment for lease may not be easy. Interest rate aggressive equipment lease lenders, such as banks, often require a business track record of as much as two years in the leasing business before they are willing to make loans available. Or they require other justifications for why taking the time to enter into loans arrangements will be worthwhile, such as your company is an equipment vendor with a solid sales and business history.

## **3. Will Market-Dictated Leasing Profits Be Acceptable?**

You must evaluate the lease rates offered by any lessor competition you may encounter. Competition over recent years in the leasing business has forced lease rates down. You may find that your acceptable profit level for lease transactions may not be competitively possible. For example, in the big ticket leasing market, many leasing companies, are accepting after-tax investment yields in the 5% to 6% range. If that is the market you intend to enter, you may not find the economic returns necessary to attract business worthwhile.

## **4. Residual Assessment**

In many transactions, except generally small ticket leases, what you expect the equipment will be worth at the end of the lease term, the estimated residual value, will be an important ingredient in determining your profit expectations. In highly competitive transactions, you may be forced to make high equipment residual estimates in pricing your lease rents to win transactions. If this sounds unacceptable, then find a market area to fit your residual comfort level.

➤ **Observation** If you are willing to play the residual end game, it's always a good idea to get expert equipment appraisal assistance.

## **5. Prospective Lessee Credit Evaluations Are Critical**

A critical element to survival in the leasing business is having the ability to properly assess the credit risk of entering into long-term leases with prospective lessees. Therefore, if your company doesn't have the internal ability to assess the credit risk of a lease investment, it must acquire the expertise. And you should keep in mind that the credit approach for leasing to small businesses is dramatically different from leasing equipment to Fortune 1000 companies. Someone able to effectively evaluate the credit worthiness of a Fortune 1000 company may be totally unable to make an effective credit evaluation of a small business for lease business purposes.

➤ **Observation** In order to be competitive in most leasing markets, your company must be able to make credit assessments quickly, that generally means in a matter of days, not weeks.

### **a. Basic Credit Primer**

As mentioned, a prospective lessee's creditworthiness is the most important consideration in the lessor's decision to provide financing. If the prospective lessee's credit is

weak, financial support from the vendor or other third party may be the only way for a prospective lessee to secure desired equipment financing.

A discussion of how to evaluate the credit worthiness of a prospective lessee is beyond the scope of this book. In addition, what may create a credit problem to one lessor, may not create a credit problem for another lessor. For example, leasing companies with in-depth equipment and re-marketing expertise may be more willing to overlook the typical credit concerns of a leasing company without this expertise.

Notwithstanding the fact that credit evaluation is beyond the scope of this book, it will be helpful to go over some basic considerations. In reviewing a prospective company's credit strength, there are many factors brought into consideration, including assets and liabilities, cash flows, years in business, management strength, market presence, and the dollar size of the request financing.

Large publicly held companies, particularly the Fortune 1000 companies, are often easiest to evaluate because of the ample and reliable information available from audited financial statements that have been prepared by recognized accounting firms, and from publicly available material on file with the Securities and Exchange Commission. In many cases, these companies have been "rated" for investment purposes by investment rating services such as Moody's and Standard & Poor's. In addition, valuable credit information can be obtained from companies such as Dun & Bradstreet. These reports are invaluable for the equipment lessor.

To give you an idea of the various aspects of the credit evaluation process, let us look at the criteria used in a simple credit evaluation—that for a small business prospective lessee. These "credits" are some of the hardest to evaluate.

The following criteria are actually used by a small ticket lessor whose equipment lease transactions range from \$5,000 to \$250,000.

- **Minimum time in business** The applicant must have a minimum verifiable time in business of two years; three years is required in the case of applications over \$25,000 and four years in the case of applications over \$100,000.
- **Existing banking relationship** The applicant must have a business bank relationship of at least two years and the bank account must show a minimum low four-figure average balance. In the case of transactions exceeding \$25,000, the minimum average account balance must be in the low five figures. There cannot be any overdrafts or check returns for insufficient funds.
- **Trade references** The applicant must provide three significant trade references, each of whose relationship goes back at least six months. COD trade references will not be acceptable.
- **Good personal credit** Personal credit reports must be forthcoming that contain no derogatory information.
- **Financial statements** Financial statements must be supplied for transactions exceeding \$25,000. Current assets must exceed current liabilities and, for transactions in excess of \$50,000, a minimum equity of \$75,000 must be present.

## 6. Assessing Leasing Business Risks

As with any other business activity, there are unique business risks in equipment leasing that you must consider. See Chapter 8 for a discussion of investment risk in leveraged lease transactions. The risks are similar in nonleveraged lease transactions. In addition to these risks, you must be prepared to deal with prospective lessee fraud, something that

exists, and something that can be minimized with a careful credit and business analysis of each prospective lessee. An experienced leasing credit person will be invaluable in preventing a credit fraud.

## **7. Administrative Issues**

Whether you intend to enter the leasing business as a lease broker or a principal lessor, you must establish the necessary administrative mechanics to carry out all aspects of your leasing operation. And that includes, credit review processing, document processing and review, security interest filings, tracking and payment of state sales and use taxes, rent invoicing, ongoing marketing of existing customers for new business, new prospect marketing, collection, accounting, equipment repossession, and lawsuit initiation and monitoring. The variety of computer software programs available today can facilitate many of the tracking and processing activities, for example, lessor rent pricing and invoicing.

## **8. Legal, Tax, and Accounting Implications**

Every lease transaction has tax and accounting implications to the leasing company, which can vary depending on changes in the business aspects of a lease transaction. For example, offering a \$1 purchase option at the end of a lease term changes the lease from a true lease for income tax purposes—where the lessor is entitled to claim equipment depreciation, and, if available, any investment tax credits—to a conditional sale—where the “lessor” is deemed to be an equipment lender and thereby not entitled to the equipment ownership tax benefits.

The characterization of your lease investments for accounting purposes can affect your financial statements. Your accountant must be brought into your early consideration discussions to assist you in understanding the financial reporting effect various lease structures will have on your existing business, or in financial presentations to your shareholders or investors.

There are a variety of legal considerations, in addition to the documentation of a lease transaction. For example, you will have to consider qualifying to do business in the various states you intend to do lease business, otherwise, at a minimum, the courts in the states you did not so qualify, will not be available to you in the event you need to sue a defaulting lessee. And the various state laws must be checked to determine what statutory language, if any, must be included in your lease agreement. Your lawyer will be instrumental in bringing the legal considerations into focus for your particular business.

## **9. Lease Documentation**

The strength of your leasing documentation can make a major business difference in your early success, and in your ability to collect from a defaulting lessee. If, for example, you intend to assign your lease as security for equipment loans, the lease agreement must contain effective assignment clauses, as well as other effective provisions. If the lessee defaults, you will have trouble collecting remaining rents due unless your lease agreement has a hell or high water provision. See Chapter 3 for a discussion of lessor assignment and hell or high water provisions.

Putting a good lease agreement together may take some time and requires an investment for an attorney’s advice. Investing thousands or even millions of dollars using a lease you’ve copied from another lessor can be penny-wise and pound-foolish.

## **E. Leasing Offers Equipment Vendors a Marketing Edge**

Ask any product marketing person and he or she will tell you that the easier it is for a customer to financially acquire a new product, the easier it is for the prospective customer to make an acquisition decision—and the shorter the sale cycle. The shorter the sale cycle, the less chance of losing an equipment sale to a competitor.

Studies show that nine of ten companies now lease equipment. So, if you have lease financing available at the time you make a product sales presentation, your chances of making the sale are increased. The real question, then, for a product vendor is how to set up the most effective customer financing program—and a key aspect of that decision is whether it should work with a third-party lessor or set up its own captive leasing operation.

### **1. What Are Internal Business Capabilities?**

A product vendor's first step in setting up an effective customer equipment financing program is to take into account its equipment leasing management, operational, and financial capabilities, as well as its leasing operation interests. Depending on the answer, the product vendor will pursue establishing its own equipment financing activity, possibly setting up a captive leasing company or entering into a relationship with one or more independent leasing companies (see below). Once that decision is made, the next step is to design a customer financing program that will be responsive to prospective customer financing requirements. For example, the credit considerations when approaching small business customer equipment financings will be considerably different from those when approaching Fortune 1000 business customers. Deciding in advance how to handle the various requirements is a critical element in maximizing the benefits of offering customer equipment financing. Nothing is more damaging to product marketing than having to tell a company it does not meet the financing requirements of a third-party lessor, after offering equipment financing, particularly when the reason for the turndown was something that to another type of lessor would not have been an objection.

### **2. The Choice Between a Third-Party Lessor and an In-House Financing Setup**

As a general rule, having an in-house financing capability, such as a captive leasing company, is the best choice because you control the financing decision and the lease documentation. An in-house leasing capability is also the right choice if you want to be assured that the most effective type of financing program—one tailored to fit the customer's needs—is in place. As a general rule, however, for equipment vendors without financial and operational expertise, good leasing company management, and available competitive funding, the better choice is often to set up an equipment leasing program for prospective customers using outside lessors.

Whether a product vendor's decision is to set up its own internal financing capability or to use outside leasing companies to service its customers' financing needs, for the financing program to work effectively, the funding must be reliable and readily available to every type of prospective vendor customer possible, particularly when working with a third-party leasing company. Merely providing a prospective equipment customer with the name of an equipment leasing company to talk to is not enough. And relying solely on the leasing company to properly put together the equipment financing has its risks. In such a situation, a product vendor must have substantial input into, and understanding of, the credit decisions and documentation processing.

► **Observation** If the decision is to rely on third-party leasing companies to satisfy equipment sales financing needs, one critical point must be kept in mind: If the success of the equipment sales effort depends heavily on customer product financing, then a product vendor cannot rely on one outside funding relationship. There have been many situations in which both bank-affiliated and non-bank leasing companies have closed their funding doors without warning and, at times, with indifference to customer commitments.

### **3. Establishing Overall Financing Programs Objectives**

The overall objectives for an effective equipment financing program are obvious, yet time and again they are frequently forgotten in the rush to put business on the books. For example, everyone agrees that maintaining good customer relations is essential, yet many equipment vendors overlook the fact that once a third-party leasing company is involved, the situation may be out of their control. One major U.S. leasing company was well known for aggressively and effectively establishing relationships with equipment vendors. And their customer service/administration department was equally well known for aggressively, and inadvertently, damaging customer relationships through inattention and indifference.

Here are the overall guidelines to follow if you're considering establishing an equipment financing program. A vendor equipment financing program must:

- Preserve at all times good customer relations.
- Allow the product vendor to control its customer relationships.
- Avoid the whims of individual financing sources.
- Give the impression of financing continuity.
- Be totally reliable under all circumstances.

In order to achieve your financing objectives, you'll want to:

- **Consider establishing your own financing company** Although setting up a financing subsidiary may be difficult, doing this properly can go a long way to providing a significant competitive marketing advantage. This can be done in many ways. For example, if you feel you do not have financial resources or management available to run a leasing operation, or would prefer not to operate a financing company, explore other similar alternatives in which you can maximize control, such as setting up a financing joint venture with an experienced lessor.
- **Establish multiple funding relationships if you decide to work with third-party lessors** If establishing your own financing company is not feasible or desirable, and you are going to set up a third-party leasing program for your customers, establish relationships with more than one lessor. Relying on one lessor to service all potential customers' needs is unrealistic for many reasons. One lessor's credit standards may not be broad enough to fit your prospective customer profile, which you may not discover until you run into a unanticipated problem, or lessor business changes could put an end to your customer program virtually overnight. Historically, for example, some bank-affiliated and nonbank leasing companies have closed their funding doors without warning and, at times, with indifference to customer commitments. So, establishing multiple funding relationships is essential, and working with at least three lease financing companies is recommended.

In establishing third-party lessor funding relationships, here are some tips.

- **Control the document process** To ensure every transaction that can get done gets done, make sure you control the deal documentation, and that means:
  1. **Develop uniform lease documentation** Developing one set of lease documents generally acceptable to all funding sources is an important marketing step. If a deal is turned down by one lessor, documents do not have to be resigned to use another funding source, thus saving time and possible embarrassment.
  2. **Handle documents** Handling the lease application and documentation process is important. This ensures problems will be properly addressed in a timely manner. For example, your salesperson should prepare the lease application and documents, submit them to the leasing company, and monitor the transaction weekly or, if necessary, every several days.
- **Be wary of funding commitments** Even if you have what appears to be a written commitment to fund customers who meet certain financial and business standards from a third-party leasing company, you may have no assurance of funding reliability. These commitments are typically filled with qualifications, properly so from the lessor's viewpoint, and are rarely legally enforceable.
- **Avoid providing financial guarantees** Be careful about providing financing guarantees for customer leases requested by third-party lessors. It is not unusual, for example, for a leasing company to suggest that if your company would guarantee all your customer leases, deals would always get done. Financial guarantees can adversely affect a product vendor's general growth requirement borrowing capabilities. Worse yet, many lease guarantees permit collection from the guarantor without having first exhausted all remedies against the lessee.
- **Investigate prospective third-party lessor backgrounds thoroughly** The financial backgrounds, years in business, and deal track records of every third-party leasing company you consider must be investigated thoroughly. Not doing so can create avoidable risks. For example, many leasing companies simply don't have the funds available to properly service a vendor's repeated financing needs. An investigation can prevent unfortunate surprises.
- **Use lease brokers cautiously** Lease brokers have no control over whether a deal will be approved or funded. They often send financing packages out to multiple sources hoping someone will approve it. In small transactions, some brokers spend more time sending financing offerings to sources than preparing a good financing package. Improper packaging alone can result in turndown, something that increases the difficulty of finding future funding.
- **If using lease brokers, watch out for fees** Lease brokers often charge a high fee for their services. In large transactions the services generally are worth the fee; in small transactions high fees are generally unwarranted. When questioned about a high fee, brokers often state that the lessor pays the fee, and so it is of no concern. The fact is, a lessor needs a minimum deal profit and the fee is something it pays based on the rent level. The higher the fee, the less competitive the lease financing. And brokers establish a rent level that permits the largest possible fee.
- **Be skeptical about dealing with lease investment funds** Lease investment funds promoted by investment bankers and lessors surface from time to time. They are public or private limited investment partnerships which raise money to invest in equipment leases. Historically, many have had problems as a result of poor management or improper structuring. And when problems arise funding is



cut off. So, if you decide to work with an investment fund, do not rely on it exclusively for customer funding.

- **When working with third-party lessors, conduct preliminary funding reviews** When using third-party leasing companies to provide customer financing, an equipment vendor should conduct its own preliminary “lease acceptability review” before submitting a transaction to the prospective leasing company to head off problems. Often, issues that could result in a turndown can be addressed to facilitate an approval before the application is submitted. Once a prospective customer is turned down by one leasing company, it is more difficult to get a funding approval from another lessor. The reason may not be logical, but it is a fact of business life: Credit managers at times turn down business they may otherwise accept merely because of fear that another credit manager spotted a problem they could not find.

In summary, there is a customer financing program structure that can work for every equipment vendor, but care must be taken to guarantee that the best possible program is put together. A vendor that works within the financial market realities has the greatest chance of arranging an attractive and reliable financing program.

## F. Summary

Entering the equipment leasing business has benefits, but only if you or your company has a market value-added reason for being in the leasing business. If your company has such a reason, take the time to carefully evaluate all aspects of leasing as it may affect your potential operations.

# Chapter 12

## *Equipment Leasing in International Markets*

### **A. Overview**

The subject of international leasing is complex, and a complete analysis is beyond the scope of this book. However, if you're a part of the leasing business, you should understand the basic issues. And if you believe leasing equipment internationally may be a worthwhile business pursuit, an understanding of key considerations will put the issues you or your company may have to address into a quick business perspective and assist you in assessing whether the subject merits further investigation.

You may have heard that there are many exciting opportunities in the international leasing market. That is true—but only for financially well-qualified and lease transaction-sophisticated entrants, as you'll realize as you read this chapter.

### **B. A Complex Market of Growth**

There has been a dramatic growth in recent years in the demand for the leasing of equipment overseas, not only in the industrialized countries but also in the industrially developing economies of such countries as China, Korea, and India. This demand has provided unprecedented and major leasing opportunities for U.S. lessors. But, there are many business hurdles to overcome, and risks to address, in what is commonly referred to as “cross-border” leasing.

International leasing brings with it complex tax, accounting, and legal issues. And more. For example, an international lessor must address:

- Business considerations unique to the particular country in which the lease transaction is done, such as restricted availability of local courts for lease enforcement procedures
- Foreign currency exchange risks
- Possible equipment export issues

Accordingly, the lessors best able to take full advantage of the rising equipment financing needs abroad are those with strong financial capabilities and support resources, such as large multinational equipment financing companies with networks of affiliated leasing companies in various international markets.

### ► Tips

- Equipment leasing associations exist in many foreign countries, such as the Leasing Associates of Singapore. If you're interested in exploring international leasing in particular markets, they can assist you in identifying local leasing companies to work with, for example, for transaction referrals. They also can provide invaluable advice about local business and legal issues that will impact your company, as well as any lease transactions that you do in their country.
- The *World Leasing Yearbook*, published by Hawkins Publishers, Ltd., Coggeshall, Essex, England, is an excellent source of leasing company information. It provides a list of well over 5,500 lessors operating in over 70 countries. It also provides a handy summary of the leasing business in many foreign countries.

## C. The Foreign Lessee Demand

For a foreign lessee, leasing from a U.S. lessor generally has the same type of traditional lease advantages that a U.S. lessee could expect. A discussion of these traditional lessee leasing advantages is in Chapter 1. There, however, may be additional advantages. In many countries, local circumstances can add substantially to the attractiveness of leasing from an international lessor. For example:

- If available local funding is expensive, or capital is unavailable or in short supply, the ability to obtain a cross-border lease can be the deciding factor in whether to acquire new equipment.
- There are times when a foreign country's lenders are unwilling to provide medium or long-term financing because of economic instability, but international lessors are willing to do so, because they want additional business or their lease investments are more risk diversified, with relatively little local investment concentration in the country in question.

Make no mistake, however, the prospective foreign lessee's decision to enter into a crossborder lease is still primarily a cost decision. There generally must be a clear cost advantage over other financing alternatives. In addition, the lease terms and conditions may have to be better than those available locally.

## D. Advantages for Lessors Leasing Internationally

The United States domestic market, as discussed in Chapter 11, is highly competitive, and currently there is more lessor money available than there are lease deals to do. As a result, some U.S. lessors, in an effort to develop new sources of business, have moved aggressively into the international leasing market for opportunities, finding a particularly high demand for equipment financing in the economically emerging countries, such as China. International leasing interests U.S. lessors for another significant reason: There are possibilities for increased economic lease returns through the use of:

- subsidized export financing
- tax benefits not available to a local foreign financing company

In fact, in some cases, cross-border leases enable lessees and lessors to avail themselves of tax advantages that exist in more than one country, through so-called "double

dip” lease transactions. These added tax benefits can either make lease pricing more aggressive or increase a lessor’s economic return.

► **Observation** Although there may be relatively more opportunities for equipment leasing abroad than in the United States, it is still a competitive market, with large multinational finance companies having a substantial foothold in virtually every significant foreign market.

For U.S. equipment manufacturers and vendors looking for increased export business, the ability to lease internationally has marketing advantages. Being able to provide leasing to prospective customers in foreign countries may facilitate foreign equipment sales.

► **Recommendation** Equipment manufacturers not familiar with the business of international equipment leasing should work with multinational third-party leasing companies, at least in beginning stages of leasing internationally. This is the easiest and most cost-effective way to gain the necessary financing knowledge and experience, and to avoid the many pitfalls associated with foreign market leasing.

## E. Risks of Operating in Foreign Markets

There are a number of risks that a U.S. lessor faces in cross-border leasing that are not present in domestic leasing. The political risk is the most obvious one, and has wide-ranging ramifications for an international lessor. If, for instance, foreign relations fall apart between the U.S. and the country where the equipment or parties are located, there could be a variety of serious problems, including an inability to collect rent and repossess equipment. In addition, if a lessee pays rent in a foreign currency, there could be a transaction profit deterioration if an adverse change in the currency exchange rate occurs.

Even if political relations remain stable with the country in which the foreign lessee is located, there are risks, such as:

- The long-term nature of the typical equipment lease can subject a lessor to an undue currency exchange fluctuation risk.
- **Tip** There are methods to hedge against the currency fluctuation risk. Investment bankers can often provide guidance in how to handle this risk.
- Certain foreign economies are well known for volatile interest rate and economic fluctuations, which may adversely affect the lease transaction.
  - Assessing the creditworthiness of a prospective lessee is more difficult, with a possibility of making a credit decision mistake, because company financial statements and presentations may be quite different than that of U.S. companies.
  - The business risks are greater than leasing in the U.S. market, if for no other reason than the leased equipment is in a distant land.
  - Leasing-related laws in the international environment are constantly changing.
  - Foreign laws or judicial systems may make it difficult to repossess equipment from a defaulting lessee.
  - The expenses involved in putting together an international lease are typically higher than that of a comparable U.S. lease transaction; thus, the potential for

financial loss is increased if the transaction falls apart during the negotiation stage.

- The language barrier, even with local counsel involved, can create basic misunderstandings that may not be discovered until there is a problem.
- An inadvertent violation of local social customs may result in interpersonal disharmony and mistrust—and eventual business problems.

Properly evaluating these risks takes considerable work. Experienced assistance is critical in determining the extent to which they exist, and how to best handle them.

## 1. Country Risk Management

Commonly referred to as the “country risk,” international lessors must contend with the possibility that events, totally or partially within the control of the foreign lessee’s government, such as war; or the government’s expropriation of the leased asset, the cancellation of the lessor’s export or import license, or the interference with the lessor’s ability to repossess equipment in the case of a lessee default, will result in the loss of some or all of their lease investment.

In certain situations, the country risk can be successfully managed. If the leased equipment will be imported into the lessee’s country, some form of guarantee or insurance program may be available through a governmental agency. For example, many governments set up an agency to assist in, or support, the export of products manufactured in their country. The Export-Import Bank (Eximbank) of the United States is one such agency set up by the U.S. government to support the exporting of U.S. products. Eximbank directly, and through its agent—the Foreign Credit Insurance Association—offers a number of product export support programs that, for example, can reduce political and commercial risks to which product exporters, lenders, or lessors may be exposed in a foreign locale. The support programs can in effect provide guarantees against loss from specified political and commercial risks, and carry the full faith and credit of the government of the United States.

► **Recommendation** Contact the Export-Import Bank of the United States’ Washington, DC office and the Foreign Credit Insurance Association’s (FICA) New York City office for information on what support programs they offer and how they work; including to whom they are available and what they cover.

Very briefly, here’s what you can generally expect to find in Eximbank and FICA program offerings:

- Guarantees of, or insurance for, equipment residual values are not available.
- Insurance against the expropriation of leased or financed equipment is available.
- New and used equipment can be covered.
- Programs are available for both U.S. and non-U.S. lessors if the equipment under lease is manufactured in United States.
- Guarantees are available for up to 100% of the principal portion of lease payments, and a certain portion of the interest portion of such lease payments.
- Protection against currency fluctuation risk is not available.
- In certain situations, the lessee may be required to make a 15% advance payment to the lessor when the equipment delivers.
- Program coverage is available for specified short-term, as well as long-term, leases.

- The following risks are generally covered.
  1. Political risks, such as war, insurrection, and equipment requisition
  2. The risk of lease nonpayment due to a lessee lease payment default, or insolvency
  3. The inability to repossess equipment following a lease default due to acts of a local government

## F. Local Law Considerations

Leasing companies entering a particular foreign market must assess the local law implications for the types of lease transactions in which they intend to participate. Lessors must determine what

- Local laws and regulations govern the leasing operation, including what periodic filing requirements may be necessary.
- Penalties may be imposed for failure to comply with local law and regulations.

In the United States, because there is little regulation, penalties are nonexistent or of minor concern. In many foreign countries, however, the situation can be dramatically different. In some countries, penalties can result in the following:

- An inability to use the country's court system
- A change in a lease transaction's taxation
- Fines
- Imprisonment

Some local laws are quite extensive in their regulation of lease transactions, even going as far as dictating the actual terms and conditions of cross-border lease agreements, including how much interest can be charged, how long or how short the lease term can be, and the required or permitted lease payment grace periods.

An important legal consideration that cannot be overlooked for obvious reasons are the creditor rights laws: The rules that govern what a lessor must do to protect and enforce its rights in the lease collateral within a country's local law. To assess these issues, you will have to be thoroughly versed in the applicable bankruptcy or similar creditor rights laws.

► **Recommendation** There is only one way to adequately protect yourself from local law problems: For each transaction, hire competent local counsel in each jurisdiction in which the equipment and transaction parties are located.

And finally, as part of your local law due diligence, you must also check to see if any treaties exist with the country you intend to do business in that can affect tax or other aspects of the lease transaction.

## G. International Lease Documents

The international lease documentation used by U.S. lessors is often based on the documentation used in sophisticated U.S.-style leveraged leases. (For basic provisions in a lease generally, the reader is referred to the lease documentation discussion in Chapters 3

and 4.) However, it should go without saying, the lease documentation must incorporate provisions and protections necessary for doing business in a foreign local.

The one sure way to competently approach proper lease document drafting is to enlist the aid of competent and experienced international U.S. leasing counsel and foreign local counsel. In any event, at a bare minimum, you will want to be particularly careful that:

- You have a noncancelable, or “hell or high-water,” lease, one in which the lessee is specifically required to make all the rental payments due under the lease without abatement, reduction, or set-off.
- You have not inadvertently relinquished legal title to the asset under lease. This may require a careful review of applicable laws to ensure that the you, as lessor, have good title at the start of the lease, and that you have adequate protection against the potential claims by any lessee creditor or other third party during the lease term.
- The manner in which rent payments are made, including the currency of payment, fits your currency exchange requirements. This means, for example, inserting provisions that detail what happens if there is a currency exchange rate fluctuation, or the lessee is not permitted by law to make the lease payments as prescribed by the lease agreement.
- You have considered more stringent maintenance and repair duties, and lease reporting requirements (travel costs and distance may make it prohibitive to conduct on-site reviews and inspections). For example, it is often advisable to include in the lease an expanded maintenance provision that details the maintenance standards suggested by the equipment manufacturer.
- There is no necessity for setting up a maintenance reserve account to cover, for example, repairs that the lessee fails to perform, or performs inadequately.
- Comprehensive tax indemnification provisions that cover all expected tax advantages have been incorporated. Typically, the tax aspects of a cross-border lease are crucial to the economic viability of the lease transaction, and very complex. In addition there is the ever-present possibility that the applicable tax laws may change to the detriment of a lessor after the lease is signed. Accordingly, these tax indemnification provisions must spell out in great detail all lessor tax benefits anticipated, and the obligations of the lessee in the event that some or all of these benefits are lost, or otherwise unavailable.
- Whether any applicable commercial laws governing the sale of goods create any implied equipment or other warranties that run to the lessee from you as lessor merely because you are the equipment title holder. In the United States, a lessor is generally able to effectively avoid any such implied warranties by using disclaimer language prescribed by the Uniform Commercial Code laws.
- The method of dealing with any required withholding taxes under local law, such as a requirement that 15% of each rental payment be withheld and remitted to the local taxing authority, is addressed and handled properly. Typically, any required withholding tax payments are responsibility of the lessor, and the lessee is deemed to be the government’s agent for their collection and payment. If the lessee fails to make these payments, the government will go after the lessor to collect. And, in this case, without a specific provision in the lease agreement for this, the lessor may have no recourse for reimbursement against the lessee. A lease provision, therefore, that spells out that payment for any such withholding taxes is the lessee’s responsibility, exactly how much the lessee must pay, when payment must be made, and to whom it is to be made is essential.

- There are representation and warranties specific to your particular lease transaction, such as that proper equipment import or governmental authorizations have been obtained. If, for example, proper governmental authorizations have not been obtained, and the lease contained a representation that they had been obtained, or none were necessary, then a lessor has the power to move quickly to minimize the potential for loss from potential adverse government actions by calling a lease default and repossessing the equipment.
- The remedies available in the event of a lease default are adequate, and not overreaching. The area of lease default is one that requires careful attention. As a general rule, at a minimum, the lessor's default remedies should conform with any specific remedies available to a lessor under the applicable foreign law. In addition, care must be taken that any additional ones do not run afoul of accepted rules of fairness, otherwise they, or possibly the lessor's entire rights against the lessee, may be subject to attack under the local laws by lessee's counsel for being unconscionable or against public policy.
- Casualty and third-party insurance provisions provide what you need. Clearly, this is a critical aspect of an equipment lease, and an insurance company thoroughly familiar with insurance coverage available in the foreign local must be consulted.
- There are effective lessor lease assignment rights. Local law must be checked to ensure there are no assignment restrictions, and also to determine if any type of assignment could result in the obligation to pay a transfer or registration fee or tax.
- There are necessary assignment restrictions on the lessee. You, as lessor, do not want the lease to end up in the hands of someone that could jeopardize your lease security or rights.
- You have considered incorporating an arbitration provision to settle disputes to avoid being tied up in local courts. Although an arbitration requirement may not be enforceable under a particular local law if a lessee chooses not to go along with it, having one is recommended. Arbitration is generally a less costly and faster procedure than litigation.
- You have designated which country's law will govern the lease transaction. Care, however, must be taken to ensure that any choice of law will be enforceable under local law.

## H. Uniform International Lease Rules

In an attempt to address the many complex issues surrounding equipment leasing in the international market, and in support of the growing interest in this form of financing in various nations, the International Institute for the Unification of Private Law, formerly an affiliate of the League of Nations, but now an independent international organization located in Rome, Italy, caused the formation of a study group in 1977 consisting of legal and financial experts to review international leasing and put together a set of uniform rules that would eliminate many uncertainties. The 1977 study group's efforts ultimately resulted in the unanimous adoption by the representatives of 55 nations gathered in Ottawa, Canada, in May 1988, of a comprehensive set of international leasing rules. The promulgated rules were subject to ratification by all represented nations. The final text of these rules is as follows:



UNIDROIT CONVENTION  
ON INTERNATIONAL FINANCIAL LEASING

(Ottawa, 28 May 1988)

THE STATES PARTIES TO THIS CONVENTION,

RECOGNIZING the importance of removing certain legal impediments to the international financial leasing of equipment, while maintaining a fair balance of interests between the different parties to the transaction,

AWARE of the need to make international financial leasing more available,

CONSCIOUS of the fact that the rules of law governing the traditional contract of hire need to be adapted to the distinctive triangular relationship created by the financial leasing transaction,

RECOGNIZING therefore the desirability of formulating certain uniform rules relating primarily to the civil and commercial law aspects of international financial leasing,

HAVE AGREED as follows:

CHAPTER I - SPHERE OF APPLICATION  
AND GENERAL PROVISIONS

Article 1

1. This Convention governs a financial leasing transaction as described in paragraph 2 in which one party (the lessor),

(a) on the specifications of another party (the lessee), enters into an agreement (the supply agreement) with a third party (the supplier) under which the lessor acquires plant, capital goods or other equipment (the equipment) on terms approved by the lessee so far as they concern its interests, and

(b) enters into an agreement (the leasing agreement) with the lessee, granting to the lessee the right to use the equipment in return for the payment of rentals.

2. The financial leasing transaction referred to in the previous paragraph is a transaction which includes the following characteristics:

(a) the lessee specifies the equipment and selects the supplier without relying primarily on the skill and judgment of the lessor;

(b) the equipment is acquired by the lessor in connection with a leasing agreement which, to the knowledge of the supplier, either has been made or is to be made between the lessor and the lessee; and

(c) the rentals payable under the leasing agreement are calculated so as to take into account in particular the amortization of the whole or a substantial part of the cost of the equipment.

3. This Convention applies whether or not the lessee has or subsequently acquires the option to buy the equipment or to hold it on lease for a further period, and whether or not for a nominal price or rental.

4. This Convention applies to financial leasing transactions in relation to all equipment save that which is to be used primarily for the lessee's personal, family or household purposes.

Article 2

In the case of one or more sub-leasing transactions involving the same equipment, this Convention applies to each transaction which is a financial leasing transaction and is otherwise subject to this Convention as if the person from whom the first lessor (as defined in paragraph 1 of the previous article) acquired the equipment were the supplier and as if the agreement under which the equipment was so acquired were the supply agreement.

### Article 3

1. This Convention applies when the lessor and the lessee have their places of business in different States and:

(a) those States and the State in which the supplier has its place of business are Contracting States; or

(b) both the supply agreement and the leasing agreement are governed by the law of a Contracting State.

2. A reference in this Convention to a party's place of business shall, if it has more than one place of business, mean the place of business which has the closest relationship to the relevant agreement and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of that agreement.

### Article 4

1. The provisions of this Convention shall not cease to apply merely because the equipment has become a fixture to or incorporated in land.

2. Any question whether or not the equipment has become a fixture to or incorporated in land, and if so the effect on the rights inter se of the lessor and a person having real rights in the land, shall be determined by the law of the State where the land is situated.

### Article 5

1. The application of this Convention may be excluded only if each of the parties to the supply agreement and each of the parties to the leasing agreement agree to exclude it.

2. Where the application of this Convention has not been excluded in accordance with the previous paragraph, the parties may, in their relations with each other, derogate from or vary the effect of any of its provisions except as stated in Articles 8 (3) and 13 (3)(b) and (4).

### Article 6

1. In the interpretation of this Convention, regard is to be had to its object and purpose as set forth in the preamble, to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

2. Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

## CHAPTER II - RIGHTS AND DUTIES OF THE PARTIES

### Article 7

1. (a) The lessor's real rights in the equipment shall be valid against the lessee's trustee in bankruptcy and creditors, including creditors who have obtained an attachment or execution.

(b) For the purposes of this paragraph "trustee in bankruptcy" includes a liquidator, administrator or other person appointed to administer the lessee's estate for the benefit of the general body of creditors.

2. Where by the applicable law the lessor's real rights in the equipment are valid against a person referred to in the previous paragraph only on compliance with rules as to public notice, those rights shall be valid against that person only if there has been compliance with such rules.

3. For the purposes of the previous paragraph the applicable law is the law of the State which, at the time when a person referred to in paragraph 1 becomes entitled to invoke the rules referred to in the previous paragraph, is:

(a) in the case of a registered ship, the State in which it is registered in the name of the owner (for the purposes of this sub-paragraph a bareboat charterer is deemed not to be the owner);

(b) in the case of an aircraft which is registered pursuant to the Convention on International Civil Aviation done at Chicago on 7 December 1944, the State in which it is so registered;

(c) in the case of other equipment of a kind normally moved from one State to another, including an aircraft engine, the State in which the lessee has its principal place of business;

(d) in the case of all other equipment, the State in which the equipment is situated.

4. Paragraph 2 shall not affect the provisions of any other treaty under which the lessor's real rights in the equipment are required to be recognized.

5. This article shall not affect the priority of any creditor having:

(a) a consensual or non-consensual lien or security interest in the equipment arising otherwise than by virtue of an attachment or execution, or

(b) any right of arrest, detention or disposition conferred specifically in relation to ships or aircraft under the law applicable by virtue of the rules of private international law.

#### Article 8

1. (a) Except as otherwise provided by this Convention or stated in the leasing agreement, the lessor shall not incur any liability to the lessee in respect of the equipment save to the extent that the lessee has suffered loss as the result of its reliance on the lessor's skill and judgment and of the lessor's intervention in the selection of the supplier or the specifications of the equipment.

(b) The lessor shall not, in its capacity of lessor, be liable to third parties for death, personal injury or damage to property caused by the equipment.

(c) The above provisions of this paragraph shall not govern any liability of the lessor in any other capacity, for example as owner.

2. The lessor warrants that the lessee's quiet possession will not be disturbed by a person who has a superior title or right, or who claims a superior title or right and acts under the authority of a court, where such title, right or claim is not derived from an act or omission of the lessee.

3. The parties may not derogate from or vary the effect of the provisions of the previous paragraph in so far as the superior title, right or claim is derived from an intentional or grossly negligent act or omission of the lessor.

4. The provisions of paragraphs 2 and 3 shall not affect any broader warranty of quiet possession by the lessor which is mandatory under the law applicable by virtue of the rules of private international law.

#### Article 9

1. The lessee shall take proper care of the equipment, use it in a reasonable manner and keep it in the condition in which it was delivered, subject to fair wear and tear and to any modification of the equipment agreed by the parties.

2. When the leasing agreement comes to an end the lessee, unless exercising a right to buy the equipment or to hold the equipment on lease for a further period, shall return the equipment to the lessor in the condition specified in the previous paragraph.

#### Article 10

1. The duties of the supplier under the supply agreement shall also be owed to the lessee as if it were a party to that agreement and as if the equipment were to be supplied directly to the lessee. However, the supplier shall not be liable to both the lessor and the lessee in respect of the same damage.

2. Nothing in this article shall entitle the lessee to terminate or rescind the supply agreement without the consent of the lessor.

#### Article 11

The lessee's rights derived from the supply agreement under this Convention shall not be affected by a variation of any term of the supply agreement previously approved by the lessee unless it consented to that variation.

Article 12

1. Where the equipment is not delivered or is delivered late or fails to conform to the supply agreement:
  - (a) the lessee has the right as against the lessor to reject the equipment or to terminate the leasing agreement; and
  - (b) the lessor has the right to remedy its failure to tender equipment in conformity with the supply agreement as if the lessee had agreed to buy the equipment from the lessor under the same terms as those of the supply agreement.
2. A right conferred by the previous paragraph shall be exercisable in the same manner and shall be lost in the same circumstances as if the lessee had agreed to buy the equipment from the lessor under the same terms as those of the supply agreement.
3. The lessee shall be entitled to withhold rentals payable under the leasing agreement until the lessor has remedied its failure to tender equipment in conformity with the supply agreement or the lessee has lost the right to reject the equipment.
4. Where the lessee has exercised a right to terminate the leasing agreement, the lessee shall be entitled to recover any rentals and other sums paid in advance, less a reasonable sum for any benefit the lessee has derived from the equipment.
5. The lessee shall have no other claim against the lessor for non-delivery, delay in delivery or delivery of non-conforming equipment except to the extent to which this results from the act or omission of the lessor.
6. Nothing in this article shall affect the lessee's rights against the supplier under Article 10.

Article 13

1. In the event of default by the lessee, the lessor may recover accrued unpaid rentals, together with interest and damages.
2. Where the lessee's default is substantial, then subject to paragraph 5 the lessor may also require accelerated payment of the value of the future rentals, where the leasing agreement so provides, or may terminate the leasing agreement and after such termination:
  - (a) recover possession of the equipment; and
  - (b) recover such damages as will place the lessor in the position in which it would have been had the lessee performed the leasing agreement in accordance with its terms.
3. (a) The leasing agreement may provide for the manner in which the damages recoverable under paragraph 2 (b) are to be computed.
  - (b) Such provision shall be enforceable between the parties unless it would result in damages substantially in excess of those provided for under paragraph 2 (b). The parties may not derogate from or vary the effect of the provisions of the present sub-paragraph.
4. Where the lessor has terminated the leasing agreement, it shall not be entitled to enforce a term of that agreement providing for acceleration of payment of future rentals, but the value of such rentals may be taken into account in computing damages under paragraphs 3 (b) and 3. The parties may not derogate from or vary the effect of the provisions of the present paragraph.
5. The lessor shall not be entitled to exercise its right of acceleration or its right of termination under paragraph 2 unless it has by notice given the lessee a reasonable opportunity of remedying the default so far as the same may be remedied.
6. The lessor shall not be entitled to recover damages to the extent that it has failed to take all reasonable steps to mitigate its loss.

Article 14

1. The lessor may transfer or otherwise deal with all or any of its rights in the equipment or under the leasing agreement. Such a transfer shall not relieve the lessor of any of its duties under the leasing agreement or alter either the nature of the leasing agreement or its legal treatment as provided in this Convention.
2. The lessee may transfer the right to the use of the equipment or any other rights under the leasing agreement only with the consent of the lessor and subject to the rights of third parties.

## CHAPTER III - FINAL PROVISIONS

## Article 15

1. This Convention is open for signature at the concluding meeting of the Diplomatic Conference for the Adoption of the Draft Unidroit Conventions on International Factoring and International Financial Leasing and will remain open for signature by all States at Ottawa until 31 December 1990.
2. This Convention is subject to ratification, acceptance or approval by States which have signed it.
3. This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.
4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the depository.

## Article 16

1. This Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the third instrument of ratification, acceptance, approval or accession.
2. For each State that ratifies, accepts, approves, or accedes to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention enters into force in respect of that State on the first day of the month following the expiration of six months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

## Article 17

This Convention does not prevail over any treaty which has already been or may be entered into; in particular it shall not affect any liability imposed on any person by existing or future treaties.

## Article 18

1. If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may substitute its declaration by another declaration at any time.
2. These declarations are to be notified to the depository and are to state expressly the territorial units to which the Convention extends.
3. If by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.
4. If a Contracting State makes no declaration under paragraph 1, the Convention is to extend to all territorial units of that State.

## Article 19

1. Two or more Contracting States which have the same or closely related legal rules on matters governed by this Convention may at any time declare that the Convention is not to apply where the supplier, the lessor and the lessee have their places of business in those States. Such declarations may be made jointly or by reciprocal unilateral declarations.
2. A Contracting State which has the same or closely related legal rules on matters governed by this Convention as one or more non-Contracting States may at any time declare that the Conven-

tion is not to apply where the supplier, the lessor and the lessee have their places of business in those States.

3. If a State which is the object of a declaration under the previous paragraph subsequently becomes a Contracting State, the declaration made will, as from the date on which the Convention enters into force in respect of the new Contracting State have the effect of a declaration made under paragraph 1, provided that the new Contracting State joins in such declaration or makes a reciprocal unilateral declaration.

#### Article 20

A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession that it will substitute its domestic law for Article 8 (3) if its domestic law does not permit the lessor to exclude its liability for its default or negligence.

#### Article 21

1. Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.

2. Declarations and confirmations of declarations are to be in writing and to be formally notified to the depository.

3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depository receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depository. Reciprocal unilateral declarations under Article 19 take effect on the first day of the month following the expiration of six months after the receipt of the latest declaration by the depository.

4. Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depository. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depository.

5. A withdrawal of a declaration made under Article 19 renders inoperative in relation to the withdrawing State, as from the date on which the withdrawal takes effect, any joint or reciprocal unilateral declaration made by another State under that article.

#### Article 22

No reservations are permitted except those expressly authorized in this Convention.

#### Article 23

This Convention applies to a financial leasing transaction when the leasing agreement and the supply agreement are both concluded on or after the date on which the Convention enters into force in respect of the Contracting States referred to in Article 3 (1)(a), or of the Contracting State or States referred to in paragraph 1 (b) of that article.

#### Article 24

1. This Convention may be denounced by any Contracting State at any time after the date on which it enters into force for that State.

2. Denunciation is effected by the deposit of an instrument to that effect with the depository.

3. A denunciation takes effect on the first day of the month following the expiration of six months after the deposit of the instrument of denunciation with the depository. Where a longer period for the denunciation to take effect is specified in the instrument of denunciation it takes effect upon the expiration of such longer period after its deposit with the depository.

**Article 25**

1. This Convention shall be deposited with the Government of Canada.
2. The Government of Canada shall:
  - (a) inform all States which have signed or acceded to this Convention and the President of the International Institute for the Unification of Private Law (Unidroit) of:
    - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
    - (ii) each declaration made under Articles 18, 19 and 20;
    - (iii) the withdrawal of any declaration made under Article 21 (4);
    - (iv) the date of entry into force of this Convention;
    - (v) the deposit of an instrument of denunciation of this Convention together with the date of its deposit and the date on which it takes effect;
  - (b) transmit certified true copies of this Convention to all signatory States, to all States acceding to the Convention and to the President of the International Institute for the Unification of Private Law (Unidroit).

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.

DONE at Ottawa, this twenty-eighth day of May, one thousand nine hundred and eighty-eight, in a single original, of which the English and French texts are equally authentic.

## **I. Summary**

There is no doubt that in a expanding global economy, cross-border leasing will continue to expand. And, the job of putting together a cross-border lease will become easier as transaction experience is gained. Leasing equipment internationally, however is extremely complex and should not be approached without competent advice.

# Chapter 13

## *The Equipment Leasing Laws under the Uniform Commercial Code*

### A. Introduction

As an equipment lessor, you must know the state equipment leasing laws, embodied in the various states' Uniform Commercial Code, to properly draft a lease contract, as well as protect your equipment from lessee creditors and claims. One mistake can be costly. Prospective lessees, on the other hand, must understand these laws because they can be turned to for rights and remedies when problems occur. There are no federal leasing law statutes.

It will be useful, before beginning this chapter, to give you some historical background. Before these leasing laws came into existence, the courts struggled with whether an equipment financing transaction should be characterized as a lease or as a conditional or installment sale for state law purposes. As a result, there was widespread inconsistency and confusion. To address this problem, a drafting committee, called the National Conference of Commissioners on Uniform State Laws, was organized to assemble the best court interpretations of leasing contract law and, once done, this "model" law was sent to the various states (including the District of Columbia) for consideration and enactment into state law. In most cases, the model law, now known as Article 2A of the Uniform Commercial Code (commonly referred to simply as the "UCC"), was adopted with few changes. Very simply, UCC Article 2A resolved the many issues and inconsistencies over lease characterization by establishing uniform leasing rules. This has clearly benefited all parties to a lease transaction.

In addition to Article 2A, there are two additional and important UCC sections (known as "Articles") that can impact an equipment financing, Article 2 (Sales), and Article 9 (Secured Transactions; Sales of Accounts and Chattel Paper). These Articles existed prior to the formulation and adoption of Article 2A and were created by the National Conference of Commissioners to provide guidance, in part, for commercial and consumer sales, and general financing of personal property. A detailed analysis of UCC Article's 2 and 9, dealing with the sales of personal property, is beyond the scope of this chapter since they relate to transactions far beyond equipment lease transactions. We will examine, however, their essential elements so you will have a working knowledge of how they may come into play in an equipment lease situation.



### **UCC Concepts**

The overall intent of the various UCC laws is, in effect, to compile, evolve, and, in certain cases, clarify the various laws (such as contract law, as interpreted by the U.S. courts) into one cohesive set of rules to eliminate arbitrary, commercially inequitable, and inconsistent court approaches and decisions.

The drafters of the various UCC Articles intended that the parties to UCC-governed transactions have, with a few exceptions, the freedom to contract as they see fit, permitting the parties to “draft out,” for example, UCC Article provisions.

## **B. UCC Article 2, Sales—An Overview**

UCC Article 2 establishes the rights and remedies of the parties to a sale transaction. It imposes, for example, certain implied product warranties that a purchaser can enforce against a seller of goods, something financing companies that are not equipment vendors should not have to fairly assume. The best way to put Article 2 into perspective in relation to Article 2A is to understand how it differs from Article 2A, as Article 2A was in part based on Article 2. Both address personal property, basically parting company in the case where the transaction is a lease financing (governed by Article 2A), as opposed to a straight equipment sale (governed by Article 2).

Two important commercial (nonconsumer) differences that Article 2A eliminated from the Article 2 sales rules are:

- Article 2A eliminated implied equipment warranties of merchantability and fitness for use, existing in Article 2.
- Article 2A eliminated implied product infringement warranties when the lease qualifies as a “finance lease,” under Article 2A.

## **C. UCC Article 9, Secured Transactions; Sales of Accounts and Chattel Paper—An Overview**

UCC Article 9 governs secured lending transactions, in which the parties intend to create a security interest in the personal property (such as equipment) financed. A security interest is simply an interest in personal property that secures the payment or performance of an obligation. If, for example, a lender loans money to a lessor to enable it to purchase equipment for lease to a lessee (such as in a typical leveraged lease transaction), it will take as collateral for the loan repayment obligations a security interest in the underlying equipment lease and the related equipment. A court would deem this type of lending transaction as governed by the UCC Article 9 rules. UCC Article 9 would also come into play if the lease transaction turns out (even unintended by the parties) to in substance be a secured loan (often referred to as a “financing”), such as when the lessee has a \$1 purchase option.

## **D. Equipment Leasing under UCC Article 2A**

### **1. Overview**

As suggested, a major development in the law of personal property leasing was the approval by the National Conference of Commissioners on Uniform State Laws of

Article 2A of the Uniform Commercial Code. Article 2A as proposed by the commissioners has been adopted by the various states (including the District of Columbia), with, in some cases, relatively minor modifications, and sets forth legal guidelines for determining whether a transaction purporting to be a lease is a lease for state law purposes. Very simply, Article 2A is generally intended to govern the formation, construction, and enforceability of equipment lease contracts.

Before Article 2A was enacted by the various states, equipment lease transactions were generally governed under state law by common law principles: UCC Article 2 (Sales) and UCC Article 9 (Secured Transactions). Article 2A has been instrumental in clarifying many personal property leasing issues that had gone unresolved under the various state laws. It has, for example, eliminated ambiguities that arose in determining the rights of equipment lessors and lessees. It established guidelines for determining when an equipment financing transaction was in fact a lease transaction and when it, instead, was a form of conditional sale-type financing (a secured financing transaction that may have looked like a lease transaction, because, for example, the contract was entitled "Equipment Lease Agreement"). Article 2A also spells out the rights an equipment lessor would have against the other lessee creditors.

### Key Point

With a few exceptions, the Article 2A provisions can be overridden by agreement between the parties. The exceptions usually relate to matters of public policy, and what would be considered good faith dealings. For issues not addressed by the parties, Article 2A governs. Therefore, you could say in a lease transaction that Article 2A's job is to fill in aspects of the transaction that the parties did not explicitly cover in their contract.

## 2. Lease Distinguished from Security Interest

UCC Article 2A, along with Article 2 and Article 9, specifically defines the characteristics of leases, sales, and security interests. It is often not easy to determine if the transaction purporting to be an lease qualifying under Article 2A is in fact an Article 2A qualifying lease, or should instead be considered, under state law, a nonlease, or secured, financing. Under Article 2A, a lease is essentially defined as a transfer of the right to possession and use of personal property for a period of time (term) in return for consideration (such as money), unless it is a "sale" or a "security interest". Typically, the most difficult part in making an assessment is determining if the transaction is a "security interest." Although the definition of security interest spells out specific factors that will disqualify a transaction as a lease and cause it to be deemed a security interest, and factors that in and of themselves will not cause a purported lease to in fact be deemed a security interest, the definition also provides that the various transaction "facts and circumstances," must be considered. The "facts and circumstances" benchmark is subject to interpretation, and thus can create characterization uncertainty.

Under the UCC, lease disqualifying factors that are:

- The lease term equals or exceeds the remaining useful life of the equipment.
- The lessee is obligated to become the equipment owner at lease end.
- The lessee has the right to purchase the equipment for a nominal amount (such as \$1), or can acquire the equipment without cost.

Factors that in and of themselves that will not cause a purported lease transaction to be disqualified as a lease are:

- The lease is a net or full payout lease.
- The lease has equipment renewal or purchase options, nonnominal in amount, even if at a fixed price.

Without getting too technical, however, as a rule of thumb, if the lessor retains a meaningful economic interest in the end-of-lease (residual) value of the equipment, notwithstanding the lessee's right to exclusive use (subject to a lessee lease default) of the equipment during the lease term, it is a lease. Otherwise, it will not be so considered, and must be treated as a secured financing, such as a secured loan or an installment sale financing. For example, if the lessee can become the equipment owner for no additional, or nominal, consideration, the transaction is not a lease under Article 2A.

### **An Exception—TRAC Leases**

Most states have adopted an exception to the foregoing lease/security interest test criteria for motor vehicle leases with terminal rental adjustment clauses (referred to as TRAC leases). Under a TRAC lease, the lessor has no meaningful economic residual interest in the equipment, because the lessee has to pay the lessor for any "shortfall" the lessor incurs in the end-of-lease resale. Under Article 2A, as adopted by those states, the transaction still qualifies as a lease under the state leasing laws. So, for example, a lessor may provide in the lease that its assumed residual is \$15,000, and that the lessee must pay the lessor for any shortfall in resale price below \$15,000. If the motor vehicle sold for \$10,000 at lease end, the lessee would owe the lessor \$5,000 ( $\$15,000 - \$10,000 = \$5,000$ ).

### **3. Protecting the Lessor's Equipment Interest**

If the transaction qualifies as a lease under Article 2A, the lessor is deemed the equipment owner and no other creditors can successfully claim superior rights to the equipment. If a transaction does not qualify as a lease under Article 2A, and it is deemed to be an equipment financing, it will typically be governed by Article 9 (Secured Transactions), and possibly Article 2 (Sales). If the transaction fails to qualify as an Article 2A lease, the Article 9 rules will likely govern and the party designated as the lessor has to generally make certain initial and follow-on document filings (referred to as UCC financing statement filings), and possibly take certain other actions to protect its equipment interest against third-party creditors of the lessee. Notwithstanding the fact that the lessors under Article 2A qualifying leases need not take any such protective UCC filing action, most lessors, as a matter of course, make what is referred to as an information-only (precautionary) filing using a UCC-1 Financing Statement form, as indicated earlier in this book. Very briefly, the lessor files a typical UCC-1 financing statement against the lessee, with a notice typed or printed in the body of UCC-1 indicating that it is a information-only filing.

### **Legal Point**

There are no filing requirements provided for under Article 2A if a lease qualifies as a true lease, and not a secured financing. Keep in mind, however, that certificates of title filings may be necessary, such as with automobiles or trucks under the various laws.

#### **4. What Are the Practical Implications of a Lease Being Deemed a Secured Financing?**

If a court determines that a transaction purporting to be an equipment lease for state law purposes is in fact a secured financing, UCC Article 9 comes into play. And if the rules of Article 9 are not complied with, a lessor could lose its secured position; that is, its ability to claim a superior right in the equipment over that of other lessee creditors who may have an effective claim to that equipment because of certain security interest rights they have in the lessee's assets. If this occurs, a court may in effect take the position that, notwithstanding that the agreement is labeled a lease, the transaction is the functional equivalent of an equipment installment, or conditional, sale or a loan.

Assume for a moment that Able Leasing Company leases a \$1,000,000 computer to Process Company for three years. The lease agreement contains an option in which Process Company, if it chooses, can purchase the computer at the end of the lease for \$1, whereupon Able Leasing Company would transfer title to the computer to Process Company. Able Leasing Company determined the lease rental rate by assuming that, at lease end, it would have received a full repayment of its \$1,000,000 equipment purchase investment and its profit. It is estimated that the fair market end-of-lease value of the computer would be \$175,000. Able Leasing Company made no protective UCC filings. Clearly, here, the lessor did not retain a meaningful economic interest (or risk) in the equipment's residual value, and, undoubtedly, this lease transaction would be interpreted by the courts as a secured financing, subject to UCC Article 9.

Now assume, additionally, that Process Company filed for bankruptcy under Chapter 7 of the federal bankruptcy law (referred to as the Bankruptcy Code), a bankruptcy trustee was appointed, and the assets of Process Company were to be liquidated (known as a Chapter 7 proceeding under the Bankruptcy Code; see Chapter 14 for a discussion of the bankruptcy concepts and rules). Also assume that Process Company's main lending bank, The Big Bank, had given Process Company a general working capital line of credit, and had secured the repayment of this line of credit by taking a security interest in all assets of Process Company, and had legally placed a lien on all existing and future assets. The Big Bank then goes before the trustee and claims that its lien on Processing Company's assets has attached to the Able Leasing Company-owned computer, that the Able Leasing Company lease was in fact a secured financing, and that, since Able Leasing Company did not "perfect" its lien rights to the computer by making an appropriate UCC filing, The Big Bank's "blanket" lien has attached to the computer, thus giving The Big Bank a prior right in the computer. Able Leasing Company states that The Big Bank has no claim because it is the titled owner of the computer. Who wins this case? The answer is The Big Bank.

If Able Leasing Company had made an information-only UCC filing, the outcome would have been different. Able Leasing Company would then have to retain its rights in the computer over the claim of The Big Bank.

So, in effect, if a purported lease is deemed to be a secured financing,

- The lessor's equipment ownership position may be treated as a subordinated security interest assuming the lessor made no Article 9 UCC filings, giving other lessee's creditors who have valid and perfected liens on the lessee's general assets, if a lessee bankruptcy occurs, the opportunity to make a valid superior claim to the equipment.
- A bankruptcy trustee may be able to sell the lessor's equipment free of any lessor rights in the equipment.
- The lessor may come under state usury laws.
- The lessor may subject itself to certain additional equipment product warranties, notwithstanding lease contract warranty disclaimers.

## 5. A Key Lease Concept under Article 2A—The Finance Lease

In order to recognize the economic and business realities in certain types of equipment financings, the UCC drafters came up with a special category of lease, referred to as a “finance lease”, which has special lessor benefits. In order for a lease to qualify as an Article 2A finance lease, and be automatically entitled to the unique benefits offered under Article 2A, the lease has to meet the following criteria:

- The lessor must not select, manufacture, or supply the equipment.
- The lessor must acquire the equipment in connection with the lease (that means, not out of inventory).
- The lessee has to be provided information, before lease execution, about what equipment warranties are provided, and who stands behind them.

The key advantages for a lessor in having a transaction classified for UCC purposes as an Article 2A statutory finance lease are:

- There are no lessor-implied equipment warranties of fitness and merchantability, as may be provided in other lease transactions.
- The lessee’s rent payment obligation is deemed to be an irrevocable commercial lessee obligation to pay rents, i.e., the rent payment obligation under a lease classified as an Article 2A finance lease is automatically deemed to be a statutory hell or high water obligation (rents are noncancelable and absolutely and unconditionally payable, and not capable of being offset or otherwise reduced, even though not specifically stated as such in the lease contract) obligation.

A key advantage to a lessee in a finance lease transaction is that Article 2A automatically passes through the equipment seller’s warranties (subject to any warranty exclusions) to the lessee.

### Lessor Tips

- If a lease transaction does not meet the Article 2A finance lease criteria, then a lessor can, through proper lease contract drafting, construct the same result by including, for example, equipment warranty disclaimers and a hell or high water lease provision.
- If a hell or high water rent obligation is intended, notwithstanding that the lease transaction apparently qualifies as a Article 2A finance lease, a lessor should NOT rely on the UCC statute to ensure hell or high water rent obligation, in the event that a lessee successfully argues in court that the lease in fact does not qualify under the applicable UCC laws as a statutory finance lease, and, thus, is not entitled to hell or high water rent treatment. So, in drafting a lease, a lessor should always include specific hell or high water language.

### Lessee Tips

- If a lease transaction does not meet the Article 2A finance lease criteria, a lessee may be able to pursue, to the extent the lease contract does not make appropriate equipment warranty disclaimers, equipment warranty claims against the equipment lessor, in addition to the actual equipment vendor.
- Even if the lease transaction does not apparently qualify as an Article 2A finance lease, a lessee should raise a defense (if the facts so warrant) against any hell or high water rent payment obligation claim by the lessor.
- Although Article 2A automatically passes through the equipment seller warranties, a lessee should be cautious by contacting the seller to ensure that the lessor/purchaser may not diminish any warranties on which the lessee is relying. If important, a side letter to that effect is always recommended to avoid any future arguments.

## 6. *Avoiding Legally Implied Equipment Warranties*

An equipment lessor that is not also an equipment seller does not want to take on the responsibility of ensuring that the equipment performs or meets other suitability standards. Prior to the existence of Article 2A, there was a risk under certain circumstances that, say, a pure finance lessor (a lessor that merely provides equipment funding and is not also an equipment vendor) could be subject to certain implied equipment warranties existing under Article 2 (Sales) that an equipment seller would have under the law to an equipment purchaser. Making matter worse, the courts did not take a consistent approach in the implied warranty area.

Under Article 2A, however, there is now consistency. If a lease qualifies as an Article 2A finance lease, implied warranties of fitness for a particular purpose and merchantability are (automatically) excluded by law. All other equipment seller product warranties, however, are extended to the seller to the extent of the lessee's leasehold interest, unless the lease contract arrangement states that these warranties are excluded. Typically, as you can see from the form leases included with this book, financial lessors write leases with warranty disclaimers.

### Lease Drafting Tip

The equipment warranty disclaimers must be conspicuous. You're referred to the form leases included with this book for the style of the disclaimers.

## 7. *Lessor Lease Remedies under Article 2A*

In a lessee lease default situation, the courts had been uniformly inconsistent, and at times incorrect, in determining what damages a lessor was entitled to receive. In keeping with

its philosophy, Article 2A addressed this critical issue by allowing the lessors and lessees to generally contractually agree in the lease contract on what default and remedy standards would apply. Article 2A did, however, provide safe harbor provisions that would apply if the lease contract default or remedy provisions were either invalid or omitted. Under Article 2A, unless so stated in the lease contract, the lessor

- Does not have to give notice of default or enforcement action
- Can terminate the lease, repossess the equipment, sell or otherwise dispose of the equipment and recover damages for breach of the contract

Unless otherwise stated in the lease, Article 2A imposes two alternative statutory default damage computation formulas, in addition to allowing claims for past due rent, costs associated with any enforcement, and recovery action, such as court cost, storage changes, and remarketing fees and expenses. The safe harbor damage computations formulas are:

1. The lessor is entitled to claim the present value of any shortfall difference between the future remaining rents due under the original lease at the time of breach and the present value of the rents due under a new and “substantially similar” lease entered into by the lessor with another lessee.
2. If the equipment was not sold or re-leased under a “substantially similar” lease, the shortfall would be calculated using the future remaining rents due under the original lease at the time of breach and what would be considered as existing fair market rentals.

Article 2A further provides that the present value interest rate used to discount the applicable future rents can be the interest rate to which the parties agree in the lease contract, provided, however, that the interest rate stated is not “manifestly unreasonable.”

The lease contract also can provide for default liquidated damages, even though the actual damages resulting from a lessee breach can be accurately determined. The liquidated damages may include the loss of such profit aspects as tax benefits or anticipated end-of-lease (residual) value, provided that the liquidated damage amount is reasonable considering the anticipated damages to be suffered by the lessor.

#### **Awareness Tip**

Article 2A has not provided any definitive guidance on what a substantially similar lease, a manifestly unreasonable present value discounting interest rate, or a reasonable liquidated damage amount might be, so as you might suspect, there is room for argument in the interpretation of these guidelines.

## **8. Lessee Lease Remedies under Article 2A**

Article 2A provides for lessee remedies if the lessor is in default under a lease contract, which, unless otherwise “drafted out” of the lease contract, will apply. Depending on the type of breach, for example, the lessee may seek to cancel the lease contract, seek to recover rents or other payments made (such as a security deposit) or pursue other damages that would typically flow from a contract breach. If the lease, however, is an

Article 2A statutory finance lease, the lessee may not cancel the lease, or offset any amounts which may be due the lessee against the rents payable. Because of this, typically, lessors add a lease provision in which the lessee waives its Article 2A remedies.

## **9. A Consumer Lease under Article 2A**

Although beyond the scope of this chapter, it is important to keep in mind that Article 2A makes a distinction between commercial lease transactions and consumer lease transactions, providing for added protections to a consumer lessee. Generally, a consumer lease is defined as “a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose.” Under the various state Article 2A enactments, you will typically find that the total lease contract rent payments, excluding equipment purchase or lease renewal option payments, may not exceed a certain legislature-specified amount.

### **E. Summary**

As discussed, over the years the courts have often struggled with whether an equipment financing transaction should be characterized as a lease or as a conditional, or installment, sale for state law purposes. Article 2A of the Uniform Commercial Code was drafted by the National Conference of Commissioners on Uniform State Laws, to resolve the many issues and inconsistencies when it was determined that uniformity in leasing rules would clearly benefit all parties to a lease transaction. The Article 2A “model” law was sent to the various states (including the District of Columbia) for consideration and enactment into state law. In most cases, the model law was adopted with few changes. There are no federal leasing law statutes. The overall intent of the various UCC laws is, in effect, to compile, evolve, and in certain cases clarify the various U.S. laws (such as contract law, as interpreted by the U.S. courts) into one cohesive set of rules to eliminate, for example, arbitrary, commercially inequitable, and inconsistent court approaches and decisions. In addition to Article 2A, there are two additional and important UCC Articles that can impact an equipment financing, Article 2 (Sales), and Article 9 (Secured Transactions; Sales of Accounts and Chattel Paper).



**This Page Intentionally Left Blank**

# Chapter 14

## *The Bankruptcy Rules for Leasing*

### A. Introduction

Inevitably, if you're involved in an equipment financing transaction, you will, at some time, be involved in a bankruptcy proceeding with one of the parties of the lease. Highly likely, if you're a lessor. Less likely, but certainly possible, if you're a lessee. And that is why an understanding of the bankruptcy rules is essential for all parties to an equipment lease transaction.

In this chapter we will be examining the basic provisions of the federal bankruptcy law (the law under which most bankruptcies are handled), known as the Bankruptcy Code, as they relate to equipment lease transactions. The Bankruptcy Code is embodied in Title 11 of the United States Code. An examination of similar state laws will not be addressed because they are rarely encountered in an equipment lease situation.

The impact on a lessor, and any equipment lender to the lessor—if the lessee files for protection under, or is involuntarily subjected to, the bankruptcy laws—can be significant. For the equipment lessor, having an understanding of the Bankruptcy Code rules is essential to properly assess whether to enter into an equipment lease, to properly draft the financing contract to facilitate a better potential recovery, and to know what it can and cannot do when a bankruptcy occurs. Mistakes can be costly. The lessor's equipment lender (say, in a leveraged lease transaction) must also understand these rules to properly assess whether to enter into an equipment lease loan, to properly draft the loan contract to facilitate the best possible collateral rights protections, and to know what it can and cannot do as a secured lender when a bankruptcy occurs. A lessee, on the other hand, must understand its rights in the event it, or its lessor, becomes subject to a bankruptcy proceeding. For a lessee, the effect of a lessor bankruptcy, although potentially a problem, is less of a concern, unless, of course, the lessor has ongoing responsibilities such as supplying maintenance or other services over and above simply not interfering with the continued use of the equipment. In the case of a leveraged lease transaction, the bankruptcy of the lessor's equipment lender is generally of little or no practical concern. Typically in all cases, a lessee can expect that its right to the continued use of the equipment will not be interfered with.

Basically, there are two types of proceedings in bankruptcy, reorganization proceedings and liquidation proceedings. A reorganization proceeding is one in which a company in financial difficulty, referred to now in bankruptcy as the debtor, has elected to avail itself of bankruptcy protection to get some breathing room from its creditors to see if it can restructure its business and get financially back on track. A liquidation proceeding is one in which it has been determined that the debtor can no longer continue in business. In a

liquidation preceding, the debtor's assets are liquidated (generally sold off) for the benefit of the debtor's creditors. A bankruptcy liquidation or reorganization proceeding can be voluntary, one in which the debtor seeks bankruptcy law protection or assistance, or one in which the debtor is involuntarily forced into bankruptcy by its creditors.

There are, for a lessor, two key Bankruptcy Code provisional concepts that should be highlighted, because they govern two important yet practical aspects of a lessee-in-bankruptcy lease transaction. The first is the automatic stay provision found in Bankruptcy Code Section 362, which puts a hold on important lessor actions once the bankruptcy occurs. The second are the provisions, found in Bankruptcy Code Section 265, which permit the rejection or assumption of an unexpired lease by or on behalf of a lessee in bankruptcy. Also worthy of mention, for aircraft, railroad rolling stock and vessel lessors, there are two additional sections that can be important, Bankruptcy Code Section 1110 and Section 1168, which allow certain preference equipment repossession rights, discussed in greater detail below.

## **B. Bankruptcy Liquidation and Reorganization**

There are five bankruptcy chapter proceedings, Bankruptcy Code Chapters 7, 9, 11, 12 and 13, that cover the various types of liquidation or reorganization (sometimes referred to as restructuring) proceedings available. Bankruptcy Chapter 7 proceedings govern individual and entity liquidations. Bankruptcy Chapter 11 proceedings govern individual business entrepreneur (as well as certain other individuals) and entity reorganizations. Chapter 7 and Chapter 11 are the ones typically encountered or used when commercial lease transactions are involved. Bankruptcy Chapter 9 governs municipal bankruptcies; Bankruptcy Chapter 12 governs family farmer reorganization proceedings, and Bankruptcy Chapter 13 governs certain limited individual (typically non-business) reorganizations. The later three Chapter proceedings are not typically encountered in the day-to-day business of equipment leasing. They will be left to your reading if such a situation arises.

### **1. Chapter 7—Liquidation: An Overview**

A Bankruptcy Code Chapter 7 proceeding, in which the business assets are liquidated for the benefit of the business's creditors, is the most difficult to encounter for an equipment lessor for obvious reasons—more likely than not, the lessor will incur a significant economic loss. In a Chapter 7 proceeding, if granted, an individual debtor actually obtains a complete discharge from all debts. Although the substantive effect is the same for an entity liquidation proceeding, technically, when an entity is involved, such as a corporation, an actual formal discharge from all debts is not granted, but the business entity is expected to dissolve its existence under the applicable nonbankruptcy laws, after its assets are liquidated. In general, as mentioned, above, both business entities and individuals can request (a voluntary proceeding initiated by the debtor) or depending on the circumstances be forced into, a Chapter 7 liquidation (an involuntary proceeding initiated by one or more the debtor's creditors).

Once the debtor (such as an equipment lessee) files under Chapter 7, seeking the protection of the bankruptcy laws, an interim bankruptcy trustee is appointed through the bankruptcy court having jurisdiction over the proceeding. In some cases, the interim trustee may be replaced by a bankruptcy trustee that has been elected by the debtor's

creditors. If the debtor's creditors do not elect their trustee, the interim trustee will in effect become the final bankruptcy trustee.

The job of the bankruptcy trustee is to determine the proper disposition (liquidation) of the debtor's assets. In some cases, the assets will be sold to third parties and the proceeds distributed to the debtor's creditors in accordance with certain priority rules mentioned below. If the creditor is a secured creditor, such as an equipment lessor or bank with a valid lien on certain assets of the debtor, typically its rights to the secured collateral are retained. Some assets considered inconsequential or burdensome may simply be abandoned by the trustee and returned to the debtor. Certain assets may be exempt, and will be out of the trustee's reach.

## **2. Chapter 11—Reorganization: An Overview**

A Bankruptcy Code Chapter 11 proceeding can be commenced voluntarily by the debtor, or involuntarily against the debtor by certain creditors of the debtor. As suggested, the intent behind a Chapter 11 proceeding is to facilitate the reorganization of the debtor in an effort to put the debtor fully back on its financial feet, and, thus, prevent it from falling into a Chapter 7 liquidation. If a Chapter 11 reorganization is unsuccessful, a Chapter 7 proceeding is assuredly next.

In a Chapter 11 proceeding, it is not unusual for the debtor (such as an equipment lessee), as opposed to a trustee, to retain control over the business assets, in which case the debtor is referred to as the debtor-in-possession, or the DIP. A trustee, however, may be appointed through the bankruptcy court if there are grounds for doing so, typically referred to as "for cause."

The DIP, or trustee, if elected, is required to formulate a plan of reorganization, which must be approved by the governing bankruptcy court (subject to input from the creditors) in which the debtor is to pay its debts in accordance with the reorganization plan. The plan, if approved by the bankruptcy court, will typically, in effect, modify the payment responsibilities of the debtor, thus giving the debtor a new start going forward. As you may suspect, in a Chapter 11 proceeding, typically all the assets are not liquidated, but rather many are retained to facilitate the on-going business operation. Under a Chapter 11 proceeding, however, assets are permitted to be liquidated to the extent necessary to ensure that the business, for example, survives. Equipment leases, as you'll see below, among certain other asset transactions, receive special treatment.

### **C. Automatic Stay**

An important concept within the Bankruptcy Code is something referred to as an automatic stay, provided for in Bankruptcy Code Section 362 (c). Very simply, once bankruptcy is instituted, all actions against the bankrupt (debtor) are prohibited. This, for example, means that once the automatic stay exists (at the time bankruptcy is instituted) the lessor cannot go in and get the leased equipment without the debtor's consent or court authority. The automatic stay also puts a stop to any potential legal proceedings that might be used to recover on any prebankruptcy petition claims against the debtor. The intent of the automatic stay is to protect the debtor and the bankruptcy estate's creditors from the item-by-item dismemberment of the estate's assets. Any knowing violation of the automatic stay rule will subject the lessor to actual and punitive damages.

## D. Equipment Lease Treatment in Bankruptcy

Equipment leases are treated under the bankruptcy rules in a special manner. Section 365 (a) of the Bankruptcy Code allows a bankruptcy trustee or a DIP to assume or reject all executory contracts, which include unexpired equipment lease contracts. Basically, an executory contract, under contract law, is a contract in which the obligations of all parties, in the case of a lease the debtor and the lessor, are so unperformed that it would be considered a material contract breach if any party failed to meet its obligations giving the other party or parties a legal excuse not to perform its obligations.

One additional important point. The general rule under the Bankruptcy Code is that the debtor must fully perform, in a timely manner, all of its equipment lease obligations that come into being starting 60 days following the institution of the bankruptcy proceeding. As you might suspect, the bankruptcy court can reduce these debtor performance obligations if it determines that it is in the best interest of the bankruptcy estate to do so. The lessor must be given notice of this possibility and an opportunity to argue against it before the bankruptcy court can make the change.

### 1. Assumption or Rejection

If the equipment lease is assumed, the debtor's assets are deemed to be available for (technically, the bankruptcy estate becomes bound by) serving the remaining lease obligations assumed. You might wonder whether, if the lessee is in bankruptcy, this is worth anything to a lessor. In fact, it is. To begin with, in order for the trustee or DIP to be able to assume the lease, the bankruptcy estate must do three things:

1. Cure any lease default or provide adequate assurance that the default will be promptly cured.
2. Pay the lessor for any default damages or provide adequate assurance that the default damages will be promptly paid.
3. Give adequate assurance that the future lease obligations will be met.

The real advantage to a lease assumption is that the lease payment obligations become a bankruptcy estate administration expense, giving the lessor a payment distribution priority over the claims of unsecured creditors for any damages arising from lease contract defaults following the assumption. To give you a priority preference perspective, in general, bankruptcy claims are treated in specified categories of priority. The secured claims are paid first, and the unsecured claims are paid next, with the equity owners taking the last recovery position. The assumption of a lease by the debtor requires the approval of the bankruptcy court, after notice, and an opportunity to be heard is given to the unsecured creditors who may be hurt by the payment priority.

Interestingly, as you might suspect, the typical event of default provision found in most lease contracts, such as lessee insolvency, a material adverse change in the lessee's financial condition, the commencement of a lessee bankruptcy proceeding or the appointment of a trustee in bankruptcy for a lessee, are not "defaults" which must be cured as part of the lease assumption.

As stated, the equipment lease can also be rejected, allowing the debtor to abandon any assets that the trustee of the DIP would in its reasonable business judgment consider burdensome to the bankruptcy estate. The decision, however, must be on an all-or-nothing basis (that is, if assumed, all the obligations must be assumed), unless the lease contract contains agreements that can be separated.

If the lease is rejected, however, the rejection is deemed to be a breach of the lease contract and the lessor cannot only reclaim its equipment, but it can also make a claim in bankruptcy for any damages that have been incurred under the lease contract before the filing of the bankruptcy petition. The claim for damages would be a general unsecured claim. Once rejected, the lease cannot be assumed, even if it would be beneficial to the bankruptcy estate to do so.

## **2. Assumption or Rejection Time Periods**

In a bankruptcy liquidation proceeding (Bankruptcy Code Chapter 7), the debtor (through the trustee in bankruptcy, if one is appointed) must decide whether to make the lease assumption or rejection within 60 days following the institution of the bankruptcy proceeding. If the decision to assume or reject is not made within the 60-day period, then the lease contract is deemed to have been rejected. Note that the 60-day period may be subject to extension by the bankruptcy court if it determines there is a valid reason to do so, often referred to as "for cause."

In a bankruptcy reorganization (Bankruptcy Code Chapters 9, 11, 12, or 13), the rule is different. The debtor is allowed (through the trustee in bankruptcy if one is appointed) to determine if it wants to assume or reject an equipment lease at any time, so long as the decision is made before the bankruptcy court puts its stamp of approval (referred to as confirms) the plan of reorganization. This decision time period again is subject to shortening upon notice to, and a hearing by, the bankruptcy court. In certain cases, it is possible for the bankruptcy court to approve a reorganization plan that permits the debtor to assume or reject an equipment lease after the reorganization has been approved by the court and is effective.

One more point. If an equipment lease is assumed in the reorganization proceeding, the general feeling is that it can still be rejected in a subsequent liquidation proceeding (if the reorganization is not successful), or possibly if a trustee was appointed if the debtor in possession was later thrown out by the bankruptcy court.

## **E. Special Treatment for Aircraft, Railroad Rolling Stock, and Vessels**

As mentioned, the Bankruptcy Code provides certain additional protections, under Bankruptcy Code Section 1110 and Section 1168, for lessors of aircraft, railroad rolling stock, and vessels. Very simply, if the lessee/debtor wants to continue to use such equipment, it must cure all lease defaults that exist at the time of the filing of the bankruptcy proceeding, within 60 days following its filing; must timely perform all future obligations under the lease contract during the period of continued use; and, if a lease default occurs, must cure the default within 30 days following its occurrence. If these conditions are not met, the lessor can immediately repossess the equipment without regard to the Bankruptcy Code automatic stay provisions, and without regard to any right the lessee would otherwise have under the Bankruptcy Code to use the equipment in the ordinary course of business (say, to assist in its ability to successfully come through a bankruptcy reorganization) or the powers of the bankruptcy court to stop (enjoin) any such repossession. The commitment by the lessee/debtor, if it wants to continue to hold this equipment, to cure past defaults and meet all on-going obligations, however, is nothing more than an exception to the automatic stay, use of equipment, and injunctive rules which would otherwise come into play in a bankruptcy proceeding. It is not deemed to be an assumption of the

entire lease contract, with the lessee debtor still able to terminate the lease arrangement when the equipment is no longer required. Whether in fact this right to repossess is worth anything to a lessor, of course, depends on the value of the equipment at the time of repossession. If the value is not there, having the lessee/debtor continue to use the equipment may be the best alternative.

## **F. What Happens If the Lease Is Not a True Lease?**

If an equipment lease turns out to be a secured equipment financing, for example, a security agreement or an installment (conditional) sale agreement, as discussed in Chapter 13, then the lessor can lose some benefits under bankruptcy. First, the “lease” does not have to be assumed or rejected by the debtor; second, and often of most concern, the debtor may be able to completely ignore the purported security interest in the equipment if the proper Uniform Commercial Code financing statement (a UCC-1) was not filed, was improperly filed, or certain other statutory requirements for “perfecting” the security interest in the equipment were not taken. In a pure bankruptcy liquidation proceeding, this reduces the lessor to an unsecured creditor.

In a bankruptcy reorganization proceeding, there are also adverse consequences. Even if the proper Uniform Commercial Code filings were made, meaning that the equipment at hand was in fact successfully encumbered by the lessor’s security interest, there is no requirement under the Bankruptcy Code that any past defaults be cured by the debtor, nor does the debtor have to provide any comfort to the lessor that it can adequately meet its payment or other obligations under the “lease”, in order for it to continue to use the equipment. The debtor merely has to give the lessor comfort, called “adequate protection,” that the lessor’s security interest in the equipment will be secure. Worse yet, for the lessor, is that if the debtor wants to retain the equipment for use in a bankruptcy reorganization, the actual plan of reorganization may reduce the interest rate or payment terms in the original agreement to under the purported lease contract, leaving the lessor with an unrecoverable deficiency. As you can imagine, the “adequate protection” requirement is open for discussion in the bankruptcy court. It may, for example, take of the form a security deposit, the granting of a lien on additional assets the debtor has, or some form of payment preference over other bankruptcy creditors.

For those lessors that package maintenance or other equipment related services with an equipment lease, if the lease is deemed to be, say, a conditional sale agreement, it is possible for the bankruptcy court to separate the two agreement arrangements, determining that the lessor no longer is the equipment owner, but treating the maintenance portion as an executory contract, thus allowing the debtor to assume or reject the equipment services. If the debtor decides to assume the service aspect, and the services were offered below the lessor’s cost as part of the lease marketing inducement, the lessor may end up with an ongoing below-cost service responsibility.

## **G. Summary**

The classification of an equipment lease as a true equipment lease for bankruptcy purposes has benefits. The debtor must decide whether to assume or reject a lease contract within a prescribed period of time, giving the lessor some benefits over those of a typical secured or unsecured creditor in bankruptcy. If rejected, the lessor gets its equipment back, and can file a bankruptcy claim as an unsecured creditor for the damages resulting

from the lease rejection, deemed to be a contract breach. If the lease is assumed, the lessor has some assurance that it will be paid what it is owed under the lease contract, subject to adjustment by the bankruptcy court. If a lease contract is not deemed to represent a true lease for bankruptcy purposes, and instead is determined to be, say, a security agreement or a conditional or installment sale arrangement, then, unless the lessor has taken the proper precaution under the Uniform Commercial Code to secure its interest in the equipment, it may lose the equipment collateral to the debtor and become an unsecured creditor.



**This Page Intentionally Left Blank**

# Chapter 15

## *Equipment Lease Terminology*

When entering into a leasing transaction, you may encounter unfamiliar terms that have developed along with the leasing industry. This chapter defines terms according to their industry usage.

**Accelerated cost recovery system (ACRS)** The method prescribed by the Internal Revenue Code that an equipment owner must use in computing depreciation deductions on most equipment placed in service after 1980 and before 1987. Under ACRS, the owner writes off the equipment's cost over a 3-year, 5-year, 10-year, or 15-year period, depending on the recovery period designated for the equipment type.

**Acceptance certificate** A document in which a lessee acknowledges that certain specified equipment is acceptable for lease. Generally used in transactions where the parties enter into the lease document well in advance of the equipment's delivery date; it serves to notify the lessor that the equipment has been delivered, inspected, and accepted for lease as of a specified date. The typical form requires the lessee to list certain pertinent information, including the equipment manufacturer, purchase price, serial number, and location.

**Acceptance supplement** The same as an acceptance certificate.

**Advance rental** Any payment in the form of rent made before the start of the lease term. The term is also sometimes used to describe a rental payment arrangement in which the lessee pays all rentals, on a per period basis, at the start of each rental payment period. For example, a quarterly, in advance, rental program requires the lessee to pay one-fourth of the annual rent at the start of each consecutive three-month period during the lease term.

**Alternative minimum tax (AMT)** A system for taxing individuals and corporations that, in effect, prevents taxpayers from otherwise reducing their tax below a formulated level. If the tax liability calculated under the AMT rules is greater than the taxpayer's regular tax, the excess amount has to be paid along with the regular tax. The AMT is basically an attempt to dampen taxpayers' typical motivation to reduce excessively their tax liabilities.

**Anti-churning** A concept under the federal tax laws that prevents a taxpayer from taking advantage of more favorable equipment depreciation tax benefits through equipment transaction manipulations that violate the spirit of the tax laws.

**Asset depreciation range (ADR) indemnity** A type of tax indemnification given by the lessee to the lessor relating to leased equipment depreciated under the asset depreciation range system method. The lessee, in effect, guarantees the lessor against loss of, or inability to claim, anticipated ADR tax benefits under certain conditions.

**Asset depreciation range system (ADR)** A method prescribed by the Internal Revenue Code that could be used in computing depreciation deductions for certain assets placed in service after 1970 and before 1981. ADR provides a range of useful lives for specified assets that serve as the period over which the asset is depreciated. The lives listed are generally shorter than the period over which an asset may be depreciated under the “facts and circumstances” method of depreciation.

**Balloon payment** Commonly found in mortgage financings, a balloon payment is a final payment that is larger than the periodic term payments. Usually it results because the debt has not been fully amortized during the repayment period. For example, a one-year financing arrangement providing for interest-only monthly payments during the year, with the principal plus the last interest payment due on the final payment date, is said to have a “balloon payment” or simply a “balloon” due at the end of the term.

**Bareboat charter party** A net financial lease relating to vessels. Also sometimes referred to simply as a “bareboat charter.” See Net lease.

**Base lease term** The primary period of time during which the lessee is entitled to use the leased equipment, without regard to any interim or renewal lease terms. For example the base lease term of a five-year lease is five years.

**Base rental** The rental that the lessee must pay during the base, sometimes called primary, lease term.

**Beneficial interest holder** A beneficial, as opposed to legal (title), owner. For example, when a trust has been created by the equity participants to act as the lessor, the equity participants are deemed the beneficial interest holders. They hold interests in the trust that has title to the equipment.

**Bond** An instrument that represents a long-term debt obligation. The debt instruments, sometimes referred to as loan certificates, issued in a leveraged lease transaction, are referred to as bonds or notes.

**Book reporting** The reporting of income or loss for financial as opposed to tax purposes on the financial records of a corporation or other reporting entity.

**Book residual value** An estimate of the equipment’s residual value that a lessor uses, or “books,” to calculate economic return on a lease transaction.

**Broker** A person or entity who, for compensation, arranges lease transactions for another’s account. A broker is also referred to as a syndicator or underwriter.

**Call** The right a lessee may have to buy specified leased equipment for a predetermined fixed price, usually expressed as a percentage of original cost. If provided, such an option commonly does not become exercisable until the end of the lease term; and it lapses if the lessee fails to give the lessor timely notice of its intention to exercise it. For example, a lessee may have a right to buy equipment at the end of the lease term for 30% of original cost, notice of intention to exercise the option to be given not less than 90 days before the lease term’s end.

**Capital lease** Under the guidelines set out in FAS No. 13 by the Financial Accounting Standards Board, a lessee must classify certain long-term leases as capital leases for

accounting and reporting purposes. Capital leases are accounted for in a manner that reflects the long-term repayment obligation of such leases.

**Cash flow** In a lease transaction, the amount of cash a lease generates for a lessor.

**Casualty value** A predetermined amount of money that a lessee guarantees the lessor will receive in the event of an equipment casualty loss during the lease term. Generally expressed as a percentage of original cost, the value varies according to the point in time during the lease term that the loss occurs. It is also referred to as a “stipulated loss value.”

**Certificate of delivery and acceptance** The same as acceptance certificate.

**Charterer** The lessee of a vessel.

**Charter party** A document that provides for the lease (charter) of a vessel or vessels. While the format is basically the same as any other lease, there are certain additions and modifications reflecting the requirements dictated by a vessel transaction.

**Chattel mortgage** A mortgage relating to personal property. Thus, a mortgage on equipment is a chattel mortgage.

**Collateral** Assets used as security for the repayment of a debt obligation. In a typical leveraged lease, the collateral is the leased equipment.

**Commencement date** The date the base, or primary, lease term begins.

**Commission agreement** An agreement between a lease broker and a prospective equity participant providing for the payment of a fee to the broker for services in arranging a lease transaction.

**Commitment fee** Compensation paid to a lender in return for an agreement to make a future loan or to a lessor for its commitment to lease equipment to a lessee in the future.

**Conditional sales agreement** A contract, also referred to as CSA, that provides for the time financing of asset purchases. The seller retains title to the asset until the buyer fulfills all specified conditions, such as installment payments. At that time, title automatically vests in the buyer.

**Cost of money** Commonly, the cost that a lessor incurs to borrow money. This includes the interest rate and any additional costs related to such borrowing, such as fees or compensating balances. In pricing a lease transaction, a lessor factors this cost into the computation.

**Cost-to-customer** The simple interest rate on a lease transaction.

**DDB/SYD/TAN** A technique of switching methods of depreciation to maximize early depreciation write-offs used on property not covered by ACRS or MACRS. Depreciation deductions are initially computed using the double-declining balance (DDB) method with an appropriately timed change to the sum-of-the-years-digits (SYD) method followed by another appropriately timed change to the straight-line method.

**Debt participant** A long-term lender in a leveraged lease transaction. Frequently, those transactions have more than one debt participant.

**Debt service** The aggregate periodic repayment amount, including principal and interest, due on a loan.

**Default** In a lease transaction, when a party breaches certain material lease obligations.

**Deficiency guarantee** A guarantee given to a lessor by a third party, such as an equipment vendor or manufacturer, to induce a lessor to enter into a lease that it would not otherwise enter into usually because the prospective lessee may be a poor credit risk, or the future value of equipment may be highly speculative. For example, a deficiency guarantor may agree to pay the lessor for any shortfall below a designated amount, say 20% of original cost, incurred when the equipment is sold at the end of the lease.

**Deficit Reduction Act (DRA)** The 1984 Deficit Reduction Act, a federal income tax act.

**Delivery and acceptance certificate** The same as an acceptance certificate.

**Depreciation indemnity** A tax indemnification given by a lessee against the lessor's loss of anticipated depreciation tax benefits on leased equipment.

**Direct financing lease** A classification for a particular type of lease prescribed under the lease accounting guidelines set out by the FASB in FAS No. 13, applicable to lessors. Those guidelines tell lessors how to report direct financing leases for accounting purposes.

**Discounted cash flow analysis** The process of determining the present value of future cash flows.

**Economic Recovery Tax Act (ERTA)** The 1981 Economic Recovery Tax Act, a federal income tax act.

**Equipment certificate of acceptance** The same as an acceptance certificate.

**Equity participant** The equity investor in a leveraged lease. Frequently, a leveraged lease transaction has more than one equity participant, who jointly own and lease the equipment. An equity participant is also sometimes referred to as an "owner participant."

**Event of default** An event that provides the basis for the declaration of a default. For example, the nonpayment of rent under a lease agreement is typically prescribed as an event of default that gives the lessor the right to declare the lease in default and to pursue permitted remedies, such as terminating the lease and reclaiming the equipment.

**Facts and circumstances depreciation** A method of determining the depreciable life of an asset generally usable on assets placed in service before 1981. Under the facts and circumstances method, the useful life determination is based on the owner's experience with similar property, giving due consideration to current and anticipated future conditions, such as wear and tear; normal progress of the art; economic changes, inventions, and current developments within the industry and the taxpayer's trade or business; and climatic and other relevant local conditions that can affect the taxpayer's repair, renewal, and replacement program.

**Fair market purchase value** An asset's value as determined in the open market in an arm's length transaction (one in which there is a willing buyer and a willing seller, under no compulsion to act) under normal selling conditions. It is also referred to simply as the "fair market value."

**Fair market rental value** The rental rate that an asset would command in the open market in an arm's length transaction (one in which there is a willing lessee and a willing lessor, under no compulsion to act) under normal renting conditions. It is also referred to simply as the "fair rental value."

**FASB** Financial Accounting Standards Board, the accounting profession's guideline-setting authority.

**FAS Statement No. 13, Accounting for Leases** FAS No. 13 sets out the standards for financial lease accounting for lessors and lessees. FAS No. 13 was initially issued by the FASB, in Stamford, Connecticut, in November 1976.

**Finance lease** (1) The same as a full payout lease. (2) A statutory lease category that would have permitted leases that otherwise would not have qualified as true leases for tax purposes to be so treated. Although enacted by TEFRA in 1982, the finance lease's effective date was postponed, and it was repealed by the 1986 TRA before ever having gone into effect, with limited exceptions.

**Financing agreement** An agreement commonly entered into by the principal parties to a leveraged lease before equipment delivery. The agreement identifies each party's obligation to the transaction and any conditions that must be satisfied before the obligations are fixed. Typically, it will involve the debt and equity participants, their representatives, and the lessee. It is also referred to as a "participation agreement."

**Floating rental rate** A form of periodic rental payments that change or "float" upward and downward over a lease's term with changes in a specified interest rate. Frequently, a designated bank's prime rate is the measuring interest rate.

**Full payout lease** A form of lease that will provide the lessor with a cash flow generally sufficient assure return on equipment investment; pay the principal, interest, and other financing costs on related debt; cover related sales and administration expenses; and generate a profit. The cash flow is determined from the rental payments, the ownership tax benefits, and the equipment residual value. The lessee typically has the right to use the leased equipment for most of its actual useful life.

**Gross income tax** A tax imposed by a state or local taxing authority on gross income generated from sources within its jurisdiction. The tax is deductible by the taxpayer for federal income tax purposes.

**Grossing up** A concept that reimbursement for a monetary loss will include sufficient additional monies so that the after-tax amount will equal the loss. The recipient is said to be made whole for his loss because the amount paid must take into account any taxes he will have to pay as a result of the receipt of the payments from the payor.

**Guaranteed residual value** An arrangement in which, for example, a broker or equipment manufacturer guarantees that a lessor will receive not less than a certain amount for specified equipment when it is disposed of at the end of the lease term. It is also sometimes referred to simply as a "guaranteed residual."

**Guidelines lease** A leveraged lease that meets with the IRS's lease guidelines as set out in Revenue Procedures 75-21, 75-28, 76-30, and 79-48. Although guidelines specifically address only private letter ruling requests, generally a *Guidelines* lease should qualify as a true lease for federal income tax purposes.

**Half-year convention** A concept under the income tax rules for depreciating equipment under which all equipment placed in service during a tax year is treated as having been placed in service at the midpoint of that year, regardless of when during the year it was in fact placed in service.

**Hell or high-water clause** A lease provision that commits a lessee to pay the rent unconditionally. The lessee waives any right that exists or may arise to withhold any rent from the lessor or any assignee of the lessor for any reason whatsoever, including any setoff, counterclaim, recoupment, or defense.

**High-low rental** A rental structure in which the rent payments are reduced from a higher to a lower rate at a prescribed point in the lease term.

**Implicit lease rate** The annual interest rate that, when applied to the lease rental payments, will discount those payments to an amount equal to the cost of the equipment leased.

**Indemnity agreement** A contract in which one party commits to insure another party against anticipated and specified losses.

**Indenture** In a leveraged lease transaction, an agreement entered into by an owner trustee (the lessor's representative) and an indenture trustee (the lender's representative) in which the owner trustee grants a lien on the leased equipment, the lease rents, and other lessor contract rights as security for repayment of the outstanding equipment loan. It is also referred to as an indenture trust.

**Indenture trustee** The representative of the lenders where, in a leveraged lease transaction, the debt is provided through a trust arrangement. As the lender's representative, the indenture trustee may, for example, have to file and maintain a security interest in the leased equipment, receive rentals from the lessee, pay out the proper amounts to the lenders and the lessor, and take certain action to protect the outstanding loan in the event of a loan default.

**Installment sale** A sale in which the purchase price is paid in an agree-on number of installment payments over an agreed-on period of time. Typically, title to what is sold does not transfer to the purchaser until, and only when, the last installment has been paid.

**Institutional investors** Institutions that invest in lease transactions. They include, insurance companies, pension funds, banks, and trusts.

**Insured value** The same as casualty value.

**Interim lease rental** The equipment rental due for the interim lease term. Typically, for each day during the interim lease term, a lessee must pay as interim lease rent an amount equal to the daily equivalent of the primary lease term rent. In a leveraged lease transaction, the lease sometimes instead permits the lessee to pay an amount equal to the daily equivalent of the long-term debt interest.

**Interim lease term** The lease term period between the lessee's acceptance of the equipment for lease and the beginning of the primary, or base, lease term.

**Investment tax credit (ITC)** A credit allowed against federal income tax liability that can be claimed by a taxpayer for certain "Section 38 property" acquired and placed in service by a taxpayer during a tax year. ITC may also be available for certain property under applicable state income tax laws. Under the federal tax laws, ITC is generally not available for property placed in service after 1985.

**ITC indemnity** A type of indemnification in which the lessee commits to reimburse the lessor for any financial loss incurred through the loss of, or inability to claim, any or all of the anticipated ITC. If the lessor has "passed through" the ITC to the lessee, the lessor may have to give the indemnity.

**ITC "pass-through"** An election made by the lessor to treat, for ITC purposes, the lessee as the owner of the leased equipment. After the election, a lessee can claim the ITC on the equipment covered by the election.

**Layoff** The sale by a lessor of its interest in the lease agreement, including the ownership of the leased equipment and the right to receive the rent payments.

**Lease agreement** A contract in which an equipment owner, the lessor, transfers the equipment's use, subject to the specified terms and conditions, to another, the lessee, for a prescribed period of time and rental rate.

**Lease line** A present commitment by a lessor to lease specified equipment to be delivered in the future. A lease line can cover a variety of types of equipment, at varying rental rates and lease terms. It is also referred to as a lease line of credit.

**Lease underwriting** The process in which a lease broker arranges a lease transaction for the account of third parties, a prospective lessor and a prospective lessee. This can be on a best efforts basis or on a firm commitment basis. In a best efforts underwriting, the broker only offers to attempt diligently to arrange the financing on certain proposed terms. In a firm commitment underwriting the broker in effect guarantees to arrange the financing as proposed.

**Lessee** The user of equipment that is the subject of a lease agreement.

**Lessor** The owner of equipment that is the subject of a lease agreement.

**Level payments** Payments that are the same for each payment period during the payment term. Frequently, rent and debt service payments are paid in level payments over the payment period.

**Leveraged lease** A lease in which a portion, generally 60% to 80%, of the equipment acquisition cost is borrowed from a bank or other lending institution, with the lessor paying the balance. The debt is commonly on a nonrecourse basis, and the rental payments are usually sufficient to cover the loan debt service.

**Limited use property** Leased property that will be economically usable only by the lessee, or a member of the lessee group, at the lease term's end because, for example, of its immobility or unique aspects. The IRS will not rule that a lease is a true lease when the leased equipment is limited use property.

**Loan certificate** A certificate that evidences a debt obligation.

**Loan participant** A debt participant.

**Low-high rental** A rental structure in which the rent payments are increased from a lower to a higher rate at a prescribed point in the lease term.

**Management agreement** A contract in which one party agrees to manage a lease transaction during its term, including rental payment processing and equipment disposal.

**Management fee** A fee that a lease transaction manager receives for services performed under a management agreement.

**Master lease agreement** A lease agreement designed to permit future equipment not contemplated when the lease is executed to be added to the lease later. The document is set up in two parts. The main body contains the general, or boiler plate provisions, such as the maintenance and indemnification provisions. An annex, or schedule, contains the type of items that usually vary with a transaction, such as rental rates and options.

**Mid-quarter convention** A concept under the income tax rules for depreciating equipment in which all equipment placed in service during a quarter of a tax year is treated as



placed in service at the mid-point of such quarter, regardless of when it was in fact placed in service during the quarter.

**Modified Accelerated Cost Recovery System (MACRS)** A method prescribed for depreciating assets that was introduced by the 1986 TRA. It applies to most equipment placed in service after 1986.

**Mortgage** An arrangement whereby a lender (mortgagee) acquires a lien on property owned by a taxpayer (mortgagor) as security for the loan repayment. Once the debt obligation has been fully satisfied, the mortgage lien is terminated.

**Negative spread** The amount by which a value is below a certain prescribed amount. Generally, in a leveraged lease, a negative spread is the amount by which the transaction's simple interest rate is below the leveraged debt interest rate.

**Net lease** A lease arrangement in which the lessee is responsible for paying all costs, such as maintenance, certain taxes, and insurance, related to using the leased equipment, in addition to the rental payments. Typically, finance leases are net leases.

**Non-payout lease** A lease arrangement that does not, over the primary term of the lease, generate enough cash flow to return substantially all the lessor's investment, debt financing costs, and sales and administration expenses.

**Nonrecourse debt financing** A loan to which the lender agrees to look solely to the lessee, the lease rents, and the leased equipment for the loan's repayment. As security for the loan repayment, the lender receives an assignment of the lessor's rights under the lease agreement and a grant of a first lien on the equipment. Although the lessor has no obligation to repay the debt in the event of a lessee default, its equity investment in the equipment is usually subordinated to the lender's rights.

**Nonutilization fee** A fee that a lessor may impose in return for its present commitment to buy and lease specified equipment in the future. The fee is generally expressed as a percentage of the aggregate unused portion of the initial dollar commitment, for example, 1% of the unused balance of a \$1 million lease line of credit. Thus, if all the commitment is used, no fee is payable.

**Operating lease** A form of lease arrangement in which the lessor generally commits to provide certain additional equipment-related services other than the straight financing, such as maintenance, repairs, or technical advice. Generally, operating leases are non-payout in nature. The term also refers to a lease classification under FAS No. 13.

**Option** A contractual right that can be exercised under the granting terms. For example, a fair market value purchase option in a lease is the right to buy the equipment covered by it for its fair market value.

**Packager** A person or entity who arranges a lease transaction for third parties. Also referred to as an underwriter, syndicator, or broker.

**Participation agreement** The same as a financing agreement.

**Payout lease** The same as a full payout lease.

**Personal property** The same as Section 38 property. Equipment is considered personal property, but real estate is not so considered.

**Portfolio lease** The term commonly refers to a lease that is entered into by a "professional" lessor for its own account and investment.

**Present value** The term refers to the present worth of a future stream of payments calculated by discounting the future payments at a desired interest rate.

**Primary lease term** The same as base lease term.

**Private letter ruling** A written opinion that the IRS issues in response to a taxpayer's request. The letter sets out the IRS's position on the tax treatment of a proposed transaction. In leveraged lease transactions, for the IRS to issue a favorable private letter ruling, the request must comply with the IRS *Guidelines*.

**Progress payments** Payments that may be required by an equipment manufacturer or builder during the construction period toward the purchase price. Frequently required for costly equipment with a long construction period, the payments are designed to lessen the manufacturer's or builder's need to tie up their own funds during construction.

**Purchase option** The right to buy agreed-on equipment at the times and the amounts specified in the option. Frequently, these options are only exercisable at the end of the primary lease term, although they sometimes can be exercised during the primary lease term or at the end of any renewal term.

**Put** A right that a lessor may have to sell specified leased equipment to the lessee at a fixed price at the end of the initial lease term. It is usually imposed to protect the lessor's residual value assumption.

**Recourse debt financing** A loan under which the lender may look to the general credit of the lessor, in addition to the lessee and the equipment, for repayment of any outstanding loan obligation. The lender is said to have a "recourse" against the lessor.

**Recovery property** Property that can be depreciated under ACRS.

**Renewal option** An option frequently given to a lessee to renew the lease term for a specified rental and time period.

**Residual sharing** A compensation technique sometimes used by syndicators for arranging a lease transaction. Under this, the equity participants must pay a predetermined percentage of what the equipment is sold for at the end of the lease. For example, a syndicator may get 50% of any amount realized exceeding 20% of the equipment's original cost on sale.

**Residual value** The value of leased equipment at the end of the lease term.

**Right of first refusal** The right of the lessee to buy the leased equipment, or renew the lease, at the end of the lease term, for any amount equal to that offered by an unaffiliated third party.

**Safe harbor lease** A statutory lease category enacted as part of ERTA that permitted a lease to qualify as a true lease for federal income tax purposes, although it would not otherwise ordinarily qualify. It was repealed by the 1984 DRA, with limited exceptions. Under a safe harbor lease, an equipment owner could essentially sell the ownership tax benefits without giving up other ownership rights.

**Sale-leaseback** An arrangement in which an equipment buyer buys equipment for the purpose of leasing it back to the seller.

**Sales tax** A tax imposed on selling equipment, similar to any other sales tax on property sold.

**Sales-type lease** A classification for a particular type of lease prescribed under the lease accounting guidelines that the FASB set out in FAS No. 13, applicable to lessors.

**Salvage value** The amount, estimated for federal income tax purposes, that an asset is expected to be worth at the end of its useful life.

**Section 38 property** Tangible personal property and certain other tangible property, as defined by Internal Revenue Code Section 38.

**Security agreement** An agreement that evidences an assignment by the lessor to the lender, as security for the equipment loan, of the lessor's rights under the lease agreement and a granting of a security interest in the leased equipment.

**Sinking fund** A fund frequently established in leveraged lease transactions by the lessor to accumulate funds to pay for future taxes.

**Sinking fund rate** The interest rate that a sinking fund is deemed to earn on accumulated funds.

**Special-purpose equipment** The same as limited use property.

**Spread** The difference between two values. In lease transactions, the term is generally used to describe the difference between the lease interest rate and the interest rate on the debt.

**Stipulated loss value** The same as casualty value.

**Sublease** The re-lease by a lessee of equipment that is on lease to the lessee.

**Take or pay contract** An agreement in which one party commits to buy an agreed-on quantity of goods or material from another at a predetermined price. If the goods or material are not bought, the party making the purchase commitment must pay the party an amount of money equal to the cost of goods or materials it had committed to buy. For example, a public utility can agree to buy 100 tons of coal annually from a mining company, and if it does not buy this amount in any year it will pay an amount of money equal to its sale price.

**Tax benefit transfer lease (TBT)** The same as a safe harbor lease.

**Tax Equity and Fiscal Responsibility Act (TEFRA)** The 1982 Tax Equity and Fiscal Responsibility Act, a Federal income tax act.

**Tax lease** The same as a true lease.

**Tax Reform Act (TRA)** The 1986 Tax Reform Act, a Federal income tax act.

**Termination option** An option entitling a lessee to terminate the lease during the lease term for a predetermined value, termination value, if the equipment becomes obsolete or surplus to the lessee's needs. The lessor usually requires the lessee to sell the equipment to an unaffiliated third party, and the lessee must pay the lessor any amount by which the sale proceeds are less than the termination value. Typically, any excess sale proceeds go to the lessor.

**Termination value** The amount that the lessee must pay the lessor if it exercises a termination option. Typically, the termination value is set as of each rental payment period and is generally expressed as a percentage of equipment cost. For example, the lessee may be permitted to terminate the lease at the end of the third year of a seven-year lease for an amount equal to 60% of cost.

**Time sale** An installment sale.

**Total earnings** The amount by which the aggregate rentals due the lessor over the entire lease term exceed the total equipment costs, including equity investment and debt financing costs. This concept does not consider the time value of money.

**TRAC lease** A lease of motor vehicles or trailers that contains what is referred to as a terminal rental adjustment clause (TRAC). The clause permits or requires the rent amount to be adjusted based on the proceeds the lessor receives from the sale of the leased equipment. TRAC leases qualify as true leases.

**Transition rules** Statutory rules enacted when there is a change in the tax laws. The transition rules allow certain transactions to be exempted from the law change. For example, transition rules permitted ITC to be claimed on certain equipment placed in service after 1985.

**True lease** An arrangement that qualifies for lease treatment for federal income tax purposes. Under a true lease, the lessee may deduct rental payments and the lessor may claim the tax benefits accruing to an equipment owner.

**Trust** An arrangement in which property is held by one party for the benefit of another. It is frequently used in leveraged lease transactions.

**Trust certificate** A trust document issued on behalf of a trust to evidence the beneficial ownership in the trust estate.

**Trustee** The person or entity appointed, or designated, to carry out a trust's terms. In leveraged lease transactions, the trustee is generally a bank or trust company.

**Trustee fees** Fees payable to a trustee as compensation for services performed.

**Trustor** An individual or entity who causes the creation of a trust and for whose benefit it is established.

**Unleveraged lease** A lease in which the lessor puts up 100% of the equipment's acquisition cost from its own funds.

**Useful life** Commonly, the economic usable life of an asset.

**Use tax** A tax imposed on the use, storage, or consumption of tangible personal property within a taxing jurisdiction. For example, in most states a lessor purchasing equipment has the option of paying an upfront sales tax equal to a specified percentage of the equipment's purchase price or a use tax equal to a specified percentage of lease rents under the equipment's lease.

**Vendor** A seller of property. Commonly, the manufacturer or distributor of equipment.

**Vendor program** A program in which an equipment lessor provides a lease financing service to customers of an equipment manufacturer.

**This Page Intentionally Left Blank**

# ***Forms***

**This Page Intentionally Left Blank**

**Form: a-01****Disk File Name: a-01.rtf****ACKNOWLEDGMENT OF RECEIPT OF CERTIFICATE OF DEPOSIT****Form Purpose**

Acknowledgment for use by an equipment leasing company or equipment lender of the receipt and acceptance of a certificate of deposit as collateral security for equipment lease or loan obligations.

*Executing Parties*

The equipment leasing company or lender, as applicable.

*See:*

Assignment of Certificate of Deposit, Form a-02

**Acknowledgment of Receipt of Certificate of Deposit**

Lessee (or Borrower, as applicable) Name:

Lessee (or Borrower, as applicable) Address:

Lease (or Loan, as applicable) Number:

Certificate of Deposit Identification Number:

To Whom It May Concern:

I hereby certify that I am a duly elected officer of (insert name of leasing company or lender) (the "Company"), and as said officer, I am duly authorized to acknowledge and accept receipt of original Certificates of Deposit on behalf of the Company.

The Certificate of Deposit referenced above has been tendered by the above-referenced lessee (or borrower, as applicable) in accordance with the terms and conditions of the above-referenced lease (or loan, as applicable), and in accordance with the Assignment of Certificate of Deposit, a copy of which is attached hereto as Exhibit A.

This letter is to acknowledge the receipt and acceptance of one original Certificate of Deposit, identified above, issued by (insert name of issuing institution) in the amount of \$ .

(Insert name of leasing company or lender)

By:

Title:

Date:

**Exhibit A**

[Copy of Assignment of Certificate of Deposit.]



Form: a-02

Disk File Name: a-02.rtf

**ASSIGNMENT OF CERTIFICATE OF DEPOSIT**

**Form Purpose**

Assignment to an equipment leasing company or lender of one or more certificates of deposit as collateral security for equipment lease or loan obligations.

*Executing Parties*

The equipment lessee or borrower, as applicable (assignor).

The equipment lessor or lender, as applicable (assignee).

*See:*

Acknowledgment of Receipt of Certificate of Deposit, Form a-01

**Assignment of Certificate of Deposit**

This Assignment of Certificate of Deposit (the "Agreement"), dated \_\_\_\_\_, is entered into by and between \_\_\_\_\_ (the "Assignor"), having its principal place of business at \_\_\_\_\_ and \_\_\_\_\_ (the "Assignee"), having its principal place of business at \_\_\_\_\_.

1. Collateral. As collateral security for the payment of any and all indebtedness and liabilities of Assignor to Assignee, however evidenced or acquired, whether now existing or hereafter arising, whether direct or indirect, absolute or contingent, or joint and several, Assignor hereby assigns, pledges, and transfers to Assignee all of Assignor's right, title, and interest in and to the certificate(s) of deposit (collectively, the "Certificate") described as follows:

<i>Certificate No.</i>	<i>Institution Name/Address</i>	<i>Amount</i>
		\$
		\$

2. Assignor Representations and Warranties. With respect to the Certificate, Assignor represents and warrants that:

- a. Assignor is the lawful owner of the Certificate, free and clear of all loans, liens, encumbrances, and claims, except as disclosed in writing to Assignee on Annex A hereto;
- b. Assignor has full right, power, and authority to enter into this Agreement and to assign the Certificate to Assignee;
- c. The Certificate is genuine and the amount(s) of the Certificate stated above is the true amount(s) of the Certificate as of the date of this Agreement; and
- d. Assignor will not sell, assign, encumber, or otherwise dispose of any of Assignee's rights to the Certificate, except as provided for in this Agreement.

3. Assignee Rights and Obligations. Assignor hereby appoints Assignee as its true and lawful attorney-in-fact, with full power of substitution, and agrees that Assignee shall have full and irrevocable right, power, and authority, in the name of Assignor or in Assignee's own name, to demand, collect, withdraw, receipt for, or sue for all amounts due or to become due and payable upon the Certificate, including any interest accrued or payable thereon and any renewals, extensions, or reinvestments thereof. Assignee may execute withdrawal receipts respecting the Certificate and endorse the name of Assignor on any or all commercial paper given in payment thereof, and, at Assignee's discretion, take any other action, including without limitation the transfer of the Certificate into its own name or the name of its nominee which it may deem necessary or appropriate to preserve or protect its interest in the Certificate.

While this Agreement is in effect, Assignee may retain the rights to possession of the Certificate. Assignee may notify the institution that issued the Certificate of this Agreement. Assignor agrees that such institution will not pay any amount on the Certificate, other than to Assignee, so long as this Agreement is in

effect. This Agreement will remain in effect until (i) there is no longer any indebtedness owing to Assignee, or (ii) Assignor has received, in writing from Assignee, a release of this Agreement.

Assignor hereby agrees that the Certificate-issuing institution may act, and in doing so shall be fully protected from liability to Assignor when so acting, on any order or direction by Assignee respecting the Certificate without making any inquiry as to Assignee's right or authority to give such order or direction or as to the application of any payment made pursuant thereto; and any payment of the Certificate made to Assignee pursuant to any such order or direction shall satisfy and discharge any liability of such institution to Assignor to the extent of such payment.

In addition to its rights under this Agreement, Assignee shall have all rights of a secured party under the Uniform Commercial Code in effect in the State of \_\_\_\_\_, and Assignor will execute required financing statements to give notice of such rights.

4. Limitations of Assignee. Assignee shall use reasonable care in the physical preservation and custody of the Certificate, but shall have no other obligation to protect the Certificate or its value, including but not limited to collection or protection of any income on the Certificate or the preservation of rights against issuers of the Certificate or third parties.

5. Events of Default and Remedies. An event of default (an "Event of Default") will exist under this Agreement if Assignor (i) fails to make any payment when due on any indebtedness and/or obligations secured by the Certificate, or (ii) dies (*Author's Note: Delete "dies" if a corporate Assignor*), becomes insolvent, appoints a receiver to any part of Assignor's property, makes any assignment for the benefit of creditors, or commences any bankruptcy proceedings.

Upon the occurrence of an Event of Default, and upon prior notice to Assignor, Assignee may present the Certificate to the issuing institution, obtain all funds deposited or accrued under the Certificate, and apply such funds to the indebtedness. If the Certificate is subject to an early withdrawal penalty, such penalty shall be deducted from the funds prior to application against the indebtedness. Any excess funds remaining after the indebtedness is satisfied will be paid to Assignor.

6. Assignment by Assignee. Assignee shall have the right, upon prior notice to Assignor, to assign its right and interest in the Certificate and to grant an assignee a first security interest in the Certificate.

7. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8. Binding Agreement. This Agreement and all representations and warranties herein contained are binding upon and shall inure to the benefit of the parties hereto and to their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the date and year first written above.

\_\_\_\_\_, Assignee

By:

Title:

\_\_\_\_\_, Assignor

By:

Title:

## Annex A

[List any loans, liens, encumbrances, and/or claims affecting the Certificates of Deposit(s).]

## Acknowledgment

The undersigned, being the institution referred to in the foregoing Agreement, hereby acknowledges receipt of a copy of, and consents to, this Agreement and certifies that the amount owing on the Certificate listed in the Agreement is not less than the amount(s) set forth above, and that parties executing the Agreement are the only parties having interest in the Certificate as appears on the record of undersigned, and that the undersigned has not received notice of any assignment, other than this Agreement, of the Certificate.

(Insert name of institution)

By:

Title:

Date:

**Form: a-03**  
**Disk File Name: a-03.rtf**

## ASSIGNMENT OF SAVINGS ACCOUNT AND/OR STOCK CERTIFICATE

### Form Purpose

Assignment to an equipment leasing company or lender of a savings account and/or stock certificate as collateral security for equipment lease or loan obligations.

#### *Executing Parties*

The equipment lessee or borrower, as applicable (assignor).

The equipment lessor or lender, as applicable (assignee).

---

### Assignment of Savings Account and/or Stock Certificate

Date:

[Insert name and address of Assignee.]

Gentlemen:

For value received, I/we (Assignor) hereby assign and transfer to and pledge to [insert name of Assignee] ("Assignee") my/our savings account and/or stock certificate number \_\_\_\_\_, as more specifically identified on Exhibit A hereto (*Author's Note*: Copies of the account statement or stock certificate are recommended), as collateral for my/our obligations ("Obligation") under that certain [insert the identification of the document giving rise to this assignment, such as "that certain equipment lease agreement, dated \_\_\_\_\_, by and between Assignor and Assignee."].

This assignment shall be a continuing one and shall be effective until canceled, and shall operate as security for payment of any other debts or liabilities of the undersigned to Assignee now in existence or hereafter contracted.

You are hereby authorized to charge against the above savings account and/or stock certificate, for Obligation monies not paid when due, and, in this regard, I/we do hereby irrevocably constitute and appoint Assignee as attorney-in-fact to effect transfers of said stock and/or withdrawals and transfers of said savings account.

Assignor warrants the savings account and/or stock certificate is genuine and in all respects what it purports to be; that Assignor is the owner thereof free and clear of all liens and encumbrances of any nature whatsoever; and that Assignor has full power, right, and authority to execute and deliver this assignment.

\_\_\_\_\_, Assignor

By:

Title:

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_, Assignee

By:

Title:

**Form: a-04****Disk File Name: a-04.rtf****ASSIGNMENT OF LEASE TO LENDER—SINGLE TAKEDOWN****Form Purpose**

Assignment to a leasing company's equipment lender of the leasing company's rights under an equipment lease, as collateral security for a loan to be used by the leasing company to pay, at least in part, for the cost of the equipment to be leased. This form contemplates a one-time loan takedown.

*Executing Parties*

The equipment lessor.

The equipment lender.

*See:*

Loan and Security Agreements Forms

Promissory Note Forms

**Assignment of Lease**

This ASSIGNMENT made as of \_\_\_\_\_, [insert name of leasing company], a corporation, with offices at \_\_\_\_\_ (hereinafter referred to as the "Borrower"), to \_\_\_\_\_, a corporation, with offices at \_\_\_\_\_ (hereinafter referred to as the "Lender").

## WITNESSETH:

WHEREAS, Borrower and (insert name of lessee) (the "Lessee") are parties to an equipment lease agreement dated as of \_\_\_\_\_, (the "Lease") that \_\_\_\_\_ provides for the leasing by Borrower to Lessee of certain equipment (the "Equipment") described in Schedule A attached hereto;

WHEREAS, Borrower desires to borrow from (insert name of lender) (the "Lender") the principal sum of \$ \_\_\_\_\_, such borrowing to be evidenced by a promissory note of Borrower in said principal amount payable to Lender or to its order (the promissory note, together with any extension and renewal thereof, hereinafter referred to as the "Note");

WHEREAS, such borrowing (the "Loan") is to be made at a closing at which Borrower has agreed to deliver to Lender (i) this Assignment (the "Assignment"), and (ii) a Loan and Security Agreement, dated the same date as this Assignment, by and between Borrower and Lender (the "Security Agreement"); and

WHEREAS, this Assignment and the Security Agreement are being delivered to Lender as security for the payment of the Note and the performance by Borrower of its obligations under the Note, the Assignment and the Security Agreement (all such sums and obligations hereinafter referred to as the "Indebtedness").

NOW, THEREFORE, to induce Lender to make the Loan and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. As security for the Indebtedness, Borrower hereby assigns, transfers, and sets over unto Lender all Borrower's right, title, and interest as lessor under the Lease, together with all rights, powers, privileges, and other benefits of Borrower as lessor under the Lease, including, without limitation, the immediate right to receive and collect all rentals, insurance proceeds, net proceeds from the sale of all the Equipment, profits and other sums payable to or receivable by Borrower under or pursuant to the provisions of the Lease, and the right to make all waivers and agreements, to give all notice, consents, and releases, to take all action upon the happening of a default or an event of default under the Lease, and to do any and all other things whatsoever which Borrower is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, Borrower hereby irrevocably authorizes and empowers Lender in its own name, or in the name of its nominee, if any, or in the name of Borrower or as its attorney, to ask, demand, collect, and receive any and all sums

to which Borrower is or may become entitled under the Lease to enforce compliance by Lessee with all the terms and agreements of the Lease.

2. The assignment made hereby is executed only as security, and, therefore, the execution and delivery of this Assignment shall not subject Lender to, or transfer, or pass, or in any way affect or modify, the liability of Borrower under the Lease, it being understood and agreed that notwithstanding such assignment, or any subsequent assignment, all obligations of Borrower to Lessee under the Lease shall be and remain enforceable by Lessee, its successors and assigns, against Borrower.

3. Borrower covenants and agrees that it will perform all of its obligations to be performed under the terms of the Lease, and hereby irrevocably authorizes and empowers Lender, in its own name, or in the name of its nominee, if any, or in the name of Borrower, or its attorney, on the happening of any failure by Borrower, to perform, or cause to be performed, any such obligation, all at Borrower's expense.

4. Upon (i) the full discharge and satisfaction of the Indebtedness, or (ii) the failure on the part of Lender to diligently exercise any right or remedies to which Lender is entitled by virtue of this Assignment and which arise out of the happening of a default or an event of default under the Lease, the assignment made hereby and all rights herein assigned to Lender shall cease and terminate, and all estate, right, title, and interest of Lender in and to the Lease shall revert to Borrower.

5. Borrower represents, warrants and covenants that: (a) the Lease is valid, is in full force and effect, is not in default, and is enforceable in accordance with its terms (subject only to bankruptcy, insolvency, and reorganization laws and other laws governing the enforcement of lessor's or creditor's rights), (b) the execution and delivery of the Assignment, the Security Agreement and the Note have been duly authorized, and the Assignment, the Security Agreement and the Note are and will remain the valid and enforceable obligations of Borrower in accordance with their terms, (c) Borrower has not executed, and will not execute, any other assignment of the Lease and its right to receive all payments under the Lease is and will continue to be free and clear of any and all liens or encumbrances created or suffered by any act or omission on the part of Borrower, except as encumbered hereunder, (d) Borrower has delivered to Lender its only executed counterpart of the Lease, and (e) notwithstanding the Assignment, Borrower will perform and comply with each and all of the covenants and conditions in the Lease set forth to be complied with by it.

6. Borrower covenants and agrees with Lender that in any suit, proceeding, or action brought by Lender under the Lease for any sum owing thereunder, or to enforce any provisions of such Lease, Borrower will save, indemnify, and keep Lender harmless from and against all expense, loss, or damage suffered by reason of any defense, setoff, counterclaim, or recoupment whatsoever of Lessee thereunder or its successors, arising out of a breach by Borrower of any obligation in respect of the Equipment covered by the Lease or arising out of any other indebtedness or liability at any time owing to Lessee or its successors from Borrower.

7. Borrower will from time to time execute all such financing statements and supplemental instruments as Lender may from time to time reasonably request in order to confirm or further assure the assignment made hereby and the provisions hereof.

8. Lender may assign, without notice or consent, all or any of its rights under the Lease, including the right to receive any payments due or to become due to it from Lessee. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all rights and privileges and be subject to all the obligations of Lender.

9. Borrower agrees that it will not, without the prior written consent of Lender, enter into any agreement amending, modifying, or terminating the Lease and that any attempted amendment, modification, or termination without such consent shall be void.

10. Borrower hereby constitutes Lender, its successors and assigns, its true and lawful attorney, irrevocably, with full power (in its name or otherwise) to ask, require, demand, receive, and compound any and all rents and claims for money due and to become due under, or arising out of this Assignment, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to Lender or any subsequent assignee seem necessary or advisable, all without affecting Borrower's liability in any manner whatsoever.

11. Borrower shall have no authority, without Lender's prior written consent, to accept payments or other collections, repossess or consent to the return of the property described in the Lease, or modify the terms of said Lease.

12. The Assignment shall be governed by the laws of the State of \_\_\_\_\_.

13. The Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14. Borrower shall cause copies of all notices received in connection with the Lease to be promptly delivered to Lender at \_\_\_\_\_, or at such other address as Lender shall designate in writing.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of the date first above written.

, Borrower

By:

Title:

Accepted this            day of            , 20\_\_

, Lender

By:

Title:

**Schedule A**

[Insert equipment description.]

**Form: a-05**  
**Disk File Name: a-05.rtf**

**ASSIGNMENT OF LEASE TO LENDER—MULTIPLE TAKEDOWNS**

**Form Purpose**

Assignment to a leasing company's equipment lender of the leasing company's rights under an equipment lease, as collateral security for a loan to be used by the leasing company to pay, at least in part, for the cost of the equipment to be leased. This form contemplates multiple equipment deliveries, and multiple equipment loan takedowns by the leasing company, and has been integrated with a Loan and Security Agreement, Form l-05, a Promissory Note, Form p-02, and an Assignment Amendment, Form a-9.

*Executing Parties*

The equipment lessor.

The equipment lender.

*See:*

Loan and Security and Loan Agreement, Form l-05

Promissory Note, Form p-02

Assignment Amendment, Form a-09

**Assignment**

This ASSIGNMENT made as of \_\_\_\_\_, from \_\_\_\_\_, a \_\_\_\_\_ corporation, with offices at \_\_\_\_\_ (hereinafter referred to as the "Company"), to \_\_\_\_\_, with offices at \_\_\_\_\_ (hereinafter referred to as the "Lender").

WITNESSETH:

WHEREAS the Company and \_\_\_\_\_ (hereinafter referred to as the "Lessee") are parties to a Lease Agreement dated as of \_\_\_\_\_, including as a part thereof, Schedule No. \_\_\_\_\_ dated as of \_\_\_\_\_, and the Acceptance Certificate executed between the Company and Lessee, dated as of \_\_\_\_\_, (said Lease, Schedule, and Acceptance Certificate being hereinafter referred to collectively as the "Lease") providing for the leasing by the Company to Lessee of certain newly manufactured equipment (as further described in Schedule A attached hereto and hereinafter referred to as the "Units");

WHEREAS, the Company desires to borrow from Lender an aggregate amount (hereinafter referred to as the "Loan") equal to \_\_\_\_\_ % of the purchase price of the Units, said Loan to be evidenced by one or more promissory notes of the Company payable to Lender or to its order (the promissory notes, together with any extension and renewal thereof, are hereinafter referred to as the "Notes");

WHEREAS, the Loan is to be made in a number of installments, each pursuant to a closing prior to which the Company has agreed to deliver to Lender (i) this Assignment (hereinafter referred to as the "Assignment") covering the Lease and (ii) a Loan and Security Agreement (hereinafter referred to as the "Security Agreement") on the Units; and

WHEREAS, the Assignment and the Security Agreement are being delivered to Lender as security for the payment of the Notes and the performance by the Company of its obligations under the Notes, the Assignment and the Security Agreement (all such sums and obligations being hereinafter referred to as the "Indebtedness").

NOW, THEREFORE, to induce Lender to make the Loan and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:



1. As security for the Indebtedness, the Company hereby assigns, transfers, and sets over unto Lender all the Company's right, title, and interest as lessor under the Lease to receive and collect all rentals, insurance proceeds, net proceeds from the sale of the Units, profits and other sums payable to or receivable by the Company under or pursuant to the provisions of the Lease (except payments and reimbursements by Lessee to the Company for taxes and payments and reimbursements to the Company in the nature of indemnification to the Company, all of which shall be retained by the Company), and the right to make all waivers and agreements permitted under the Security Agreement, to give all notice, consents, and releases permitted under the Security Agreement, to take all action upon the happening of a default or an event of default under the Lease, and to do any and all other things whatsoever which the Company is or may become entitled to do under the Lease; provided, however, that no assignment is hereby made of the rights and options granted to the Lessee in Section \_\_\_\_\_ of the Lease and, in connection therewith, the Company reserves the right to give all such notices and take all such acts as are required or incident to the exercise of such rights and options, and the Company further reserves the right to receive all financial and other information which the Lessee is required to furnish to the Company pursuant to the Lease, provided that the Company, if requested by Lender, will deliver copies of all such information received by it to Lender. In furtherance of the foregoing assignment, the Company hereby irrevocably authorizes and empowers Lender in its own name, or in the name of its nominee, if any, or in the name of the Company or as its attorney, to ask, demand, collect, and receive any and all sums to which the Company is or may become entitled under the Lease and to enforce compliance by Lessee with all the terms and agreements of the Lease.

2. The assignment made hereby is executed only as security, and therefore, the execution and delivery of this Assignment shall not subject Lender to, or transfer, or pass, or in any way affect or modify, the liability of the Company under the Lease, it being understood and agreed that notwithstanding such assignment, or any subsequent assignment, all obligations of the Company to Lessee under the Lease shall be and remain enforceable by Lessee, its successors and assigns, against the Company.

3. The Company covenants and agrees that it will perform all of its obligations to be performed under the terms of the Lease, and hereby irrevocably authorizes and empowers Lender, in its own name, or in the name of its nominee, if any, or in the name of the Company, or its attorney, on the happening of any failure by the Company, to perform, or cause to be performed, any such obligation, all at the Company's expense.

4. Upon the full discharge and satisfaction of the Indebtedness, the assignment made hereby and all rights herein assigned to Lender will cease and terminate, and all estate, right, title, and interest of Lender in and to the Lease shall revert to the Company. Lender will forthwith execute and file all such termination statements and such other documents as may be necessary or appropriate to make clear upon the public record the termination of such assignment hereunder.

5. The Company represents, warrants and covenants that (a) the Lease is valid, in full force and effect, is not in default, and is enforceable in accordance with its terms against the Company (subject only to bankruptcy, insolvency, and reorganization laws and other laws governing the enforcement of lessor's or creditor's rights), (b) the execution and delivery of the Assignment, the Security Agreement and the Notes have been duly authorized, and the Assignment and Security Agreement are and the Notes will be, the valid and enforceable obligations of the Company in accordance with their terms, (c) the Company has not executed, and will not execute, any other assignment of the Lease and its right to receive all payments under the Lease is and will continue to be free and clear of any and all liens or encumbrances created or suffered by any act or omission on the part of the Company, except as encumbered hereunder, (d) the Company has delivered to Lender the Company's only executed counterpart of the Lease, and notwithstanding the assignment, the Company will perform and comply with each and all of the covenants and conditions in the Lease set forth to be complied with by it, and (e) notice pursuant to Section \_\_\_\_\_ of the Lease has been given to Lessee. (*Author's Note:* include if Lessor is obligated under the Lease to notify Lessee of a Lease assignment.)

6. The Company covenants and agrees with Lender that in any suit, proceeding, or action brought by Lender under the Lease for any sum owing thereunder, or to enforce any provisions of such Lease, the Company will save, indemnify, and keep Lender harmless from and against all expense, loss, or damage suffered by reason of any defense, setoff, counterclaim, or recoupment whatsoever of Lessee hereunder or its successors, arising out of a breach by the Company of any obligation in respect of the Units covered by the Lease or arising out of any other indebtedness or liability at any time owing to Lessee or its successors from the Company.

7. The Company will from time to time execute all such instruments and supplemental instruments and cooperate in the filing or recording of such documents, as Lender may from time to time reasonably request in order to confirm and perfect the assignment made hereby and the provisions hereof.

8. Lender may assign all or any of its rights under the Lease, including the right to receive any payments due or to become due to it from Lessee. In the event of any such assignment, any such subsequent or

successive assignee or assignees shall, to the extent of such assignment, enjoy all rights and privileges and be subject to all the obligations of Lender.

9. The Company agrees that it will not, without prior written consent of Lender, enter into any agreement amending, modifying, or terminating the Lease, and any such attempted amendment, modification, or termination without such consent shall be void.

10. The Company hereby constitutes Lender, its successors and assigns, its true and lawful attorney, irrevocably, with full power, (in its name or otherwise) to ask, require, demand, receive, and compound any and all rents and claims for money due and to become due under, or arising out of this Agreement, to endorse any checks or other instruments or orders in connection therewith, and to file any claims or take any action or institute any proceedings which to Lender or any subsequent assignee seem necessary or advisable, all without affecting the Company's liability in any manner whatsoever.

11. The Company shall have no authority, without Lender's prior written consent, to accept payments or other collections assigned to Lender hereunder, or to repossess or consent to the return of the property described in the Lease, or materially modify the terms of said Lease.

12. The Assignment shall be governed by the laws of the State of \_\_\_\_\_.

13. The Assignment shall be binding upon and inure to the benefit of the parties hereto and the respective successors and assigns.

14. The Company shall cause copies of all notices received in connection with the Lease to be promptly delivered to Lender at \_\_\_\_\_, Attn.: \_\_\_\_\_, or at such other address as Lender shall designate in writing.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of the date first written above.

(Insert name of Company)

By:

Title:

Accepted:

(Insert name of Lender)

By:

Title:

### Schedule A

#### Description of Equipment

<i>Description of Unit and Manufacturer</i>	<i>No. of Units</i>	<i>Location</i>	<i>Supplier or Vendor</i>	<i>Identification or Serial No.</i>
---	---------------------	-----------------	-------------------------------	---

**Form: a-06****Disk File Name: a-06.rtf****ASSIGNMENT OF LEASE—SALE BY LESSOR (LIMITED RECOURSE)****Form Purpose**

Sale assignment, limited recourse, by one leasing company to another leasing company of an equipment lease and the underlying equipment.

*Executing Parties*

The selling equipment lessor.

The purchasing equipment lessor.

*See:*

Bill of Sale, Forms b-01 and b-02

**Assignment of Lease**

(Limited Recourse)

[Insert name of assigning equipment leasing company] (the "Assignor") hereby sells, assigns, transfers, and conveys to (insert name of purchasing equipment leasing company) (the "Assignee"), its successors and assigns, without recourse except as hereinafter provided, the lease agreement (the "Lease"), covering

(insert equipment description here),

dated \_\_\_\_\_, between Assignor and (insert name and address of Assignor of the lease), and \_\_\_\_\_, as lessee, ("Lessee") and all payments due and to become due thereunder and all right, title, and interest of Assignor in and to the property described in the Lease (the "Property") and all Assignor's rights and remedies thereunder, 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 for this assignment.

Assignor represents and warrants that the Lease and all related instruments are genuine, enforceable, and the Lease is the only one executed with respect to the Property; all statements therein contained are true; the Property has been delivered to, and accepted by, Lessee in condition satisfactory to Lessee, and Assignor will comply with all its representations, warranties and other obligations to Lessee.

Assignor hereby agrees to indemnify, hold safe and harmless from and against and covenants to defend Assignee against any and all claims, costs, expenses, damages, and all liabilities arising from or pertaining to the use, possession, or operation of the Property.

Assignor represents and warrants that the Lease is in full force and effect and that Assignor has not assigned or pledged, and hereby covenants that it will not assign or pledge the whole or any part of the rights hereby assigned, to anyone other than Assignee, its successors or assigns.

Assignee shall have no obligations of Assignor under the Lease.

All Assignor's right, title and interest assigned hereunder may be reassigned by Assignee and any subsequent assignee. It is expressly agreed that, anything herein contained to the contrary notwithstanding, Assignor's obligations under the Lease may be performed by Assignee or any subsequent assignee without releasing Assignor therefrom, and that Assignee shall not, by reason of this assignment, be obligated to perform any of Assignor's obligations under the Lease or to file any claim or take any other action to collect or enforce any payment assigned hereunder.



**Form: a-07**

**Disk File Name: a-07.rtf**

**ASSIGNMENT OF MASTER LEASE—SALE BY LESSOR INTEGRATED (WITHOUT RECOURSE)**

**Form Purpose**

Sale assignment, without recourse, by one leasing company to another leasing company of a master equipment lease, certain specified equipment schedules, and the underlying equipment. This form is integrated with Lease Agreement Form l-03.

*Executing Parties*

The selling equipment lessor.  
The purchasing equipment lessor.

*See:*

Lease Agreement, Form l-03  
Bill of Sale, Forms b-01 and b-02

---

, Lessor

Home Office Address:

Phone (    )

**Assignment and Assumption of Master Agreement to Lease Equipment**

ASSIGNMENT AND ASSUMPTION (“Assignment”) made this                    day of                    , between                    , a                    corporation (“Assignor”), and                    , a                    corporation (“Assignee”).

WHEREAS, Assignor has entered into a certain Master Agreement to Lease Equipment (“Master Agreement”), dated as of                    , between Assignor, as Lessor, and                    , as Lessee (“Lessee”), pursuant to which Assignor has agreed to lease equipment to Lessee by means of Schedules entered into by the parties with respect to certain items of equipment (“Units”); and

WHEREAS, Assignor desires to sell and assign to Assignee the Master Agreement and/or certain Schedules.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Assignor hereby assigns, transfers, and sets over unto Assignee all of Assignor’s rights and interests in and to the Master Agreement and/or the Schedules identified in Exhibit A hereto (collectively “Assigned Contracts”), including all rights, powers, privileges, and other benefits of Assignor as lessor under the Assigned Contracts. Assignee, for itself and its successors and assigns, hereby expressly assumes and agrees to satisfy all obligations and liabilities existing or arising on or after the date of this Assignment out of or relating to the Assigned Contracts. From and after the date of this Assignment, Assignor shall have no further liability or obligations under the Assigned Contracts as lessor, or otherwise, of any nature whatsoever.

2. Assignor warrants and covenants that (a) the execution and delivery of this Assignment has been duly authorized, and this Assignment is and will remain the valid and binding obligation of Assignor enforceable against Assignor in accordance with its terms (subject only to bankruptcy, insolvency, and reorganization laws and other laws governing the enforcement of lessor or creditor rights), (b) Assignor has not executed any other assignment of the Assigned Contracts or any of them and any right to receive payments under the Assigned Contracts is free and clear of any and all liens or encumbrances created or suffered by any act or omission on the part of Assignor, and (c) Assignor has delivered to Assignee all executed counterparts of the Assigned Contracts in its possession.

3. Assignee covenants and agrees with Assignor on behalf of itself and its successors and assigns that from and after the date of this Assignment it shall save and hold Assignor harmless from and against and indemnify and defend Assignor with respect to any and all damages, losses, liabilities, claims, and expenses suffered or incurred by Assignor arising directly or indirectly out of or in connection with the Assigned Contracts, the Units and any other matter arising out of or relating to any transaction contemplated by, or effected pursuant to, the Assigned Contracts.

4. Assignor and Assignee agree that each will execute all such supplemental instruments as Assignor or Assignee may from time to time reasonably request in order to confirm or further assure the assignment made hereby and the provisions hereof and to evidence and provide for the specific assumption by Assignee, its successors or assigns, of the obligations and liabilities of Assignor relating to the Assigned Contracts.

5. Assignee may not assign all or any of its rights under the Assigned Contracts, including the right to receive any payments due or to become due to it from Lessee, without the prior written consent of Assignor.

6. This Assignment shall be governed by the laws of the State of \_\_\_\_\_.

7. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the undersigned have duly executed this Assignment as of the date first above written.

\_\_\_\_\_, Assignor

By:

Title:

\_\_\_\_\_, Assignee

By:

Title:

**Exhibit A to Assignment and Assumption of Master Agreement to Lease Equipment**

Description of Assigned Contracts

1. Master Agreement Number: \_\_\_\_\_

2. Schedules:

*Schedule No.*

*Date of Schedule*

**Form: a-08****Disk File Name: a-08.rtf****ASSIGNMENT OF LEASE—SALE BY LESSOR (WITH RECOURSE)****Form Purpose**

Sale assignment, with recourse, by one leasing company to another leasing company of an equipment lease and the underlying equipment.

*Executing Parties*

The selling equipment lessor.

The purchasing equipment lessor.

*See:*

Bill of Sale, Forms b-01 and b-02

**Assignment of Lease with Recourse**

TO: [Insert name and address of Assignee]

RE: Equipment Lease Agreement (“Lease”) by and between [insert name of lessee] (the “Lessee”), and under-  
signed (the “Assignor”), as lessor, dated \_\_\_\_\_, having aggregate unpaid rentals of \$ \_\_\_\_\_.

FOR VALUE RECEIVED, Assignor hereby sells, assigns, and transfers to [insert name of assignee] (the “Assignee”), Assignor’s right, title, and interest in and to the Lease, the property therein leased, and all monies to become due thereunder. In consideration of the purchase of the Lease, Assignor agrees, in the event Lessee defaults in making any payment due under the Lease, at the time and in the manner therein specified, to pay on demand to Assignee such payments due, or to become due under the Lease.

Assignor further agrees to reimburse Assignee for any and all costs and expenses (including reasonable attorney’s fees) resulting from any failure or refusal of Lessee to recognize and comply with the conditions of this Lease assignment.

Assignor hereby consents that Assignee, its successors and assigns, may, without notice, extend the time for payment under said Lease, waive the performance of the terms and conditions as it may determine appropriate, and make any reasonable settlement there under without affecting or limiting Assignor’s liability hereunder.

Assignor warrants that (i) Assignor is the owner of the property described in the Lease free from all liens and encumbrances except the Lease, (ii) the Lease and any accompanying guaranties, waivers, and/or other instruments are genuine, enforceable, (iii) the Lease is the only lease executed concerning the property described in the Lease, (iv) the Lease rentals and other payments due and to be become due are and will continue to be free from defenses, setoffs, and counterclaims, (v) all signatures, names, addresses, amounts, and other statements and facts contained in the Lease and related documents are true and correct, (vi) the aggregate unpaid Lease rentals shown above is correct, (vii) the property has been delivered to Lessee under the Lease on the date set forth below in satisfactory condition and has been accepted by Lessee, (viii) Assignor will comply with all its warranties and other obligations with respect to the Lease transaction, and (ix) the Lease constitutes and will continue to constitute, as applicable, a valid reservation of unencumbered title to or first lien upon or security interest in the property covered thereby, effective against all persons, and if filing, recordation, or any other action or procedure is permitted or required by statute or regulation to perfect such reservation of title or lien or security interest, the same has been accomplished. If Assignor breaches any of the foregoing, it will, upon Assignee’s request, promptly repurchase the Lease for an amount equal to the unpaid rentals thereon, including accrued interest plus any expenses of collection, repossession, transportation, and storage incurred by Assignee, less any customary refund by Assignee of unearned charges. Assignor agrees that Assignee may, in Assignor’s name, endorse all remittances received, and Assignor gives express permission to Assignee to release, on terms satisfactory to Assignee or by operation of law or otherwise, or to

compromise or adjust any and all rights against and grant extensions of time of payment to Lessee or any other persons obligated on the Lease or on any accompanying guaranty, or to agree to the substitution of a Lessee, without notice to Assignor and without affecting Assignor's obligations hereunder. Assignor shall have no authority to, and will not, without Assignee's prior written consent, accept payments of rents or of option prices, repossess, or consent to the return of the property described in the Lease, or modify the terms thereof or of any accompanying guaranty. Assignee's knowledge at any time of any breach or of noncompliance with any of the foregoing shall not constitute any waiver by Assignee. Assignor waives notice of acceptance hereof.

The property covered by the Lease was delivered to, and accepted by Lessee on \_\_\_\_\_ .

Date:

\_\_\_\_\_, Assignor

By:

Title:

\_\_\_\_\_, Assignee

By:

Title:



**Form: a-09**  
**Disk File Name: a-09.rtf**

**ASSIGNMENT AMENDMENT—EQUIPMENT LOAN**

**Form Purpose**

Amendment of a loan and security agreement equipment lease assignment. This form has been integrated with Loan and Security Agreement Form l-05.

*Executing Parties*

The equipment lessor.  
The equipment lender.

*See:*

Assignment of Lease to Lender, Form a-05  
Loan and Security Agreement, Form l-05  
Promissory Note, Form p-02

---

**Amendment No.      to Assignment**

This Amendatory Agreement, dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
("Amendment") by and between \_\_\_\_\_, with a place of business at \_\_\_\_\_,  
business at \_\_\_\_\_, (the "Company") and \_\_\_\_\_, with a place of \_\_\_\_\_,  
(the "Lender").

WITNESSETH:

WHEREAS, as security for the repayment of a Note, dated \_\_\_\_\_, in the principal amount of \$ \_\_\_\_\_, issued by the Company to Lender, the Company and Lender entered into (i) a Loan and Security Agreement dated as of \_\_\_\_\_, 20\_\_\_\_ (the "Security Agreement") granting to Lender a security interest in the items of equipment described therein (the equipment being referred to as "Units" in the Security Agreement) and (ii) a related assignment dated as of \_\_\_\_\_, granting a security interest to Lender in certain rights of the Company as lessor of the Equipment under a Lease Agreement dated as of \_\_\_\_\_ (the "Lease") by and between the Company and \_\_\_\_\_ (the "Lessee"); and

WHEREAS, pursuant to the Acceptance Certificate referenced below (the "Acceptance Certificate"), Lessee has leased certain additional items of equipment from the Company under the Lease and the Company desires to borrow the additional principal amount of \$ \_\_\_\_\_ from Lender to partially finance the purchase of these additional Units, the borrowing to be evidenced by a promissory note, of even date herewith, to be issued by the Company to Lender in said principal amount (the "Note") and secured by the additional items of equipment under the Security Agreement and the Acceptance Certificate under the Assignment.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

1. The Note and the Units described in Annex A hereto shall be included as a "Note" and as "Units" respectively under the Security Agreement and for all purposes thereof be considered a "Note" and "Units" respectively as defined therein.
2. The Acceptance Certificates listed in Annex A hereto shall be included under the Assignment and shall for all purposes thereof be considered a part of the "Lease" (as defined in the Assignment),

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day \_\_\_\_\_ and year first above written.  
(Insert name of the Company)

By:

Title:

(Insert name of Lender)

By:

Title:

**Annex A**

Acceptance Certificate dated

*Identification or Description of Unit*

*No. of Units*

*Serial Number*

**Form: a-10**

**Disk File Name: a-10.rtf**

## ASSIGNMENT OF EQUIPMENT PURCHASE CONTRACT

### Form Purpose

Assignment by an equipment lessee to an equipment leasing company of the rights, but not the obligations, to purchase equipment from its equipment vendor, which will be the subject of the lease agreement.

#### *Executing Parties*

The equipment lessor.

The equipment lessee.

---

### Equipment Purchase Contract Assignment

Equipment Purchase Contract Assignment, dated \_\_\_\_\_, by and between \_\_\_\_\_ (“the Assignee”), with a place of business at \_\_\_\_\_ and (“the Assignor”), with a place of business at \_\_\_\_\_ (the “Assignment”).

WHEREAS, the Assignor has entered into certain equipment purchase contracts, copies of which are annexed as Exhibit A hereto (the “Purchase Contracts”), with certain manufacturers, dealers, or distributors (the “Vendors”) pursuant to which the Vendors agreed to sell to the Assignor the Equipment described therein (the “Equipment”);

WHEREAS, the Assignor wishes to lease said Equipment subject to the Purchase Contracts from the Assignee instead of purchasing the Equipment; and

WHEREAS, the Assignor, as Lessee, and the Assignee, as Lessor, have entered into an Equipment Lease Agreement, dated as of \_\_\_\_\_, (the “Lease”) whereby the Assignee will lease, subject to the terms of the Lease, the Equipment described in the Lease as it is delivered to and accepted for lease by the Assignor and the Assignee.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

1. For purposes of this Assignment, the terms used hereafter which are not specifically defined herein shall have the meanings that are attributed to them in the Lease, unless the context otherwise requires.

2. The Assignor does hereby sell, assign, transfer, and set over unto the Assignee all of the Assignor’s rights and interest in and to the Purchase Contracts as and to the extent that the same relate to such Equipment and the purchase and operation thereof. This Assignment, except to the extent reserved below shall include, without limitation, (a) in respect of the Assignee, the right, upon valid tender by the Vendors, to purchase the Equipment pursuant to the respective Purchase Contracts, and the right to take title to such Equipment and to be named the purchaser in the bills of sale to be delivered by the Vendors in respect of said Equipment, and (b) any and all rights of the Assignor to compel performance of the terms of the Purchase Contracts in respect of the Equipment; reserving to the Assignor, however, so long, and only so long, as such Equipment shall be subject to the Lease (i) the rights to demand, accept, and retain all rights in and to all property (other than the Equipment), data, technical publications, and service which the Vendors are obligated to provide or do provide pursuant to the Purchase Contracts and (ii) the right to any services, training, data, demonstrations, and testing pursuant to the Purchase Contracts.

Notwithstanding the foregoing, so long as the Assignee shall not have declared the Assignor to be in default under the Lease, the Assignee authorizes the Assignor, to the exclusion of the Assignee, to exercise in its own name all rights and powers of the buyer under the Purchase Contracts in respect to said Equipment and to retain any recovery or benefit resulting from the enforcement of any warranty or indemnity under the Purchase Contracts in respect to said Equipment, or otherwise, except that (a) the Assignor may not enter into any change order or other amendment, modification, or supplement to any of the Purchase Contracts with-

out the prior written consent of the Assignee if such change order, amendment, modification, or supplement would result in any rescission, cancellation, termination, or modification of any of the Purchase Contracts.

3. It is expressly agreed that, anything herein contained to the contrary, (a) the Assignor shall at all times remain liable to the Vendors under the Purchase Contracts to perform all the duties and obligations of the buyers thereunder to the same extent as if this Assignment had not been executed and (b) the exercise by the Assignee of any of the rights assigned hereunder shall not release the Assignor from any of its duties or obligations to the Vendors under the Purchase Contracts except to the extent that such exercise by the Assignee shall constitute performance of such duties and obligations.

4. The Assignor does hereby constitute, effective at any time after the time the Assignee has declared the Assignor to be in default under the Lease, the Assignee, its successors and assigns, the Assignor's true and lawful attorney, irrevocably, with full power (in the name of the Assignor or otherwise) to ask, require, demand, receive, compound, and give acquittance for any and all monies and claims for monies due and to become due under, or arising out of, the Purchase Contracts to the extent that the same have been assigned by this Assignment and, for such period as the Assignee may exercise rights with respect thereto under this Assignment, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute (or, if previously commenced, assume control of) any proceedings and to obtain any recovery in connection therewith which the Assignee may deem to be necessary or advisable in the premises.

5. Notwithstanding the foregoing Assignment, the Assignee hereby designates the Assignor to perform all obligations and duties of the Assignee under the Purchase Contracts except the purchase of the Equipment and the payment of monies due the Vendors under the Purchase Contracts as of the time of the completion of delivery and acceptance of Equipment and making same subject to the Lease by and between Assignee, as lessor and Assignor, as lessee. The only obligations of the Assignee under this Assignment shall be, on the dates of acceptance of the Equipment by Assignor, as lessee, and Assignor, as lessor, pursuant to the Lease, to purchase said Equipment from the respective Vendors and to pay the Vendors an amount equal to the purchase price due and owing, taking advantage of applicable discounts, subject to the limitations as set forth in the Lease. In the event that any of the Vendors have heretofore required, or may hereafter require, the making of any down payments, progress payments, or other advances, the same shall be (or have heretofore been) made by the Assignor. Any such payments and/or advances shall be reimbursed to the Assignor by the Assignee upon proof of payment therefore when and if the Assignee is required to make payment of the purchase price therefore pursuant to the Lease, including all attachments thereto.

6. In the event that the Assignor or the Assignee determines not to accept for lease any of said Equipment, the Assignee shall reassign to the Assignor the appropriate contract rights governing said Equipment and release the Assignee's interests therein. The Assignee shall thereupon have no further obligations, or liabilities in connection with said contract rights and Equipment, and the Assignor hereby agrees to indemnify the Assignee and hold the Assignee harmless from and against any and all claims, demands, actions, or proceedings arising out of or in any way relating to said contract rights and Equipment, by whomsoever asserted, and any and all losses, damage, obligations, liabilities, costs, expenses (including attorneys' fees) suffered, paid, or incurred by the Assignee in connection therewith.

7. The Assignor agrees that at any time and from time to time, upon written request of the Assignee, the Assignor will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as the Assignee may reasonably request in order to obtain the full benefit of this Assignment and of the rights and powers herein granted.

8. The Assignor does hereby represent and warrant that the Purchase Contracts are in full force and effect and the Assignor is not in default thereunder. The Assignor does hereby further represent and warrant that the Assignor has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as this Assignment shall remain in effect, the whole or any part of the rights hereby assigned or any of its rights with respect to the Equipment under the Purchase Contracts not assigned hereby, to anyone other than the Assignee.

9. The Assignee agrees that, except as otherwise expressly provided herein, it will not enter into any agreement with any of the Vendors that would amend, modify, supplement, rescind, cancel, or terminate any of the Purchase Contracts in respect to the Equipment without the prior written consent of the Assignor.

10. All notices, requests, demands, or communications to or upon the Assignee and the Assignor shall be deemed to have been given or made when deposited in the U.S. mail, postage for certified mail prepaid, addressed to respective addresses contained in the Lease.

11. The Assignor shall notify the Vendors of this assignment, such notice to be in the form of Exhibit B hereto.

12. Neither this Assignment nor any provision hereby may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

13. This Assignment shall be binding upon the Assignor and its successors and assigns and shall be binding upon and inure to the benefit of the Assignee and its successors and assigns.

14. This Assignment and the rights and obligations of the parties hereunder shall be construed in accordance with and governed by the laws of the State of \_\_\_\_\_.

IN WITNESS WHEREOF, the parties here to have caused this Assignment to be duly executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, Assignor

By:

Title:

\_\_\_\_\_, Assignee

By:

Title:

**Exhibit A**

[Copies of Purchase Contracts]

**Exhibit B**

Form of Notification of Assignment  
[See Form a-11.]

**Form: a-11**  
**Disk File Name: a-11.rtf**

**ASSIGNMENT OF PURCHASE CONTRACT NOTIFICATION TO VENDOR**

**Form Purpose**

Notification to, and acknowledgment by, an equipment vendor of the assignment by an equipment lessee to an equipment leasing company of the rights, but not the obligations, to purchase equipment, from its equipment vendor, which will be the subject of the lease agreement.

*Executing Parties*

The equipment lessee.

The equipment vendor.

*See:*

Assignment of Equipment Purchase Contract, Form a-10

**Notification of Purchase Contract Assignment**

Date

(Insert name and address of equipment vendor)

Re: Purchase Contract, dated \_\_\_\_\_.

(Insert name of assignor) ("Lessee") has assigned its position under the above-referenced purchase contract ("Purchase Contract") to (Insert name of assignee), as lessor, who will lease the equipment which is the subject of the Purchase Contract to Lessee. Notwithstanding such assignment, Lessee hereby guarantees performance of all of buyer's obligations under the Purchase Contract and expects you to permit Lessee to continue to exercise and permit the enforcement of buyer's rights in relation to warranties and/or representations provided by, or through, you the seller.

Please prepare your invoices to show the equipment as billed, and shipped, to Lessor in care of Lessee. Any additional title papers or bills of sale should be prepared to show as owner:

[Insert Lessor's name and address]

We request your written acknowledgment that these changes will be made as requested, by signing and returning to us the enclosed copy of this notification.

Thank you.

(Insert name of Lessee)

By:

Title:

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Insert name of equipment vendor), Vendor

By:

Title:

**Form: a-12**  
**Disk File Name: a-12.rtf**

**ASSUMPTION AGREEMENT**

**Form Purpose**

When one equipment leasing company sells an equipment lease, and the equipment subject to the lease, to another equipment leasing company, if some or all of the equipment purchase funds have been borrowed from a third-party lender, an assumption agreement can be used to, in effect, transfer the loan obligation to the second leasing company. The following assumption is a recourse assumption, obligating the selling leasing company to pay any transferred obligations not paid by the purchasing leasing company. If the equipment loan had been guaranteed, the guarantor must also consent to the assumption agreement.

*Executing Parties*

- The selling equipment lessor.
- The purchasing equipment lessor.
- The selling equipment lessor’s loan guarantor.
- The equipment lender (secured party).

*See:*

- Assignment of Lease, Forms a-06, a-07, and a-08
- Assumption Consent—Guarantor, Form a-13

**Assumption Agreement**

This Assumption Agreement (“Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and among (“Transferor”), with a place of business at \_\_\_\_\_ (“Transferee”), with a place of business at \_\_\_\_\_; and \_\_\_\_\_ (“Secured Party”), with a place of business at \_\_\_\_\_.

WHEREAS, Transferor has entered into a Loan and Security Agreement (“Security Agreement”), dated as of 20\_\_\_\_, with Secured Party covering the following equipment (“Equipment”)

[insert equipment description here]

which is subject to an equipment lease (the “Lease”), dated \_\_\_\_\_, by and between Transferor, as lessor, and \_\_\_\_\_, as lessee.

WHEREAS, Transferor wishes to sell, assign, and/or transfer all of its right, title, and interest in and to the Lease, the Equipment, and the Security Agreement thereof to Transferee, and

WHEREAS, the Equipment and the Lease is subject to the security interest of Secured Party, and Secured Party is willing to consent to such sale, assignment, and transfer, subject, however, to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, this Agreement the parties hereto agree as follows:

1. Transferor hereby sells, assigns, and/or transfers to Transferee all of its right, title, and interest in and to the Security Agreement with respect to the Lease, and the Equipment.
2. Transferee hereby:
  - (a) promises to pay to Secured Party all monies due and to become due pursuant to the terms and conditions of the Security Agreement and in the manner set forth therein;
  - (b) hereby assumes and covenants to perform all obligations of Transferor under the Security Agreement;

(c) agrees that it shall stand in the place and stead of Transferor and shall be subject to all of the terms and provisions contained in the original Security Agreement, as though it were the original Security Agreement named therein; and

(d) agrees to pay as they become due the remaining monthly rentals numbering \_\_\_\_\_ at \$ \_\_\_\_\_ each.

3. In consideration of the consent of Secured Party to the foregoing sale, assignment, transfer, and assumption, Transferor does hereby absolutely, irrevocably, and unconditionally guarantees to Secured Party and its successors and assigns that all warranties and representations made by Transferor to Secured Party to induce Secured Party to consent to this transfer and assumption are true and correct. In addition, upon any default by Transferee hereunder, Transferor shall pay to Secured Party or its successors or assigns the full unpaid amounts of any and all the obligations then owed by Transferee to Secured Party pursuant to the aforementioned Security Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

(Insert name of Transferor), Transferor

By:

Title:

(Insert name of Transferee), Transferee

By:

Title:

(Insert name of Secured Party), Secured Party

By:

Title:



**Form: a-13****Disk File Name: a-13.rtf****ASSUMPTION CONSENT—GUARANTOR****Form Purpose**

When one equipment leasing company sells an equipment lease to another leasing company, if some or all of the equipment purchase funds have been borrowed from a third-party lender, an assumption agreement can be used to, in effect, transfer the loan obligation to the second leasing company. If the equipment loan had been guaranteed, the guarantor must also consent to the assumption agreement. The following agreement provides for such a guarantor consent and should be attached to the assumption agreement as an exhibit.

*Executing Parties*

The selling equipment lessor's guarantor.

*See:*

Assumption Agreement, Form a-12

**Agreement of Guarantor**

Lease Agreement dated:

Selling Lessor:

Lessee:

Purchasing Lessor:

The undersigned, as a guarantor of Selling Lessor's obligations under the Lease, does hereby represent and warrant that the undersigned has read and understands the foregoing Assumption Agreement, does hereby consent to the execution thereof, and covenants and agrees that any obligation or liability, which it may have by virtue of the undersigned's guaranty, will remain in full force and effect upon and after the execution of this agreement and shall secure the full and timely performance of the obligations of both the Selling Lessor and Purchasing Lessor.

, Guarantor

By:

Title:

**Form: a-14**  
**Disk File Name: a-14.rtf**

**AMENDMENT TO LEASE AGREEMENT**

**Form Purpose**

Lease amendment. This form has been integrated with the short form net finance master lease agreement, Equipment Lease Agreement—Short Form 1-03.

*Executing Parties*

The equipment lessor.

The equipment lessee.

*See:*

Equipment Lease Agreement—Short Form 1-03

---

RIDER to Schedule No. dated as of to Master Agreement to  
Lease Equipment, dated as of , between , Lessor, and  
, Lessee.

**Amendment to Lease**

The terms and conditions of the Schedule designated above are modified and amended as follows:

, Lessor

By:

Title:

, Lessee

By:

Title:



**Form: b-02**  
**Disk File Name: b-02.rtf**

**BILL OF SALE—"AS IS, WHERE IS"**

**Form Purpose**

An "as is, where is" equipment bill of sale.

*Executing Parties*  
 The equipment seller.

**Bill of Sale**

This Bill of Sale, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, from \_\_\_\_\_ ("Seller"), with a place of business at \_\_\_\_\_.

WITNESSETH

In consideration of the receipt of \$ \_\_\_\_\_ and other valuable consideration, the receipt of which is hereby acknowledged, Seller does hereby sell, assign, transfer, convey, and deliver, on an "as is, where is" basis, to \_\_\_\_\_ (the "Buyer"), with a place of business at \_\_\_\_\_ all the property and equipment of whatsoever kind of character listed, described, or otherwise referred to on its attached invoice, a copy of which is attached hereto and incorporated herein by this reference with the same force and effect as set forth herein full as Annex A.

Seller represents and warrants that:

- A. It is the owner of, and has absolute title to, each and every item of said property free and clear of all claims, liens, encumbrances, and all other defects of title, of any kind whatsoever.
- B. It has not made any prior sale, assignment, or transfer of any item of said property to any person, firm, or corporation.
- C. It has the present power and authority to sell, assign, and transfer each and every item of said property to Buyer.
- D. All acts, proceedings, and things necessary and required by law and the articles of incorporation and by-laws of Seller to make this Bill of Sale a valid, binding, and legal obligation of Seller have been done, taken, and have happened; and the execution and delivery hereof have in all respects been duly authorized in accordance with the law, and said articles of incorporation and by-laws.

Seller covenants that it shall forever warrant and defend this sale, assignment, transfer, conveyance, and delivery of each and every item of said property to Buyer and its successors and assigns, against each and every person whomsoever lawfully claiming the same by or through Seller.

This Bill of Sale is binding upon the successors and assigns of Seller and insures to the benefit of the successors and assigns of Buyer.

IN WITNESS WHEREOF, the undersigned Seller has caused this instrument to be executed on the day and year first above appearing, by and through a duly authorized officer.

(Seller):

By:

Title:

**Form: c-01****Disk File Name: c-01.rtf****CHECKLIST—LESSEE PROPOSAL STAGE****Form Purpose**

A lessee proposal stage checklist.

*See:*

Request for Lease Quotations, Forms r-01 through r-04

NOTE: This form is reproduced on page 36, and is included on the accompanying CD.

**Form: c-02****Disk File Name: c-02.rtf****CHECKLIST—LEASE NEGOTIATION AND DRAFTING****Form Purpose**

A checklist for drafting and negotiating a lease agreement.

*See:*

Lease Agreements, Forms l-02 through l-04

NOTE: This form is reproduced on page 75, and is included on the accompanying CD.

**Form: c-03****Disk File Name: c-03.rtf****CHECKLIST—LESSOR PROPOSAL STAGE****Form Purpose**

A lessor proposal stage checklist.

*See:*

Lessor Proposal Documents—Forms p-04 through p-05

NOTE: This form is reproduced on page 39, and is included on the accompanying CD.

**Form: c-04****Disk File Name: c-04.rtf****CHECKLIST—SUPPLEMENTAL LEASE DOCUMENT CLOSING****Form Purpose**

A supplemental lease document closing checklist.

NOTE: This form is reproduced on page 90, and is included on the accompanying CD.

**Form: c-05**  
**Disk File Name: c-05.rtf**

**COLLECTION NOTIFICATION—INITIAL LESSEE NONPAYMENT**

**Form Purpose**

A lessee lease payment default notification letter.

*Executing Parties*  
The equipment lessor.

*See:*  
Collection Notification—Follow-up Lessee Nonpayment, Form c-06  
Collection Notification—Lawsuit, Form c-07  
Collection Notification—Repossession, Form c-08

[Letterhead of Leasing Company]

Date:

(Insert name and address of Lessee)

Re: Equipment Lease Agreement, dated \_\_\_\_\_, 20\_\_.

Lease Account Number:

Have you forgotten "our date"?

The one on which you promised to make regular payments on your account.

Of course, if you have put your remittance in the mail, please accept our thanks and disregard this reminder. But, if the date merely slipped your mind, won't you send us a check today? Payments made on time avoid additional charges and maintain a good credit record.

If there is some reason you cannot make this payment now, please come into our office or call us.

\*\*\*\*\*

Have you changed your address?

If so, kindly fill in the information requested below. Then, enclose this notice in the envelope with your account statement and payment when mailing to us.

Name:

New Address:

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: ( ) \_\_\_\_\_ Account Number: \_\_\_\_\_

Your cooperation is appreciated.

Thank you.

By:

Title:

**Form: c-06**

**Disk File Name: c-06.rtf**

**COLLECTION NOTIFICATION—FOLLOW-UP LESSEE NONPAYMENT**

**Form Purpose**

A follow-up lessee lease payment default notification letter.

*Executing Parties*

The equipment lessor.

*See:*

Collection Notification—Initial Lessee Nonpayment, Form c-05

Collection Notification—Lawsuit, Form c-07

Collection Notification—Repossession, Form c-08

---

[Letterhead of Leasing Company]

(Insert name and address of Lessee)

Re: Equipment Lease Agreement, dated \_\_\_\_\_, 20\_\_\_\_.

Lease Account Number:

Dear

The delinquency on your account has become an extremely serious matter. As of today's date your account remains past due for its payment of \$ \_\_\_\_\_, plus late charges of \$ \_\_\_\_\_. We very much want to work with you in this matter and understand that these situations do occur. However, you should also be aware that your obligation to us needs to be paid promptly.

If we do not receive your past due payments or work out alternate arrangements within seven days from the date of this letter, you leave us no alternative but to accelerate the entire balance owing under your lease, which totals \$ \_\_\_\_\_. Failure to pay that balance will result in the loss of the leased equipment and a subsequent costly legal action.

We would like to cooperate with you as much as we reasonably can, but our cooperation requires immediate attention. Please contact our office immediately upon receipt of this letter.

Sincerely,

**Form: c-07**  
**Disk File Name: c-07.rtf**

**COLLECTION NOTIFICATION—LAWSUIT**

**Form Purpose**

A follow-up leasing company notification letter of intent to file a lawsuit for payment default.

*Executing Parties*  
The equipment lessor.

*See:*  
Collection Notification—Initial Lessee Nonpayment, Form c-05  
Collection Notification—Follow-up Lessee Nonpayment, Form c-06  
Collection Notification—Repossession, Form c-08

---

[Letterhead of Leasing Company]

(Insert name and address of Lessee)

Re: Equipment Lease Agreement, dated \_\_\_\_\_, 20\_\_\_\_.

Lease Account Number:

Dear

This letter is to inform you that we are about to file a lawsuit against you due to nonpayment on the above referenced lease. At this time your account balance is \$\_\_\_\_, plus accrued late charges.

If you wish to avoid this expensive court proceeding, we demand that you forward your check for this balance, or contact our office to make suitable payment arrangements, within the next ten days. The choice is yours. We wish to resolve this with you.

If no action is taken on your part, we will immediately begin to pursue all legal remedies available to us.

Very truly yours,



**Form: c-08****Disk File Name: c-08.rtf****COLLECTION NOTIFICATION—REPOSSESSION****Form Purpose**

A follow-up leasing company notification letter of intent to repossess leased equipment for payment default.

*Executing Parties*

The equipment lessor.

*See:*

Collection Notification—Initial Lessee Nonpayment, Form c-05  
 Collection Notification—Follow-up Lessee Nonpayment, Form c-06  
 Collection Notification—Lawsuit, Form c-07

[Letterhead of Leasing Company]

Date:

SENT CERTIFIED AND REGULAR MAIL

(Insert name and address of Lessee)

RE: Notice of Intention to Repossess Equipment

Under Equipment Lease Agreement, Dated \_\_\_\_\_

Lease Account No.: \_\_\_\_\_

Dear

As of today's date the above referenced lease is past due for \$ \_\_\_\_\_.

We must have the above account brought current immediately. In the event payment is not made within ten days from the date of this letter, it is the intention of the holder of the lease to institute legal action to repossess your leased equipment.

All payments referred to in this notice must be in the form of cash, cashier's check, certified check, or money order, and must be received at our office no later than \_\_\_\_\_, 20\_\_.

If you wish to cure the default within ten days from the date of this letter you must pay the total amount due as stated above.

If payment is made after ten days from the date of this notice, you will have to pay, in addition to the regular monthly installments then due, all attorney's fees incurred.

Sincerely,

**Form: c-09**  
**Disk File Name: c-09.rtf**

**CERTIFIED CORPORATE GUARANTOR’S RESOLUTIONS**

**Form Purpose**

Secretary’s certificate incorporating corporate resolutions for an equipment lessee’s guarantor. This form has been integrated with the short form net finance master lease agreement, Lease Agreement Form I-03.

*Executing Parties*

Corporate secretary, or assistant secretary, of the equipment lessee’s guarantor.

*See:*

Lease Agreement, Form I-03

**Form of Guarantor’s Resolutions**

Secretary’s Certificate

I, \_\_\_\_\_, the duly elected and qualified Secretary of \_\_\_\_\_, a \_\_\_\_\_ corporation (the “Corporation”), hereby certify that set forth below is a true and complete copy of certain resolutions duly adopted by the Board of Directors of the Corporation, at a meeting duly held on \_\_\_\_\_, at which a quorum was present and acting throughout, and such resolutions have not been amended or rescinded, are in full force and effect on the date hereof, and are the only resolutions adopted by said Board which relate to the matters referred to therein:

“RESOLVED, that the form, terms, and provisions of a proposed Guaranty (the “Guaranty”) to be made and given by this Corporation to \_\_\_\_\_ or its \_\_\_\_\_ assignee or designee (collectively “Lessor”) in order to induce Lessor to purchase and lease certain equipment to \_\_\_\_\_, a corporation (“Lessee”), pursuant to the (proposed) Master Agreement to Lease Equipment between Lessee and Lessor (the “Agreement”), and proposed Schedule No. \_\_\_\_\_ between Lessee and Lessor (the “Schedule”), all as submitted to this meeting and filed with the records of this Corporation, be, and the same hereby are, approved in all respects; and that the \_\_\_\_\_ (officer) and \_\_\_\_\_ (officer) of this Corporation or any one of them be, and each such officer hereby is, authorized and directed to execute and deliver to Lessor the Guaranty, substantially in the form presented to this meeting, together with such changes, additions, and modifications as may be approved by any such officer, such approval to be conclusively evidenced by an authorized officer’s execution of the Guaranty; and

RESOLVED, that the officers of this Corporation be, and each and any such officer hereby is, authorized and directed to execute and deliver all documents and to take or cause to be taken all other action, in the name and on behalf of this Corporation, as may be required by Lessor or otherwise be deemed by such officers or any of them necessary or desirable to fully effectuate the purposes and intent of, and consummate the transactions authorized by, the foregoing resolution and to comply with the terms and provisions of the Guaranty and, if required, the terms and provisions of the Schedule and the Agreement.”

IN WITNESS WHEREOF, I have hereunto signed my name this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Secretary

**Form: c-10**

**Disk File Name: c-10.rtf**

**CERTIFIED CORPORATE RESOLUTIONS—LOAN/LEASE  
(WITH INCUMBENCY CERTIFICATION)**

**Form Purpose**

Certified corporate resolutions, with incumbency certification, authorizing the entering into of an equipment lease/loan agreement.

*Executing Parties*

Corporate secretary, or assistant secretary, of the equipment lessee/borrower.

**Resolutions of Corporate Board**

Authority to Procure Loans or Leases  
(Certified Copy)

I HEREBY CERTIFY that I am the duly elected and qualified secretary, and the keeper of the records and corporate seal, of (insert name of corporation); that the following is a true and correct copy of resolutions duly adopted at a meeting of its Board of Directors held in accordance with its by-laws at its offices at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and that the following resolutions are now in full force.

Resolutions

BE IT RESOLVED, that the (insert titles) of this corporation, or their/his/her successors in office, or any (insert number required to sign) of them be and they/he/she hereby are/is authorized for, on behalf of, and in the name of this corporation to:

- (a) Negotiate and procure loans or leases from (insert name of lessor or lender) up to an amount not exceeding \$ \_\_\_\_\_ in the aggregate at any one time outstanding (*Author's Note* : If there is no limit, so indicate);
- (b) Give security for any liabilities of this corporation to (insert name of lessor or lender) in connection therewith, including the pledge, sale, or assignment, or the granting of a lien, upon any personal property, tangible or intangible, of this corporation; and
- (c) Execute in such form as may be required by (insert name of lessor or lender), all notes or lease agreements and other evidences of such loans or lease agreements, all instruments of pledge, assignment or lien, and that none of the same shall be valid unless signed or endorsed by the above-mentioned officers of this corporation; and

RESOLVED FURTHER, that this resolution shall continue in force, and (insert name of lessor or lender) may consider the holders of said offices and their signatures, respectively, to be and continue as set forth in the certificate of the secretary of this corporation accompanying a copy of this resolution shown delivered to (insert name of lessor or lender) or in any similar subsequent certificate, until notice to the contrary in writing is duly served on (insert name of lessor or lender).

I HEREBY FURTHER CERTIFY that the following named persons have been duly elected to the offices set opposite their respective names, that they continue to hold these offices at the present time, and that the signatures appearing hereon are the genuine, original signatures of each respectively (insert name of those with signing authority, such as):

- President
- Vice President
- Secretary
- Asst. Secretary
- Director

IN WITNESS WHEREOF, I have hereunto affixed my name as secretary and have caused the corporate seal of said corporation to be hereto affixed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(CORPORATE SEAL)

Secretary

I hereby certify that I am [a director] of said corporation and that the foregoing is a correct copy of resolutions passed as therein set forth, and that the same are now in full force.

*(Author's Note: This should be an individual other than the individual who is the Secretary.)*

By:

Title:

**Form: c-11****Disk File Name: c-11.rtf****CERTIFIED CORPORATE RESOLUTIONS—LOAN (WITH INCUMBENCY CERTIFICATION)****Form Purpose**

Certified corporate resolutions, with incumbency certification, authorizing the entering into of an equipment loan agreement.

*Executing Parties*

Corporate secretary, or assistant secretary, of the equipment borrower.

---

Certified Copy of Resolutions of Board of Directors of  
(Insert name of corporation)

RESOLVED, that the Board of Directors of the Corporation hereby deems it to be in the best interest of the Corporation to borrow money from \_\_\_\_\_ (“Creditor”) in the principal amount of \$ \_\_\_\_\_ (the “Indebtedness”) and issue a note and enter into such other agreements as Creditor may require (collectively the “Agreement”), such Agreement being substantially in the form or forms submitted to the Directors of the Corporation and attached as Annex A to these Resolutions, which form(s) is (are) hereby approved; and it is

FURTHER RESOLVED, that the President, Vice President, Treasurer and/or of this Corporation be and any one of them hereby is authorized, directed, and empowered to execute and deliver the Agreement to Creditor; and it is

FURTHER RESOLVED, that the President, Vice President, Treasurer and/or of this Corporation be and any one of them hereby is authorized, directed, and empowered to execute, issue, and deliver to Creditor, for and on behalf of and in the name of the Corporation, the Corporation’s note or notes evidencing the Indebtedness or any part thereof, at such rate(s) of interest and upon such other terms and conditions as are required by Creditor, and any and all other documents, and to do or cause to be done all such further acts and things as shall be deemed necessary, advisable, convenient, or proper in connection with the execution and delivery of any documents or instruments and in connection with or incidental to the carrying of these resolutions into effect, including, but not limited to, the execution, acknowledgment, and delivery of any and all instruments and documents which may reasonably be required by Creditor under or in connection with the Agreement, which acts and things heretofore done to effectuate the purpose or purposes of these resolutions are hereby in all respects ratified, confirmed, and approved as the act or acts of this Corporation; and it is

FURTHER RESOLVED, that the present and future officers of this Corporation are and shall be bound by these resolutions, as too shall this Corporation; and it is

FURTHER RESOLVED, that Creditor is hereby authorized to rely upon these resolutions and the Certificate of the Secretary or Assistant Secretary of this Corporation, and that these resolutions shall be in full force and effect and binding on this Corporation until they shall have been repealed and until written notice of such repeal shall have been delivered to and received by Creditor.

I, (insert name of Secretary), do hereby certify that I am the Secretary of this Corporation; that I am keeper of the corporate records and seal of said Corporation; that the foregoing is a true and correct copy of resolutions duly adopted at a meeting of the Board of Directors of the above-named Corporation duly called and held on (or, where permitted by law, by unanimous written consent of all Directors of the above-named Corporation dated \_\_\_\_\_); that a quorum was present and acted throughout the meeting; that such resolutions have not been rescinded, annulled, revoked, or modified and are still in full force and effect; that neither the said resolutions nor any action taken or to be taken pursuant thereto are or will be in contravention of any provision or provisions of the Certificate of Incorporation or By-Laws of such Corporation or any agreement, indenture, or other instrument to which such Corporation is a party; and that the Certificate of Incorporation of such Corporation, and all amendments thereto, do not contain any provisions requiring any vote or con-

sent of shareholders of such Corporation to authorize any lease, indebtedness, assignment, or any creation of a security interest in all or any part of such Corporation's property, or any interest therein, or to authorize any other action taken or to be taken pursuant to such resolutions. The persons whose names, titles, and signatures appear on the Incumbency and Signature Schedule of the Corporation hereto attached as Annex B are duly elected, qualified, and acting officers of this Corporation and hold on the date hereof the offices set forth opposite their respective names.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of such Corporation on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(CORPORATE SEAL)

By:

Secretary

**Annex A**

(Attach copy of loan agreement)

**Annex B**

Incumbency and Signature Schedule  
of  
(Insert name of corporation)

<i>Name</i>	<i>Title</i>	<i>Signature</i>
	President	
	Vice President	
	Treasurer	
	Secretary	

**Form: c-12**  
**Disk File Name: c-12.rtf**

**CERTIFIED CORPORATE RESOLUTIONS—LEASE (WITH INCUMBENCY CERTIFICATION—ALTERNATE FORM)**

**Form Purpose**

Certified corporate resolutions, with incumbency certification, authorizing the entering into of an equipment lease agreement—Alternate Form.

*Executing Parties*

Corporate secretary, or assistant secretary, of the equipment lessee.

**Secretary's Certificate  
Corporate Resolutions**

The undersigned, \_\_\_\_\_, Secretary of (insert name of corporation), a (insert state of incorporation) corporation (the "Corporation"), does hereby certify:

1. That he/she is the duly elected, qualified, and acting Secretary of the Corporation and has the custody of the corporate records, minutes, and corporate seal.
2. That the following named person(s) has/have been properly designated, elected, and assigned to the office in such Corporation as indicated below; that such person(s) hold(s) such office at this time and that the specimen signature appearing beside the name of such officer is his/her true and correct signature.

<i>Name</i>	<i>Title</i>	<i>Specimen Signature</i>
-------------	--------------	---------------------------

3. That at a meeting of the Board of Directors of the Corporation, duly called, convened, and held on \_\_\_\_\_, at which meeting a quorum was present and voted throughout, the following resolution(s) were duly adopted by said Board and said resolution(s) have not been amended, altered, or repealed, and remain in full force and effect on the date hereof:

RESOLVED, that this Corporation be and hereby is authorized to enter into an equipment lease with \_\_\_\_\_ for a period of \_\_\_\_\_ months and that (insert below name and/or titles of authorized individuals)

<i>Name</i>	<i>Title</i>
-------------	--------------

of this Corporation be authorized for and on behalf of this Corporation as its corporate act and deed to execute and deliver the lease and such ancillary and supporting documents and instruments as may be necessary or desirable and to do any and all things necessary or desirable to execute the full intent and purpose of this resolution.

4. That he/she is one of the duly authorized and proper officers of such Corporation to make certificates in its behalf and that he/she has caused this certificate to be executed and the seal of the Corporation to be hereunto appended this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(CORPORATE SEAL)

Secretary

**Form: c-13**  
**Disk File Name: c-13.rtf**

**CERTIFIED CORPORATE RESOLUTIONS—LEASE (WITH CHAPTER, BY-LAWS, INCUMBENCY CERTIFICATION)**

**Form Purpose**

Certified corporate resolutions, with charter, by-laws, and incumbency certification, authorizing the entering into of an equipment lease agreement.

*Executing Parties*

Corporate secretary, or assistant secretary, of the equipment lessee.

**Certificate of Corporate Resolutions  
Charter, By-Laws, and Incumbency  
of  
[Insert name of corporation]**

I, \_\_\_\_\_, Secretary of (insert name of corporation) hereby certify that:

- 1. I am the duly elected and acting Secretary of (insert name of corporation), a corporation duly organized and existing in good standing under the laws of the State of \_\_\_\_\_ (insert jurisdiction of incorporation) (hereafter, the "Corporation").
- 2. The resolutions set forth on Exhibit A, attached hereto, were duly adopted by the Board of Directors of the Corporation at a meeting duly called and held on \_\_\_\_\_, at which meeting a quorum was present and acting throughout, or by the unanimous written consent of all directors, dated \_\_\_\_\_.
- 3. The resolutions set forth on Exhibit A, attached hereto, have not been amended, rescinded, or modified and are in full force and effect on the date hereof.
- 4. Attached hereto as Exhibit B is a true, correct and complete copy of the Articles of Incorporation of the Corporation and any amendments thereto as in effect on the date hereof.
- 5. Attached hereto as Exhibit C is a true, correct, and complete copy of the By-Laws of the Corporation and any amendments thereto as in effect on the date hereof.
- 6. The following persons are the duly elected, qualified, and acting officers of the Corporation in the capacity set forth after their names, are the officers of the Corporation who have been authorized by the Corporation to generally act for and on behalf of the Corporation with respect to the transaction contemplated by these resolutions, and the signatures set forth after their names and titles are their true and genuine signatures.

<i>Title</i>	<i>Name</i>	<i>Signature</i>
--------------	-------------	------------------

7. The undersigned further certifies that the following individuals are the directors of the Corporation and that each of the following individuals was duly elected as a director by proper corporate action and is eligible to serve and act as a director until the successor director has been duly elected and has qualified as such.

<i>Name</i>	<i>Signature</i>
-------------	------------------

WITNESS my signature under seal of the Corporation this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(CORPORATE SEAL)



By:

Secretary

I, \_\_\_\_\_, hereby certify that:

- (a) I am the duly elected, qualified, and acting [President] of the Corporation; and
- (b) \_\_\_\_\_ is the duly elected, qualified, and acting Secretary of the Corporation, and
- (c) the signature of \_\_\_\_\_ set forth above is his/her true and genuine signature.

WITNESS my signature this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(CORPORATE SEAL)

By:

[President]

**Form: c-14**  
**Disk File Name: c-14.rtf**

**CERTIFIED CORPORATE RESOLUTION—SHORT FORM**

**Form Purpose**

Certified corporate resolutions, short form, authorizing the entering into of an equipment lease agreement.

*Executing Parties*

Corporate secretary, or assistant secretary, of the equipment lessee.

**Certified Copy of Resolution**

This is to certify that a special meeting of the Board of Directors of (insert name of corporation), duly called and held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the principal office of the corporation in (insert location where meeting held) at which a quorum was present, the following resolution was unanimously and duly adopted, as shown by the minute book of said corporation, to wit:

“WHEREAS, (insert name and title of individual(s) executing lease agreement) of this corporation has executed or is about to execute an equipment lease agreement with (insert here the name of the leasing company) and approve the terms thereof.”

“NOW, THEREFORE, BE IT RESOLVED, that the execution and delivery of said equipment lease agreement for this corporation by its [insert name and title of the individual(s) that will sign or has signed the equipment lease agreement] be and the same are hereby authorized, approved and ratified as the act and deed of this corporation.”

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of this corporation this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(CORPORATE SEAL)

Corporate Secretary

**Form: c-15****Disk File Name: c-15.rtf****CERTIFIED RESOLUTIONS—CORPORATE—INTEGRATED****Form Purpose**

Secretary's certificate incorporating corporate resolutions for an equipment lessee. This form has been integrated with the short form net finance master lease agreement, Lease Agreement Form I-03.

*Executing Parties*

Corporate secretary, or assistant secretary, of the equipment lessee.

*See:*

Lease Agreement, Form I-03.

**Form of Corporate Resolutions**

## Secretary's Certificate

I, \_\_\_\_\_, the duly elected and qualified Secretary of \_\_\_\_\_, a corporation (the "Corporation"), hereby certify that set forth below is a true and complete copy of certain resolutions duly adopted by the Board of Directors of the Corporation, at a meeting duly held on \_\_\_\_\_, at which a quorum was present and acting throughout, and such resolutions have not been amended or rescinded, are in full force and effect on the date hereof, and are the only resolutions adopted by said Board, which relate to the matters referred to therein:

RESOLVED, that the form, terms, and provisions of the proposed Master Agreement to Lease Equipment to be entered into between this Corporation and \_\_\_\_\_, Lessor (the "Agreement"), and proposed Schedule No. \_\_\_\_\_ between Lessee and Lessor (the "Schedule"), all as submitted to this meeting and filed with the records of this Corporation, be, and the same hereby are, approved in all respects; and that the \_\_\_\_\_ (officer) and \_\_\_\_\_ (officer) of this Corporation or any one of them be, and each such officer hereby is, authorized and directed to execute and deliver to Lessor the Agreement and the Schedule, substantially in the forms presented to this meeting, together with such changes, additions, and modifications as may be approved by any such officer, such approval to be conclusively evidenced by an authorized officer's execution thereof; and

RESOLVED, that the officers of this Corporation be, and each and any such officer hereby is, authorized and directed to execute and deliver all documents and to take or cause to be taken all other action, in the name and on behalf of this Corporation, as may be required by Lessor or otherwise be deemed by such officers or any of them necessary or desirable to fully effectuate the purposes and intent of, and consummate the transactions authorized by, the foregoing resolution and to comply with the terms and provisions of the Schedule and the Agreement.

IN WITNESS WHEREOF, I have hereunto signed my name this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Secretary



**Form: d-01**  
**Disk File Name: d-01.rtf**

**DEFICIENCY AGREEMENT**

**Form Purpose**

To protect a lessor from any loss incurred in the disposition of equipment. Although this form covers aircraft equipment, it may be easily modified to cover any type of equipment.

*Executing Parties*

The equipment lessor.  
The deficiency loss guarantor.

---

**Deficiency Agreement**

This Agreement, made and executed as of the \_\_\_\_\_ day of \_\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ corporation, having its principal place of business at \_\_\_\_\_ (“Deficiency Guarantor”), and \_\_\_\_\_, a \_\_\_\_\_ corporation, having its principal place of business at \_\_\_\_\_ (“Lessor”).

WITNESSETH:

WHEREAS, Lessor and Jet Aircraft Corporation, a \_\_\_\_\_ corporation, having a place of business at \_\_\_\_\_ (“JAC”) contemplate executing a Purchase Agreement of even date herewith (the “Purchase Agreement”) bearing JAC Document No. \_\_\_\_\_, whereby Lessor will agree to purchase and JAC will agree to sell two JAC Model TC-60 jet aircraft (the “Aircraft”), together with installed Pratt & White Model RX- 20 jet engines; and

WHEREAS, Lessor and New Airlines, Inc., a \_\_\_\_\_ corporation, having its principal place of business at \_\_\_\_\_ (“NAI”), as lessee, contemplate executing a lease of even date herewith (the “Lease”) whereby Lessor will agree to lease and NAI will agree to hire the Aircraft with such installed engines and in addition two spare Pratt & White Model RX-20 jet engines; and

WHEREAS, Lessor and Deficiency Guarantor desire to enter into this Agreement in order to partially protect Lessor against any loss which may arise out of the disposition of the Equipment (as hereinafter defined) after its delivery to Lessor.

NOW THEREFORE, in order to induce Lessor to enter into the Lease and in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

- 1. For the purpose of this Agreement, the following terms shall have the following meanings:
  - 1.1 “Equipment” shall mean all equipment subject to the Lease including the Aircraft, installed engines and spare engines, each Aircraft and engine hereinafter separately referred to as an “Item of Equipment.”
  - 1.2 “Original Cost” shall mean in respect of each Item of Equipment the purchase price of such Item of Equipment.
  - 1.3 “Receipts” shall mean in respect of each Item of Equipment all amounts received by Lessor from the sale, lease (including the Lease, but excluding all tax benefits arising from ownership of the Equipment) or other disposition, insurance or other contracts relating to the Equipment, but not including any amounts received by Lessor upon the mortgage or other pledge of such Item of Equipment.
  - 1.4 “Expenses” shall mean in respect of each Item of Equipment payments made by Lessor for reasonable attorneys’ fees and other expenses incurred and paid by Lessor to third parties arising out of removing, stor-

ing and re-leasing, or selling such Equipment and in overhauling, repairing, or modifying such Equipment in condition for such release or sale or other disposition.

1.5 "Unamortized Cost" in respect of each Item of Equipment shall be the sum of (i) the Original Cost of such Equipment, together with interest thereon from the date such Equipment becomes subject to the Lease to the date as of which the computation is made, at the rate of six percent (6%) per annum, compounded quarterly, plus (ii) Expenses in respect of such Equipment, together with interest thereon from the date paid to the date as of which the computation is made, at the rate of six percent (6%) per annum, compounded quarterly, less (iii) Receipts in respect of such Equipment, together with interest thereon from the date received to the date as of which the computation is made, at the rate of six percent (6%) per annum, compounded quarterly.

1.6 "Divestiture" in respect of each Item of Equipment shall mean disposition by Lessor, whether voluntary or involuntary, of all of its right, title, and interest in such Equipment.

2. On the date of Divestiture in respect of each Item of Equipment, provided such Divestiture occurs within fifteen (15) years from the date such Equipment becomes subject to the Lease, Deficiency Guarantor agrees to pay to Lessor the lesser of (i) the Unamortized Cost of such Equipment at the date of Divestiture in respect of such Equipment, or (ii) twenty percent (20%) of the Unamortized Cost of such Equipment at the date of Divestiture in respect of such Equipment excluding from the calculation of Unamortized Cost any Receipts in respect of such Equipment which arise from such Divestiture.

3. Lessor shall have the right to terminate this Agreement at any time prior to Deficiency Guarantor making any payment hereunder. Upon any such termination, neither party shall have any further liability hereunder.

4. This Agreement shall be construed and performance thereof shall be determined according to the laws of the State of . This Agreement shall not be varied in its terms by oral agreement or representation or otherwise than by an instrument in writing of even or subsequent date hereto, executed by both parties by their duly authorized representatives.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written by their officers or agents thereunto duly authorized

, Deficiency Guarantor

By:

Title:

, Lessor

By:

Title:

**Form: g-01**  
**Disk File Name: g-01.rtf**

**GUARANTY OF LEASE—INTEGRATED**

**Form Purpose**

A guaranty for the lessee's obligations under an equipment lease. This form is integrated with the short form net finance master lease agreement, Lease Agreement Form I-03.

*Executing Parties*

The equipment lease guarantor.

*See:*

Lease Agreement, Form I-03

**Guaranty**

GUARANTY, dated as of \_\_\_\_\_, from \_\_\_\_\_, a \_\_\_\_\_ corporation ("Guarantor") to \_\_\_\_\_, a \_\_\_\_\_ corporation ("Lessor").

WHEREAS, Guarantor desires that \_\_\_\_\_, a \_\_\_\_\_ corporation ("Lessee"), pursuant to a Master Agreement to Lease Equipment ("Master Agreement"), dated as of \_\_\_\_\_, 20\_\_\_\_, between Lessor and Lessee, enter into one or more leases of personal property in the form of Schedule No(s) \_\_\_\_\_, dated as of the date hereof (collectively the "Lease"); and

WHEREAS, as a condition to entering into the Lease, Lessor requires that all the obligations of Lessee under the Lease be guaranteed by Guarantor;

NOW, THEREFORE, in order to induce Lessor to enter into the Lease, Guarantor hereby agrees as follows:

1. Guarantor does hereby acknowledge that it is fully aware of the terms and conditions of the Lease and does hereby irrevocably and unconditionally guarantee, as primary obligor and not as a surety merely, without offset or deduction, the due and punctual payment when due by Lessee of all Rent (as defined in the Lease) which may from time to time become due and payable in accordance with the terms of the Lease and the performance by Lessee of all of its other obligations under the Lease (the payment of Rent and each other obligation of Lessee guaranteed hereby being hereinafter referred to as an "Obligation" and collectively as the "Obligations"). Guarantor does hereby agree that in the event that Lessee fails to perform any Obligation for any reason, Guarantor will perform or otherwise provide for and bring about promptly when due the performance of each such Obligation. This Guaranty of the Obligations shall constitute a guaranty of payment and performance and not of collection. Guarantor specifically agrees that it shall not be necessary or required, and that Guarantor shall not be entitled to require, that Lessor (a) file suit or proceed to obtain or assert a claim for personal judgment against Lessee or any other person for any Obligation, (b) make any effort at collection or other enforcement of any Obligation from or against Lessee or any other person, (c) foreclose against or seek to realize upon any security now or hereafter existing for any Obligation or upon any balance of any deposit account or credit on the books of Lessor or any other person in favor of Lessee or any other person, (d) exercise or assert any other right or remedy to which Lessor is or may be entitled in connection with any Obligation or any security or other guaranty therefore, or (e) assert or file any claim against the assets of Lessee or any other guarantor of other person liable for any Obligation, or any part thereof, before or as a condition of enforcing the liability of Guarantor under this Guaranty or requiring payment or performance of any Obligation by Guarantor hereunder, or at any time thereafter.

2. Guarantor waives notice of the acceptance of this Guaranty and of the performance or nonperformance by Lessee, presentment to or demand for payment or other performance from Lessee or any other person and notice of nonpayment or failure to perform on the part of Lessee. The obligations of Guarantor hereunder

shall be absolute and unconditional and shall remain in full force and effect and shall not be subject to any reduction, limitation, impairment, or termination for any reason.

3. No right, power, or remedy herein conferred upon or reserved to Lessor is intended to be exclusive of any other right, power, or remedy or remedies and each and every right, power, and remedy of Lessor pursuant to this Guaranty now or hereafter existing at law or in equity or by statute or otherwise shall, to the extent permitted by law, be cumulative and concurrent and shall be in addition to each other right, power, or remedy pursuant to this Guaranty, and the exercise by Lessor of any one or more of such rights, powers, or remedies shall not preclude the simultaneous or later exercise by Lessor of any or all such other rights, powers, or remedies.

4. No failure or delay by Lessor to insist upon the strict performance of any term, condition, covenant, or agreement of this Guaranty or to exercise any right, power, or remedy hereunder or consequent upon a breach hereof shall constitute a waiver of any such term, condition, covenant, agreement, right, power, or remedy or of any such breach, or preclude Lessor from exercising any such right, power, or remedy at any later time or times.

5. In case any one or more of the provisions contained in this Guaranty should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

6. This Guaranty (a) constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among Lessee, Lessor, and Guarantor with respect to the subject matter hereof, (b) may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and (c) shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of, and shall be enforceable by, Lessor and its successors and assigns.

7. Unless otherwise specifically provided herein, all notices, instructions, requests, and other communications required or permitted hereunder shall be in writing and shall become effective when received or if mailed when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested. Notices shall be directed to Lessor at its address set forth in the Lease, and to Guarantor at its address set forth below, or at such other address as such party may from time to time furnish to the other by notice similarly given.

8. This Guaranty shall be governed by, and construed in accordance with, the laws of the State of

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed as of the date first hereinabove set forth.

, Guarantor

By:

Title:

Address:

Telephone:





**Form: g-03**  
**Disk File Name: g-03.rtf**

**GUARANTY OF LEASE—INDIVIDUAL**

**Form Purpose**

Individual guaranty for lease obligations—short form.

*Executing Parties*

The equipment lease guarantor.

**Personal Guaranty**

Lessee:

Lessor:

Lease No.:

Date:

In consideration of the making of the above Lease by Lessor with Lessee, the undersigned (if more than one, then "jointly and severally"), as a direct and primary obligation, absolutely and unconditionally guaranties to Lessor and any assignee of Lessor (either of whom are called "Holder"), the prompt payment of all Lease rent to be paid and the performance of all terms, conditions, covenants, and agreements of the Lease, irrespective of any invalidity or unenforceability thereof or security thereof. The undersigned promises to pay all of the Holder's expenses, including reasonable attorney fees, incurred by Holder in enforcing all obligations under the Lease or incurred by Holder in connection with enforcing this Guaranty. The undersigned waives notice of protest or of any defaults, and consents that Holder may, without affecting the obligation hereunder, grant Lessee any extension or indulgence under the Lease, and may proceed directly against the undersigned without first proceeding against Lessee or liquidation or otherwise disposing of any security afforded Holder under the Lease.

This Guaranty shall be binding upon the respective heirs, executors, administrators, successors and assigns of the undersigned. This Guaranty shall be construed according to the laws of the State of \_\_\_\_\_.

Witness my/our hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Insert name of individual),  
Individual Guarantor

(Insert name of individual),  
Individual Guarantor

(signature without title)

(signature without title)

Name:

Name:

Home Address:

Home Address:

City: State: Zip:

City: State: Zip:

Home Telephone No.:

Home Telephone No.:

Social Security No.:

Social Security No.:

**Form: g-04**  
**Disk File Name: g-04.rtf**

## **GUARANTY—GENERAL OBLIGATION**

### **Form Purpose**

General credit extension guaranty. This form is set up for use by an individual or corporate guarantor.

*Executing Parties*  
 The credit guarantor.

### **Guaranty**

WHEREAS, (insert name of company asking for a credit arrangement) (hereinafter referred to as "Obligor") desires to transact business and to make credit arrangements with (insert name of company for whose benefit this Guaranty is provided), with a principal place of business at \_\_\_\_\_ (hereinafter referred to as "Creditor"); and

WHEREAS, Creditor is unwilling to transact business with Obligor unless it receives the guaranty of the undersigned (hereinafter referred to as "Guarantor") covering the indebtedness of the Obligor to Creditor.

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration and in order to induce Creditor to transact business with Obligor by providing credit arrangements for the Obligor, Guarantor hereby guarantees, absolutely and unconditionally to Creditor the payment of all indebtedness of Obligor to Creditor of whatever nature, whether now existing or hereafter incurred, whether created directly or acquired by Creditor by assignment or otherwise, whether matured or unmatured and whether absolute or contingent.

The term "credit" is used throughout this guaranty in its broadest and most comprehensive sense and shall include, without limiting the generality of the foregoing (a) all sums of money which Creditor heretofore has advanced or loaned or hereafter advances or lends to Obligor, whether such sums have been or hereafter are drawn from or paid out by Creditor by or on promissory notes, leases or other evidences of indebtedness, made, endorsed, or guaranteed by Obligor, either alone or with others; (b) all other obligations of Obligor, alone or with others, absolute or contingent, joint or joint and several, arising from any other financial accommodation given or continued or from any guaranty, acceptance, or paper discounted, purchased, or held by Creditor or taken as security for any loan or advance of any sort whatever or arising in any other manner; (c) any indebtedness of Obligor to Creditor on account of collections or paper received for collection and all expenses, including attorney fees and costs of collection, incurred by Creditor in connection therewith, and (d) interest, if any, on the foregoing items.

The word "indebtedness" is used throughout this guaranty in its most comprehensive sense and includes any and all advances, leases, debts, obligations, and liabilities of Obligor heretofore, now, or hereafter made, incurred, or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether Obligor may be liable individually or jointly with others, or whether recovery on such indebtedness may be or hereafter become otherwise unenforceable.

Guarantor agrees that, with or without notice or demand, Guarantor will reimburse Creditor, to the extent that such reimbursement is not made by Obligor, for all expense (including attorney fees) incurred by Creditor in collection from Obligor of any credit hereby guaranteed or in the enforcement of this guaranty.

Guarantor further agrees that Creditor may renew or extend any indebtedness of Obligor, or accept partial payment thereon, or settle, release, compound, or compromise any of the same or collect on or otherwise liquidate any claims held by Creditor in such manner as Creditor may deem advisable, without impairing the liability of Guarantor. Extensions of the times of payment, renewal of indebtedness, extensions of the times

of performance of agreements, and any other compromises, adjustments, or indulgences may be granted to Obligor without notice to Guarantor. Creditor may also release, substitute, or modify any collateral securing any of the obligations of Obligor without the consent of Guarantor.

In the event of any default by Obligor on any indebtedness hereby guaranteed, Guarantor agrees, without Creditor being first required to liquidate any lien or any other form of security, instrument or note held by Creditor, to pay on demand (either oral or written) any and all sums due to Creditor from Obligor. This is a guaranty of payment and not of collection and Guarantor further waives any right to require that any action be brought against Obligor or any other person or to require that resort be first had to any security.

In any right of action which shall accrue to Creditor by reason of indebtedness of Obligor, Creditor at its election may proceed (1) against Guarantor together with the Obligor, (2) against Guarantor and the Obligor individually, or (3) against Guarantor only without having commenced any action against or having obtained any judgment against Obligor. If any claim against Guarantor is referred to an attorney for collection, then Guarantor shall pay such attorney's reasonable fee as determined by state law.

Guarantor hereby waives (a) notice of acceptance of this guaranty and of creations of Obligor to Creditor; (b) presentment and demand for payment of any indebtedness of Obligor; (c) protest, notice of protest, and notice of dishonor or default to Guarantor or to any other party with respect to any of the indebtedness of Obligor; (d) all other notices to which Guarantor might otherwise be entitled; (e) any demand for payment under this guaranty; (f) any defense arising by reason of any disability or other defense of Obligor or by reason of the cessation from any cause whatsoever of the liability of the Obligor; (g) any rights to extension, composition or otherwise under bankruptcy law, or under any state or other federal statute; (h) any rights which the Obligor may assert against Creditor under the Uniform Commercial Code of any state or the laws of the State of \_\_\_\_\_ regarding disposition of any collateral, including but not limited to the "commercial reasonableness" of such disposition; and (i) all exemptions and any rights under any homestead laws.

Until all credit and indebtedness hereby guaranteed have been paid in full, Guarantor shall have no right of subrogation and waives any benefit of and any right to participate in the collateral, if any there be.

Any indebtedness of Obligor now or hereafter held by Guarantor is hereby subordinated to the indebtedness of Obligor to Creditor; and such indebtedness of Obligor to Guarantor if Creditor so requests and upon default by Obligor to Creditor shall be collected, enforced, and received by Guarantor as trustee for Creditor and shall be paid over to Creditor on account of the indebtedness of Obligor to Creditor but without impairing or affecting in any manner the liability of Guarantor under the other provisions of this guaranty.

Guarantor declares to and covenants with Creditor, its successors, endorsees, and assigns, that Guarantor now has no defense whatever to any action, suit, or proceeding at law, or otherwise, that may be instituted on this guaranty.

Each reference herein to Creditor shall be deemed to include its successors and assigns, in whose favor the provisions of this guaranty shall also run. The term "Guarantor," as used in this guaranty, shall, if this instrument is signed by more than one party, mean the "Guarantor and each of them" and each undertaking herein contained shall be their joint and several undertaking, provided, however, that in the next succeeding paragraph hereof, the term "Guarantor" shall mean the "Guarantor or any of them." If any party hereto shall be a partnership, the agreements and obligations on the part of Guarantor herein contained shall remain in force and applicable notwithstanding any changes in the individuals composing the partnership and the term "Guarantor" shall include any altered or successive partnerships but the predecessor partnerships and their partners shall not thereby be released from any obligation or liability. The release of any party to this guaranty shall not release any of the others from the obligation of this guaranty.

No exercise, delay in exercising, or omission to exercise any of the rights, powers, remedies, and discretions of Creditor shall be deemed a waiver thereof, and every such right, power, remedy, and discretion may be exercised repeatedly. No notice to or demand on Guarantor shall be deemed to be a waiver of the obligation of Guarantor or of the right of Creditor to take further action without notice or demand as provided herein; nor in any event shall any modification or waiver of the provisions of this guaranty be effective unless in writing nor shall any such waiver be applicable except in the specific instance of which given. Failure of Creditor



[FOR CORPORATE EMPLOYEE]

STATE OF \_\_\_\_\_ )

) ss:

COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came to me known, who, being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_, that he/she is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

My Commission Expires:

Notary Public

**Form: g-05**  
**Disk File Name: g-05.rtf**

## **GUARANTY—VENDOR**

### **Form Purpose**

An equipment vendor continuing guaranty to a leasing company purchasing, from time to time, equipment from the vendor that the vendor has put on leases with various customer/lessees. The guaranty provides the leasing company with recourse against the vendor in the event that any of these lessees default in the performance of their lease obligations. This form is set up for use by an individual or corporate guarantor.

#### *Executing Parties*

The equipment vendor/guarantor.

### **Continuing Guaranty**

This Guaranty Agreement “Guaranty”), dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, provided by (insert name of equipment vendor), a (insert jurisdiction of incorporation, if applicable) with a principal place of business at (insert address) to (insert name of beneficiary of this Guaranty).

1. In order to induce (insert name of leasing company purchasing equipment and leases from equipment vendor) (the “Creditor”) to purchase leases and equipment subject to such leases (the “Equipment”) from the undersigned and which the undersigned has entered into with various lessees (each a “Lessee” and collectively the “Lessees”), which shall be fair and sufficient consideration for the execution of this Guaranty, the undersigned, jointly and severally if more than one, hereby unconditionally, directly, and absolutely guarantees to Creditor, its successors and assigns, all present and future obligations (collectively the “Obligations”) of Lessees to Creditor under any and all leases of the Equipment, as the same may from time to time be amended, modified, renewed, or replaced (each a “Lease” and collectively the “Leases”), including, without limitation (1) punctual payment (whether upon demand, at stated maturity, upon acceleration, or otherwise) of all sums of money, including renewals, extensions, and refinancings, matured and unmatured, now and hereafter owed to Creditor by each Lessee under each Lease, including, without limitation, rental installments, interest, fees, finance charges, late charges, attorney’s fees, and costs and expenses of collection, irrespective of the manner in which such obligations shall arise, whether directly or indirectly, voluntarily or by operation of law; and (2) performance by each Lessee of all present and future covenants, conditions, agreements, and undertakings under each Lease. The undersigned hereby agrees to save harmless and indemnify Creditor from and against all obligations, demands, loss, or liability, by whomever asserted, suffered, incurred, or paid, arising out of or with respect to the Obligations.

2. This shall be a continuing guaranty, terminable only as hereinafter provided. No termination hereof shall be effected by the death, or dissolution, as the case may be, of any or all of the undersigned. No termination shall be effective except by notice sent by the undersigned by certified or registered mail naming a termination date effective not less than 90 days after the receipt of such notice by Creditor; or effective as to any of the undersigned who has not given such notice; or affect the guaranty of the undersigned with respect to the Obligations of any Lessee under any Lease executed prior to the effective date of termination.

3. The undersigned hereby waive(s) notice of acceptance of this Guaranty with regard to each of the Obligations that may now exist or may hereafter come into existence. The undersigned hereby waive(s) presentment, demand, diligence in the enforcement or collection of any of the Obligations, protest, and all notices of any kind whatsoever, including, without limitation, notice of default in the payment of any of the Obligations.

4. The undersigned hereby waive(s) notice of each and every one of the following acts, events, and/or conditions and agree(s) that the creation or existence of any such act, event, or condition or the performance thereof by Creditor (in any number of instances) shall in no way release or discharge any of the undersigned from liability hereunder, in whole or in part (a) the renewal, extension, modification, refinancing, or granting of any indulgence of any nature whatsoever with respect to any or all of the Obligations; (b) the addition of or partial or entire release of any guarantor, maker, surety, endorser, indemnitor, or other party or parties primarily or secondarily liable for the payment and/or performance of any of the Obligations; (c) the assumption of any of the Obligations by any other person, whether by assignment, sale, sublease, conveyance, or oth-

erwise; (d) the institution of any suit or the obtaining of any judgment against any Lessee, any guarantor, maker, surety, endorser, indemnitor, or other party primarily or secondarily liable for the payment and/or performance of any of the Obligations; (e) the sale, exchange, pledge, release, disposition, surrender, loss, destruction, damage to, or impairment of any collateral now or hereafter granted or received to secure any of the Obligations; (f) the obtention, perfection, continuation, amendment, release, waiver, or modification of any security interest or lien with respect to any of the Obligations or the settlement, subordination, compromise, or discharge of same; or (g) any other event, circumstance, or condition which might otherwise constitute a legal or equitable discharge of a surety or a guarantor. It is expressly agreed that Creditor shall have no obligation to obtain, perfect, or continue in effect any security interest or lien with respect to any of the Obligations and that the obligations of the undersigned hereunder shall in no way be diminished, impaired, affected, or released by Creditor's commission of or omission to do any of the above-described acts or by the invalidity, unenforceability, loss or change in priority of any security interest or lien with respect to any of the Obligations.

5. Any money or other property that Creditor may receive in respect of or as security for any of the Obligations of any Lessee from any source whatsoever may be applied to any of the Obligations of such Lessee, whether secured or unsecured, as Creditor shall determine in its sole discretion. Any property that Creditor may receive from a guarantor of any of the Obligations or with respect to which a guarantor of any of the Obligations has granted or shall grant to Creditor a lien or security interest shall secure the payment of the Obligations. In the event that Creditor shall be granted a security interest in or lien upon any real or personal property in respect of or as security for any of the Obligations, the same shall be for the sole and exclusive benefit of Creditor, and not for the benefit, whether direct or indirect, by subrogation or otherwise, of any of the undersigned, unless Creditor shall expressly and in writing grant subrogation or other rights to the undersigned. The undersigned shall not be subrogated to the rights of Creditor against any Lessee or against any property of any Lessee securing any of the Obligations, either in whole or in part, until such time as the Obligations of such Lessee have been paid in full and there is no amount owing to Creditor hereunder with respect to any of the Obligations.

6. If any of the Obligations of any Lessee are not duly paid or performed, as the case may be, all of the Obligations of such Lessee shall at Creditor's option be deemed to be forthwith due and payable for the purposes of this Guaranty and the liability of the undersigned hereunder. If the undersigned shall default in the payment or performance of any of its obligations to Creditor hereunder, all of the Obligations shall at Creditor's option be deemed to be forthwith due and payable for the purposes of this Guaranty and the liability of the undersigned hereunder.

7. The undersigned agree(s) that any suit, action, or proceeding instituted against it with respect to any of the Obligations of this Guaranty may be brought in any court of competent jurisdiction located in the State of (insert appropriate state). The undersigned, by the execution and delivery of this Guaranty, irrevocably waive(s) any objection and any right of immunity on the ground of venue, the convenience of the forum or the jurisdiction of such courts or from the execution of judgments resulting therefrom. The undersigned hereby irrevocably accept(s) and submit(s) to the jurisdiction of the aforesaid courts in any suit, action, or proceeding. The undersigned agree(s) to reimburse Creditor for all attorney fees and other expenses (including stamp taxes and other duties, taxes, filing and other fees and charges) paid or incurred in enforcing this Guaranty. The undersigned further agree(s) that any claim which any of the undersigned may now or hereafter have against Creditor, any Lessee, or any other person for any reason whatsoever shall not affect the obligations of any of the undersigned under this Guaranty and shall not be used or asserted against Creditor as a defense to the performance of said obligations or as a setoff, counterclaim, or deduction against any sums due hereunder. The performance and construction of this Guaranty shall be governed by the laws of the State of

. The use of the singular in this Guaranty shall also include the plural, and vice versa, and the use of any gender or the neuter shall also refer to the other gender or the neuter.

8. In the event that Creditor shall suffer, pay, or be responsible for the payment of any losses, costs, court costs, or attorney fees with respect to any of the Obligations and/or the collection thereof, the undersigned agree(s) to pay and do(es) hereby guarantee payment to Creditor of such amounts in full. Such expenses shall include all attorney fees incurred by Creditor before the filing of any action to enforce this Guaranty, and, in the event of such an action, shall include all attorney fees incurred by Creditor in connection with such action. No delay in making any demand hereunder shall prejudice the right of Creditor to enforce this Guaranty.

9. All of Creditor's rights hereunder shall inure to the benefit of Creditor, its successors and assigns, and all obligations, covenants, and agreements of the undersigned shall be binding upon the undersigned, jointly and severally if more than one, and their heirs, executors, successors and assigns. Creditor may, without notice to, or consent of, any of the undersigned, sell, assign, or transfer to any person or persons all or any part of the Obligations, and each such person or persons shall have the right to enforce this Guaranty as fully



as Creditor, provided that Creditor shall continue to have the unimpaired right to enforce this Guaranty as to so much of the Obligations that it has not sold, assigned, or transferred.

10. The liability of the undersigned shall not be conditioned upon or subject to a defense of reliance upon the guaranty of any other person. In any action to enforce any of the Obligations of this Guaranty, Creditor may, at its option, join the appropriate Lessee, any of the undersigned and any other guarantors in one action, or bring successive actions against any of them in such order as Creditor may elect, in its sole discretion.

11. No waiver by Creditor of any right or remedy shall be effective unless in writing nor, in any event, shall the same operate as a waiver of any other or future right or remedy that may accrue to Creditor. If any part of this Guaranty shall be adjudged invalid, then such partial invalidity shall not cause the remainder of this Guaranty to be or to become invalid, and if a provision hereof is held invalid in one or more of its applications, said provision shall remain in effect in valid applications that are severable from the invalid application or applications. Notwithstanding any partial or entire payment of all or any of the Obligations, this Guaranty shall remain in effect or be reinstated, as the case may be, as though such payment had never been made, with respect to any such payment which is rescinded or recovered from or restored or returned by Creditor under authority of any law, rule, regulation, order of court or governmental agency, whether arising out of any proceedings under the United States bankruptcy laws or otherwise.

12. The undersigned hereby authorize(s) any attorney at law to appear for (it, him/her) them (or any of them) before any court having jurisdiction and, after one or more declarations filed, confess judgment against (it, him/her) them (or any of them) as of any time after any of the Obligations are due (whether by demand, stated maturity, acceleration, or otherwise) for the unpaid balance of the Obligations declared due, together with interest, court costs, and reasonable attorney's fees.

13. The undersigned agree(s) to furnish to Creditor from time to time, upon Creditor's request, current written financial statements of the undersigned.

14. Any notice or other communication in connection with this Guaranty, if by registered or certified mail, shall be deemed to have been given when received by the party to whom directed, or, if by mail but not registered or certified, when deposited in the mail, postage prepaid, provided that any such notice or communication shall be addressed to a party as provided below (or as otherwise specified in writing by such party) (a) if to the undersigned, at the address(es) specified below and; (b) if to Creditor, at:

(insert address)

IN WITNESS WHEREOF, (each of) the undersigned, intending to be legally bound hereby and intending this to be a sealed instrument, has caused this Guaranty to be duly executed under seal the day and year first above written.

Individual Guarantors (*Author's Note:* Individual guarantors must sign without titles. Also, use street addresses, not P.O. boxes.)

Individually

Home Address

Individually

Home Address

Corporate Guarantors (*Author's Note:* Use street addresses, not P.O. boxes.)

(Insert name and address of corporation)

(CORPORATE SEAL)

By:

Attest Secretary

Name:

Title:

(CORPORATE SEAL)

By:

Attest Secretary

Name:

Title:

**Form: i-01**  
**Disk File Name: i-01.rtf**

**INSURANCE REQUEST LETTER TO LESSEE (FROM LESSOR)**

**Form Purpose**

A leasing company form notification for advising lessees of lease insurance requirements.

*Executing Parties*  
The equipment lessor.

---

[Letterhead of Leasing Company]

To: \_\_\_\_\_, Lessee

Lease No.:

Lease Agreement Date:

Equipment Description:

**Important**

In accordance with the terms of the above-referenced lease you have with our leasing company, the equipment must be insured. You are required to carry adequate fire, theft, and extended physical damage insurance coverage on the equipment in the amount of \$ \_\_\_\_\_, as well as third-party liability insurance coverage in the amount of \$ \_\_\_\_\_. Your insurance must also conform to any additional requirements set forth in Section \_\_\_\_\_ of the above-referenced lease.

Please furnish us with a loss payable endorsement, originated by your agent, showing the above-named lessor as loss payee and additional insured. Be sure to include your customer lease number so that insurance can be applied to the proper account. Normally, your agent will be able to handle this request without any additional charge to your firm.

In the event you have any questions, please feel free to notify this office. Your attention to this matter will be greatly appreciated.

(Insert name of leasing company)

By:

Title:

**Form: i-02**  
**Disk File Name: i-02.rtf**

**INSURANCE REQUEST TO INSURANCE COMPANY (FROM LESSEE)**

**Form Purpose**

An equipment lessee form for requesting that its insurance company provide a certificate of insurance verifying insurance coverage on the specified leased equipment.

*Executing Parties*  
 The equipment lessee.

**Request for Certificate of Insurance**

Lessor: Telephone No.: (        )  
 Street Address:  
 City: State: Zip:  
 Lease No.:

Insurance Agent: Telephone No.: (        )  
 Street Address:  
 City: State: Zip:

Insurance Company:  
 Policy No.:

Gentlemen:

We wish to advise you that we have leased equipment from the above-referenced Lessor, and the conditions of the Lease require that we, as Lessee, carry insurance indemnifying Lessor against any loss, damage, or destruction of the equipment which is valued at \$        , as well as indemnifying Lessor from and against any claims or actions filed against Lessor as a result of personal injury, death, property damage, or commercial losses in any way claimed to have been sustained by or from the equipment.

A certificate certifying the following limits of liability are requested: \$        Bodily Injury Liability, \$        Property Damage Liability, and Physical Damage "All Risk" coverage.

The Lessor must be named as additional insured and loss payee under a Certificate of Insurance so indicating. The insurance policy must provide that it may not be canceled for a period of thirty (30) days following written notice by the insurance carrier to the Lessor, and this must be so acknowledged in the Certificate of Insurance.

(Insert name of equipment lessee)

By:

Title:

Date:

**Form: i-03**  
**Disk File Name: i-03.rtf**

## INSURANCE REQUIREMENT NOTICE—INTEGRATED (FROM LESSOR)

### Form Purpose

Lessee insurance requirement letter. This form has been integrated with the short-form net finance master lease agreement, Lease Agreement Form I-03.

*Executing Parties*

The equipment lessor.

The equipment lessee.

*See:*

Lease Agreement, Form I-03

Lessee:

Address:

Attn.:

Re: Insurance Requirements

Gentlemen:

Reference is made to the proposed lease of equipment ("Lease") between \_\_\_\_\_ ("Lessor") and you ("Lessee").

We have set forth below the insurance requirements of Lessor to be complied with by you, as Lessee, in accordance with the Lease. The terms used in this letter shall have the same meanings as in the Lease, unless otherwise defined herein.

You, as Lessee, will as to all Units, at all times commencing when any risk shall pass to Lessor until the return of such Units to Lessor in accordance with the terms of the Lease, at your expense, cause to be carried and maintained with insurers of recognized responsibility acceptable to Lessor (a) property and casualty insurance in respect of such Units and (b) public liability insurance against claims for personal injury, death, or property damage resulting from such Units, including without limitation the ownership, possession, maintenance, use, and operation of such Units, in both cases in at least such amounts and against such risks as are customarily insured against by companies of recognized standing engaged in a business similar to that of Lessee with respect to similar equipment; provided, however, that in no event shall (i) the amount of such property and casualty insurance be less than \$ \_\_\_\_\_ and (ii) the amount of such public liability insurance be less than \$ \_\_\_\_\_ in respect of any one person or \$ \_\_\_\_\_ in respect of any one occurrence; and the benefits thereof shall be payable to Lessor and Lessee, as their respective interests may appear. Each such policy of insurance shall (i) require 30 days prior written notice to Lessor of a material change, cancellation, or nonrenewal, (ii) name Lessor as an additional named insured and loss payee, as its interest may appear, (iii) provide that all provisions of such policy, except the limits of liability, will operate in the same manner as if there were a separate policy governing such additional insured, (iv) include a waiver by the insurer of all claims for premiums, commissions, or similar costs or charges against Lessor, (v) provide that, in respect of the interests of Lessor, such insurance will not be invalidated by reason of any breach of representation or warranty made by Lessee to the insurer in connection with obtaining such policy of insurance or maintaining the same in full force and effect, and (vi) be primary without rights of contribution from any other insurance which Lessor or Lessee may have. Lessee shall deliver to Lessor a certificate of insurance or other evidence of insurance satisfactory to Lessor no later than the execution of the Lease.

Please acknowledge your receipt of the insurance requirements relating to the Units by executing and returning to the undersigned the extra copy of this letter enclosed.

, Lessor

By:

Title:

Received this            day of            , 20    .

, Lessee

By:

Title:

**Form: I-01**  
**Disk File Name: I-01.rtf**

## LANDLORD WAIVER

### Form Purpose

A real estate landlord's waiver to ensure that the landlord of the property on which leased equipment will be located will not exercise any claim against the equipment for obligations due from the lessee to the landlord.

*Executing Parties*

The real estate landlord.

### Landlord's Waiver

The undersigned ("Landlord") is the owner and landlord of the premises at \_\_\_\_\_, which Landlord has leased to (insert name of equipment lessee) ("Tenant"). In order to induce (insert name of leasing company) ("Lessor") to extend credit to Tenant, and intending to be legally bound hereby, agrees as follows:

1. The following equipment ("Collateral") in which Lessor is, or will be, the legal owner, will remain personal property and will not be deemed to be fixtures:
2. Lessor may enter the leased premises to remove the Collateral, or any part thereof, at any time in the exercise of its rights as the owner of the Collateral.
3. Landlord waives any right of distraint or execution against the Collateral or any claim to it so long as Lessor owns it.
4. Landlord agrees that it will notify:
  - A. Lessor of the termination of the lease between Landlord and Tenant for any reason, and
  - B. Any purchaser of the leased premises and any subsequent mortgagee or other encumbrance holder of the lease's premises of the existence of this waiver.
5. This waiver shall be binding upon the successors and transferees of Landlord, and shall inure to the benefit of the successors and assigns of Lessor.

Dated:

(Insert name of landlord), Landlord

By:

Title:

**Form: I-02****Disk File Name: I-02.rtf****LEASE AGREEMENT—MASTER (HIGH TECH/GENERAL EQUIPMENT)****Form Purpose**

Form of master net finance equipment lease, containing particular business and legal needs in large ticket lease transactions of computer equipment. This form is part of an integrated package, including all key closing documents. Although it contains certain specialized language for leasing computer equipment, it can be readily modified to cover any type of equipment. The master format allows future equipment to be easily added by means of a schedule.

*Executing Parties*

The equipment lessor.

The equipment lessee.

*See:*

Equipment Schedule, Form I-02a

Certificate of Acceptance, Form I-02b

Casualty Value Schedule, Form I-02c

Termination Value Schedule, Form I-02d

Incumbency Certificate, Form I-02e

Certified Resolutions, Form I-02f

Opinion of Counsel, Form I-02g

Prohibited Lender Assignee Schedule, Form I-02h

**Master Lease of Computer Equipment**

dated as of \_\_\_\_\_,  
 between  
 Lessor  
 and  
 Lessee

**Master Lease of Computer Equipment**

- Section 1. Definitions
- Section 2. Equipment Acquisition and Acceptance
- Section 3. Lease Term
- Section 4. Net Lease
- Section 5. Rent and Usage
- Section 6. Identification Marks
- Section 7. General Tax Indemnification
- Section 8. General Indemnification
- Section 9. Payment for Casualty Occurrence
- Section 10. Insurance
- Section 11. Inspection
- Section 12. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Additions
- Section 13. Events of Default and Remedies
- Section 14. Fair Market Value and Fair Market Rental
- Section 15. Assignment, Possession, Liens, Sublease, and Merger
- Section 16. Lessee Rights



- Section 17. Return of Equipment
- Section 18. Interest on Overdue Payments
- Section 19. Confidential Information
- Section 20. Advertising or Publicity
- Section 21. Representations and Warranties
- Section 22. Financial Information
- Section 23. Payments
- Section 24. Notices
- Section 25. Statement of Lease
- Section 26. Severability, Effect, and Interpretation of Lease
- Section 27. Law Governing
- Section 28. Further Assurances
- Section 29. Modification, Waiver, and Consent
- Section 30. Binding Effect
- Section 31. Execution in Counterparts

- Exhibit A. Equipment Schedule, see Form I-02a
- Annex A. Certificate of Acceptance, see Form I-02b
- Annex B. Casualty Value Schedule, see Form I-02c
- Annex C. Termination Value Schedule, see Form I-02d
- Annex D. Incumbency Certificate, see Form I-02e
- Annex E. Certified Resolutions, see Form I-02f
- Annex F. Opinion of Counsel, see Form I-02g
- Annex G. Prohibited Lender Assignee Schedule, see Form I-02h

Master Lease of Computer Equipment, dated as of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_, a corporation, with a principal place of business located at \_\_\_\_\_ (the "Lessor," such term to include, to the extent permitted hereunder, its successors and assigns), and \_\_\_\_\_, a corporation, with a principal place of business located at \_\_\_\_\_ (the "Lessee," such term to include, to the extent permitted hereunder, its successors and assigns).

The following terms shall have the respective meanings set forth below for all purposes of this Lease.

1.1 "Acceptance Date" as to each Item of Equipment shall mean the date on which Lessee determines that such Item of Equipment is acceptable for lease pursuant to the terms and conditions of this Lease, as specified by Lessee in the applicable Certificate of Acceptance.

1.2 "Appraiser" shall mean a qualified independent computer equipment appraiser selected in accordance with the provisions of Section 14 of this Lease.

1.3 "Basic Lease Commencement Date" as to each Unit shall mean the date on which the Primary Term shall begin, as specified in the applicable Equipment Schedule.

1.4 "Basic Lease Rate Factor" as to each Unit shall mean the percentage rental set forth in the applicable Equipment Schedule.

1.5 "Basic Rent" as to each Unit shall mean the rent due and payable on each Rent Date during the Primary Term, as specified in the applicable Equipment Schedule.

1.6 "Business Day" shall mean a calendar day, excluding Saturdays, Sundays, and all days on which banking institutions in [insert jurisdiction(s) of Lessee's and/or Lessor's principal place(s) of business] shall be closed.

1.7 "Casualty Occurrence" shall have the meaning set forth in Section 9 of this Lease.

1.8 "Casualty Value" as to each Unit shall be the amount calculated in accordance with the Casualty Value provisions of the applicable Equipment Schedule.

1.9 "Certificate of Acceptance" shall mean a certificate substantially in the form attached as Annex A to the form of Equipment Schedule attached hereto as Exhibit A.

1.10 "Code" shall mean the United States Internal Revenue Code of 1986, as amended and in effect from time to time [if appropriate, insert other relevant governing tax law].

1.11 "Cut-Off Date" as to each Item of Equipment shall mean the date specified in the applicable Equipment Schedule after which Lessor shall not be obligated to purchase and lease such Item of Equipment to Lessee in accordance with the terms and conditions of this Lease.

1.12 "Discount Rate" shall mean the per annum interest charge (calculated on the basis of a 360-day year and 30-day month) specified in the applicable Equipment Schedule.

1.13 "Equipment Schedule" shall mean each schedule, substantially in the form of Exhibit A attached hereto, which shall refer to this Lease and which shall become a part hereof as executed from time to time by the parties hereto, covering one or more Items of Equipment that may be leased by Lessee from Lessor hereunder.

1.14 "Event of Default" shall mean any of the events specified in Section 13.1 of this Lease.

1.15 "Fair Market Rental" shall mean the rental value of a Unit determined in accordance with the provisions of Section 14 of this Lease.

1.16 "Fair Market Value" shall mean the sale value of a Unit determined in accordance with the provisions of Section 14 of this Lease.

1.17 "Impositions" shall have the meaning set forth in Section 7.1 of this Lease.

1.18 "Interim Rent" as to each Unit shall mean the rent payable with respect to any Interim Term, as specified in the applicable Equipment Schedule.

1.19 "Interim Term" as to each Unit shall mean the period of time, if any, commencing on the Acceptance Date and ending on the day immediately preceding the Basic Lease Commencement Date.

1.20 "Item of Equipment" shall mean an item of electronic data processing equipment described in an Equipment Schedule. When an "Item of Equipment" becomes subject to this Lease it is thereafter for all purposes of this Lease referred to and defined as a "Unit."

1.21 "Invoice Purchase Price" as to each Unit shall mean the aggregate amount payable by the Lessor to Manufacturer for such Unit, as specified in one or more Manufacturer's invoices for such Unit.

1.22 "Lease" shall mean this Master Lease of Computer Equipment between Lessor and Lessee, including without limitation all Equipment Schedules and all exhibits to this Lease and to all Equipment Schedules. The words "herein," "hereof," "hereunder," and other words of similar import used in this Lease refer to this Lease as a whole and not to any particular Section, Subsection, or other portion of this Lease.

1.23 "Lessor's Cost" as to each Unit shall mean the Invoice Purchase Price plus additional costs and expenses that are assumed and subsequently paid by Lessor pursuant to the applicable Equipment Schedule.

1.24 "Lessor's Lien" shall have the meaning set forth in Section 15.3 of this Lease.

1.25 "Lien" shall have the meaning set forth in Section 15.3 of this Lease.

1.26 "Loss Payment Date" as to a Unit suffering a Casualty Occurrence shall mean the date on which Lessee shall be obligated to pay Lessor the Casualty Value in accordance with provisions of Section 9.1 of this Lease.

1.27 "Manufacturer" as to each Unit shall mean the manufacturer or vendor thereof specified by Lessee in the applicable Equipment Schedule.

1.28 "Overdue Rate" shall mean the per annum interest charge (calculated on the basis of a 360-day year and 30-day month) pursuant to Section 18 as specified in the applicable Equipment Schedule.

1.29 "Primary Term" as to each Unit shall mean that period of time commencing on, and including, the Basic Lease Commencement Date and ending that period of time thereafter, as designated in the applicable Equipment Schedule, unless earlier terminated pursuant to the provisions of this Lease.

1.30 "Purchase Documents" shall mean those documents relating to the purchase of a Unit or Units by Lessor from Manufacturer.

1.31 "Purchase Right" as to each Unit shall have the meaning specified in Section 16.1 of this Lease.

1.32 "Renewal Rent" as to each Unit shall mean the rent due and payable on each Rent Date during a Renewal Term, as specified in the applicable Equipment Schedule.

1.33 "Renewal Right" as to each Unit shall have the meaning specified in Section 16.2 of this Lease.

1.34 "Renewal Term" as to each Unit shall mean that aggregate period of time following the end of the Primary Term for which this Lease is extended.

1.35 "Rent" as to each Unit shall mean and include Basic Rent and any Interim Rent and Renewal Rent payable or to become payable, by Lessee to Lessor.

1.36 "Rent Date" as to each Unit shall mean each date during the Term on which Rent is due and payable, as specified in the applicable Equipment Schedule.

1.37 "Term" as to each Unit shall mean the Primary Term and any Interim Term and Renewal Term.

1.38 "Termination Right" as to each Unit shall have the meaning specified in Section 16.3 of this Lease.

1.39 "Termination Value" as to each Unit shall be the amount calculated in accordance with the Termination Value provisions of the applicable Equipment Schedule.

1.40 "Unit" shall mean an Item of Equipment, and any modifications thereof, or improvements or additions thereto, which is leased by Lessor to Lessee pursuant to the terms and provisions of this Lease.

1.41 "Upgrade Right" shall have all the meaning specified in Section 16.4 of this Lease.

2.1 Lease Commitment. In consideration of the Rent to be paid by Lessee and the other covenants contained in this Lease to be kept and performed by Lessee, Lessor hereby agrees to lease to Lessee each Item of Equipment described in each Equipment Schedule in accordance with the terms and conditions of this Lease.

2.2 Lessor Payment. Lessor shall purchase each Unit from Manufacturer solely for its own investment and account as a principal and not as a broker and promptly pay to Manufacturer the full Invoice Purchase Price for each Unit. In no event shall Lessor make such payment later than the earlier of the due date specified by Manufacturer or thirty (30) days after the Acceptance Date. Lessor shall, immediately upon making such payment, deliver to Lessee reasonably satisfactory evidence of such payment. If the full Invoice Purchase Price for any such Unit is not so paid to Manufacturer as provided in this Section 2.2, Lessee shall have the absolute right, in its discretion, (a) to make such payment to Manufacturer, whereupon all of Lessor's rights in, and title to, such Unit shall automatically vest in Lessee and (b) to withhold any Rent and/or (c) terminate this Lease as to such Unit. In addition to paying the Invoice Purchase Price for each Unit, Lessor shall also pay, no later than the due date, such other costs and expenses as to a Unit as specified as part of the Lessor's Cost for such Unit in the applicable Equipment Schedule.

2.3 Cut-Off Date. Lessor shall have no obligation to purchase and lease any Item of Equipment hereunder which has not been accepted by Lessee in accordance with the provisions of Section 2.5 on or before the Cut-Off Date.

2.4 Installation Location. Each Unit shall be installed at the address set forth in the applicable Equipment Schedule. Lessee may, without Lessor's consent, move any such Unit from such address, or any relocated address, to any other address in the United States of America, provided Lessee has notified Lessor in writing at least thirty (30) days prior to effecting any change of location.

2.5 Lessee Acceptance. Lessee shall acknowledge its acceptance of each Item of Equipment for lease hereunder by executing and delivering to Lessor a Certificate of Acceptance as to each such Item of Equipment, whereupon each such Item of Equipment shall become subject to this Lease as of the Acceptance Date.

3.1 Term of Lease. The Term of each Unit shall be as specified in the applicable Equipment Schedule.

3.2 Lease Termination. This Lease shall not be terminated by Lessor or Lessee with respect to any Unit for any reason whatsoever, except as expressly provided herein.

This Lease is a net lease and Lessee, subject to the provisions of Section 2.2, shall not be entitled to any abatement or reduction of Rent, or setoff against Rent, including without limitation abatements, reductions, or setoffs due or alleged to be due by reason of any past, present, or future claims of Lessee against Lessor under this Lease. Notwithstanding the foregoing, however, nothing shall preclude Lessee from otherwise enforcing any and all other rights it may have against Lessor under this Lease or otherwise.

5.1 Rent Payment. Lessee agrees to pay Lessor Rent for each Unit in accordance with the provisions of this Lease. The Rent for each Unit shall be paid on each Rent Date in the amount set forth in the applicable Equipment Schedule. In accordance with Section 23.1 hereof, if any date on which a Rent payment is due is not a Business Day, the Rent payment otherwise payable on such date shall be payable on the next succeeding Business Day.

5.2 Unlimited Usage. Lessor agrees that there shall be no limit on the number of hours for which any Unit may be used.

Lessee, at its own cost and expense, will cause each Unit to be legibly and permanently marked, in a reasonably prominent location, with the following legend evidencing the fact that such Unit is owned by Lessor and subject to this Lease:

"[Name and Address of Lessor], Owner, Lessor."

Lessee shall, upon at least thirty (30) Business Days prior written notice from Lessor, make such changes and/or additions in such markings specified by Lessor as may be required by law in order to protect Lessor's ownership of such Unit and the rights of Lessor under this Lease. Lessee will promptly replace or cause to be replaced any such markings that are removed, defaced, or destroyed.

7.1 General Tax Indemnity. All Rent and other payments required to be made by Lessee hereunder shall be net of any deductions, charges, costs, expenses, and Impositions with respect to collection or otherwise. Lessee agrees to pay, on written demand by Lessor specifying such Impositions in reasonable detail, any and all Impositions and shall keep and save harmless and indemnify Lessor from and against all such Imposi-

tions. "Impositions" shall mean the amount of any local, state, federal, or foreign taxes of any nature whatsoever, assessments, license fees, governmental charges, duties, fines, interest charges, or penalties with respect to any Unit or any part thereof, or with respect to the purchase, ownership, delivery, leasing, possession, use, or operation thereof. The term "Impositions" shall not include (a) federal, state, local, and foreign tax on, or measured by, the net income of Lessor; (b) any tax based on, or measured by, gross income or gross receipts of Lessor as a substitute for and not in addition to taxes based on net income of Lessor; (c) any tax imposed by Section 531 [Accumulated Earnings Tax] or Section 541 [Personal Holding Company Tax] of the Code; (d) taxes, fees, or other charges included in Lessor's Cost; (e) the aggregate of all franchise taxes or other similar taxes up to the amount in the aggregate of any such taxes which would be payable to the states and cities in which Lessor maintains or has maintained places of, or otherwise does, business during the Term of this Lease, except any such tax which is in substitution for or relieves Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse Lessor for as herein provided; (f) any fines or penalties that are imposed as a result of (A) the misconduct or negligence of Lessor or (B) a failure by Lessor to take reasonable action or to furnish reasonable cooperation to Lessee as a result of which Lessee is unable to diligently fulfill its obligations under this Section 7; (g) any claim made against Lessor for any Imposition that Lessee is obligated to pay hereunder with respect to which Lessor has not notified Lessee in writing pursuant to Section 7.2; (h) any tax imposed on the purchase of a Unit or Units from Manufacturer; and (i) any sales or use tax imposed upon (A) the voluntary transfer or other disposition by Lessor, or any assignee of Lessor, of all or any of the Units, or (B) another obtaining any interest in a Unit by, through, or under Lessor. In this regard it is understood that any transfer or disposition (A) that occurs in the Lessor's exercise of the remedies provided in Section 13.2 after an Event of Default has occurred and while the same is continuing or (B) of a unit which has suffered a Casualty Occurrence, shall not be deemed to be a voluntary transfer or disposition.

7.2 Claim Notification. If a claim is made against Lessor for any Imposition that Lessee is obligated to pay hereunder, Lessor shall promptly notify Lessee in writing.

7.3 Right to Contest. Lessee shall be under no obligation to pay any imposition so long as Lessee is contesting such Imposition in good faith. Lessor hereby agrees to fully cooperate with Lessee, including providing any information Lessee shall request, in connection with any such contest. So long as Lessee is so contesting such Imposition and no final, unreviewable judgment adverse to Lessee has been entered by a court of competent jurisdiction, Lessee shall not be in default hereunder with respect to the nonpayment of any such Imposition.

7.4 Lessor Payment Reimbursement. If any Imposition shall have been charged or levied against Lessor directly and paid by Lessor, Lessee shall reimburse Lessor on presentation of reasonably satisfactory evidence of payment; provided, however, Lessor has obtained Lessee's prior written approval for the payment thereof, which approval shall not be unreasonably withheld.

7.5 Lessor Refund Reimbursement. If Lessee has reimbursed Lessor for any Imposition pursuant to this Section 7 (or if Lessee has made a payment to the appropriate taxing authority for an Imposition which it is required to pay hereunder), Lessee may take such steps (in the name of Lessee or in the name of Lessor) as are necessary or appropriate to seek a refund of such Imposition, and Lessor shall fully cooperate with Lessee in seeking such refund. In the event of a refund of any Imposition for which Lessor has received a payment from Lessee, the amount of such refund shall be immediately paid over to or retained by Lessee, as appropriate.

8.1 Conflict. The provisions of this Section 8 are in addition to, and not in limitation of, the provisions of Section 7 hereof; provided, however, that in the event of a conflict between the provisions of this Section 8 and the provisions of Section 7, the provisions of Section 7 shall be controlling.

8.2 General Indemnity. Lessee hereby agrees to assume liability for, and does hereby agreed to indemnify, protect, save, and keep Lessor harmless from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses, or disbursements arising out of Lessee's actions that may be imposed on, incurred by, or asserted against Lessor relating to or arising out of this Lease or the manufacture, purchase, acceptance, rejection, return, lease, ownership, possession, use, condition, operation, or sale of each Unit or any accident in connection therewith. Lessor hereby expressly authorizes Lessee to contest, and agrees to cooperate fully with Lessee in contesting, in the name of Lessee or Lessor as Lessee shall deem appropriate for the benefit of Lessee, any such liability, obligation, penalty, or claim asserted against either Lessee or Lessor. Lessee shall not be required to indemnify Lessor except as specifically set forth in the preceding sentence, including without limitation as to (a) loss or liability in respect of any Unit arising from any act or event which occurs after such Unit has been returned to Lessor pursuant to the provisions of this Lease; (b) loss or liability resulting from the breach of any covenant, representation, or warranty made by

Lessor in this Lease or in any document relating to the transactions contemplated by this Lease; (c) loss or liability resulting from the negligence or misconduct of Lessor (including acts by employees, agents, or other representatives of Lessor); (d) any legal or accounting fees or other expense incurred by Lessor in connection with this Lease and the other documents referred to herein and any amendments or other modifications or additions to this Lease or such other documents; (e) any brokerage fees or similar fees or commissions incurred by Lessor in connection with any transactions contemplated hereby; or (f) any liability, obligation, penalty, or claim indemnified against herein so long as the validity or amount thereof is being contested by Lessee in good faith.

9.1 Casualty Occurrence. In the event that any Unit becomes damaged or otherwise inoperable so as to preclude its use for the purpose intended by Lessee, as determined by Lessee in good faith, or in the event any Unit is lost or stolen or is permanently returned by Lessee to Manufacturer pursuant to the Purchase Documents [*Author's Note:* This relates to when a Unit is permitted to be returned to the manufacturer because it is defective or otherwise fails to meet requirements set forth in the Purchase Documents], or for ninety (90) consecutive days or more is taken or requisitioned by condemnation or otherwise in such a manner as to result in Lessee's loss of possession or use, excluding any permitted sublease (any such occurrence being hereinafter referred to as a "Casualty Occurrence") during the Term of this Lease, Lessee shall promptly so notify Lessor. On the Rent Date next succeeding a Casualty Occurrence (the "Loss Payment Date"), Lessee shall pay to Lessor an amount equal to the Casualty Value of such Unit applicable on the date of such Casualty Occurrence. [*Author's Note:* Casualty Value payments vary in arrangement—each situation must be looked at independently.] Upon, but not prior to, the time when such payment is made by Lessee as to any Unit, Lessee's obligation to pay Rent for such Unit, including without limitation any Rent that would be attributable to any Rent payment period subsequent to the Loss Payment Date, shall cease and the Term of this Lease as to such Unit shall automatically terminate. Lessor hereby appoints Lessee as its sole agent to dispose of any Unit or any part thereof suffering a Casualty Occurrence in the best manner and at the best price obtainable, as determined by Lessee in its sole discretion, on an "as is, where is" basis. If Lessee shall have so paid the Casualty Value to Lessor, unless an Event of Default shall have occurred and be continuing, Lessee shall be entitled to the proceeds of such sale up to an amount equal to the sum of the Casualty Value of such Unit plus all costs, expenses, and damages incurred by Lessee in connection with such Casualty Occurrence and the disposition of such Unit. Lessor shall be entitled to any excess. In the case of the taking or requisition of any Unit by any governmental authority, any payments received from such governmental authority as compensation for such taking or requisition shall, if Lessee has therefore paid the Casualty Value, be immediately paid over to or retained by Lessee, as appropriate, up to an amount equal to the sum of the Casualty Value of such Unit plus all costs, expenses, and damages incurred by Lessee in connection with such Casualty Occurrence, and Lessor shall be entitled to any excess. Lessor shall have no duty to Lessee to pursue any claim against any governmental authority but Lessee may at its own cost and expense pursue the same on its own behalf and on behalf of Lessor, and Lessor shall cooperate fully in Lessee's pursuit of such claim.

9.2 Manufacturer Returned Unit. As to each Unit returned to Manufacturer in the manner described in the first sentence of Section 9.1, Lessee shall be entitled to immediately receive and retain all amounts paid or payable to Lessor by Manufacturer with respect to the return of such Unit, up to the Casualty Value paid by Lessee hereunder plus all cost, expenses, and damages incurred by Lessee in connection therewith. Any excess shall immediately be paid over to or retained by Lessor, as appropriate.

9.3. Return After Requisition. In the event of the taking or requisition for use by any governmental authority of any Unit during the Term of this Lease as to such Unit, unless such taking or requisition shall constitute a Casualty Occurrence, all of Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such taking or requisition had not occurred, except that if such Unit is returned by such governmental authority to Lessee at any time after the end of the Term of this Lease as to such Unit, anything to the contrary contained in this Lease notwithstanding, Lessee shall only be required to promptly return such Unit to Lessor upon such return by such governmental authority, rather than at the end of the Term of this Lease as to such Unit. All payments received by Lessor or Lessee from any governmental authority for the use during the Term of this Lease of such Unit as provided in this Section 9.3 shall be immediately paid over to or retained by Lessee, as appropriate, unless an Event of Default shall have occurred and be continuing, in which case the amount otherwise payable to Lessee may be retained by Lessor and applied to discharge the liabilities of Lessee under Section 13.

10.1 Insurance Maintenance. Lessee will, at all times during the Term of this Lease as to each Unit prior to the return of such Unit to Lessor in accordance with Section 17 of this Lease, at its own expense, cause to be carried and maintained with insurers of recognized responsibility (a) property and casualty insurance for such Unit and (b) public liability insurance against claims for personal injury, death, or property damage

resulting from the ownership, possession, maintenance, use, or operation of such Unit, in both cases in at least such amounts and against such risks as are customarily insured against by Lessee on similar equipment; provided, however, that in no event shall (a) the amount of such property and casualty insurance be less than the Casualty Value of such Unit from time to time (except that Lessee may self-insure in an amount up to \$ ) and (b) the amount of such public liability insurance be less than [\$ ] as to any one occurrence. The benefits under such insurance shall be payable to Lessor and Lessee, as their respective interests may appear. Any policy of insurance carried in accordance with this Section 10 shall (a) require thirty (30) days prior written notice to Lessor of a material change or cancellation or nonrenewal; (b) name Lessor as additional insured, as its interest may appear, and provide that all provisions of such policy, except the limits of liability, will operate in the same manner as if there were a separate policy governing such additional insured; and (c) provide that, as to Lessor's interest, such insurance shall not be invalidated by reason of any breach of representation or violation of warranty made by Lessee to the insurer in connection with obtaining such policy of insurance or maintaining the same in full force and effect. Lessee shall deliver to Lessor together with each Certificate of Acceptance a copy of each such policy (or a certificate of insurance relating thereto) with respect to each Unit covered by such Certificate of Acceptance.

10.2 Insurance Proceeds. Any insurance proceeds resulting from insurance carried by Lessee or condemnation payments received by Lessor for each Unit suffering a Casualty Occurrence shall be deducted from the amounts payable by Lessee for a Casualty Occurrence pursuant to Section 9. If Lessor shall receive any such insurance proceeds or condemnation payments after Lessee shall have made payment to Section 9 without deduction for such insurance proceeds or such condemnation payments, Lessee shall immediately pay such insurance proceeds or condemnation payments to Lessee, up to the sum of the Casualty Value amount paid by Lessee plus all costs, expenses, and damages incurred by Lessee in connection with the disposition of each Unit suffering a Casualty Occurrence, unless an Event of Default shall have occurred and be continuing, in which case the amount otherwise payable to Lessee may be retained by Lessor and applied to discharge the liabilities of Lessee under Section 13. The balance of such insurance proceeds or condemnation payments shall be retained by Lessor. All property damage insurance proceeds received by Lessor or Lessee with respect to a damaged Unit not suffering a Casualty Occurrence shall be applied toward the payment, when due, of the cost of repairing such Unit. Any condemnation payments received with respect to a Unit not suffering a Casualty Occurrence shall be the property of Lessee unless an Event of Default shall have occurred and be continuing, in which case the amount otherwise payable to Lessee shall be paid to or retained by Lessor, as appropriate, and applied to discharge the liabilities of Lessee under Section 13.

Lessor shall have the right during the Term of this Lease upon not less than ten (10) Business Days prior written notice to Lessee to inspect any Unit for the purpose of confirming its existence, condition, and proper maintenance, at mutually agreeable times during Lessee's regular business hours. Notwithstanding the foregoing, Lessor may not inspect any Units if it would unreasonably interfere with Lessee's business operations, violate any applicable governmental security laws, regulations rules, or violate the reasonable security regulations or procedures of Lessee.

12.1 Warranty Disclaimer. LESSOR, NOT BEING THE MANUFACTURER OR VENDOR OF THE UNITS NOR A DEALER IN SIMILAR EQUIPMENT, MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER EXCEPT AS EXPRESSLY STATED HEREIN, INCLUDING WITHOUT LIMITATION THE DESIGN OR CONDITION OF THE UNITS, THEIR MERCHANTABILITY, DURABILITY, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, INFRINGEMENT, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE UNITS, OR THE CONFORMITY OF THE UNITS TO THE PROVISIONS OR SPECIFICATIONS OF ANY PURCHASE ORDER RELATING THERETO, AND LESSOR HEREBY SPECIFICALLY DISCLAIMS ANY AND ALL SUCH REPRESENTATIONS AND WARRANTIES. [*Author's Note: This warranty disclaimer should be given to a lessor only when the lessor is not also the vendor*], it being agreed that all such risks, as between Lessor and Lessee, are to be borne by Lessee; but Lessor hereby assigns and transfers to Lessee, and hereby irrevocably appoints and constitutes Lessee as its agent and attorney-in-fact to assert and enforce from time to time as Lessee shall deem appropriate, in the name of and for the account of Lessor and/or Lessee, as their respective interest may appear, at Lessee's sole cost and expense, whatever claims and rights Lessor may have as owner of each Unit against Manufacturer (or any subcontractor or supplier of Manufacturer) under the Purchase Documents or otherwise. Lessor agrees to cooperate fully at Lessee's request in Lessee's pursuit of any such claims or rights. If for any reason Lessee is prevented from asserting such claims or rights in the name of and for the account of Lessor and/or Lessee, as their respective interests may appear, Lessor will, at Lessee's expense, promptly upon Lessee's request enforce such claims or rights as directed from time to time by Lessee.

12.2 Compliance with Laws. Lessee agrees to use its best efforts to comply in all material respects with all applicable laws (including without limitation laws with respect to Lessee's use, maintenance, and operation of each Unit) of each jurisdiction in which a Unit is located; provided, however, Lessee shall not be required to comply with any such law so long as Lessee is, in good faith, contesting the validity or application of any such law. Lessor agrees to cooperate fully at Lessee's request in Lessee's contest of any such law or its applicability.

12.3 Maintenance. Lessee shall pay all costs, expenses, fees, and charges (other than those included in Lessor's Cost) incurred in connection with Lessee's use and operation of the Units. Subject to the provisions of Section 9, Lessee, at its own cost and expense, shall maintain, repair, and service, or cause to be maintained, repaired, and serviced, each Unit so as to keep it in the same operating condition and repair as it was when it first became subject to this Lease, ordinary wear and tear for the use intended by Lessee excepted, and within a reasonable period of time shall replace all parts of any Unit that may have become worn out, stolen, confiscated, destroyed, or otherwise rendered permanently unfit for use with appropriate replacement parts, which shall be free and clear from all Liens, other than any Lessor's Lien. Upon replacement, title to the replacement parts shall automatically be vested in Lessee.

12.4 Maintenance Agreement. Lessee shall, upon expiration of the Manufacturer's warranty period applicable to each Unit, enter into and maintain in force for the longest possible period obtainable by Lessee during the Term of this Lease as to such Unit a maintenance agreement (the "Maintenance Agreement") with Manufacturer or with another qualified party covering at least the prime shift maintenance of such Unit; provided, however, if Lessee is unable to obtain Maintenance Agreement reasonably satisfactory to it as to any Unit, Lessee shall have the right to maintain such Unit itself. Charges under the Maintenance Agreement and all other maintenance and service charges, including installation and dismantling charges, shall be borne by Lessee.

12.5 Additions. Lessee may, at its option and at its own cost and expense, make additions, modifications, and improvements to any Unit provided such additions, modifications, and improvements are readily removable without causing material damage to such Unit. All such additions, modifications, and improvements shall remain the property of Lessee and shall be removed by Lessee before such Unit is returned to Lessor. Lessee shall repair all damage to any such Unit resulting from such installation and removal. Lessee shall not, without the prior written consent of Lessor, which consent shall not be unreasonably withheld, alter any Unit, or affix or install any accessories or devices on any Unit, if the same shall materially impair the function or use of such Unit. Except to the extent otherwise provided in the first sentence of this Section 12.5, any and all other additions or modifications and improvements to any Lien (except for any Lessor's Lien), shall immediately be vested in Lessor, any and all warranties of Manufacturer with respect thereto shall thereupon automatically be assigned to Lessee and Lessor shall cooperate fully with Lessee in their enforcement the same extent and on the same basis as provided in Section 12.1.

13.1 Events of Default. During the Term of this Lease the occurrence of any of the following events shall constitute an "Event of Default":

- (a) Nonpayment of all or any part of the Rent provided for in Section 5 (except as otherwise expressly provided in Section 2.2), if such nonpayment shall continue for ten (10) Business Days after Lessee's receipt from Lessor of written notice of such nonpayment;
- (b) Lessee shall make or permit any unauthorized assignment or transfer of this Lease or any interest herein or any unauthorized transfer of the right to possession of any Unit;
- (c) Lessee shall fail or refuse to comply with any other covenant, agreement, term, or provision of this Lease required to be kept or performed by Lessee or to make reasonable provision for such compliance within thirty (30) days after Lessee's receipt from Lessor of a written demand for the performance thereof, which demand shall specify in reasonable detail the nonperformance;
- (d) Any proceedings shall be commenced by or against Lessee for any relief under any bankruptcy or insolvency law, or any law relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangement, composition, or extension, and, unless such proceedings shall have been dismissed, nullified, stayed, or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all of the obligations of Lessee hereunder shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for Lessee or its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within thirty (30) days after such appointment, if any, or thirty (30) days after such proceedings shall have been commenced,

whichever is earlier, or Lessee shall make a general assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due;

- (e) any representation or warranty made by Lessee in this Lease, or in any certificate or other document delivered by Lessee pursuant hereto, shall be incorrect in any material respect as of the date made and shall remain uncorrected for a period of thirty (30) days after receipt by Lessee of written notice from Lessor specifying in reasonable detail the incorrect representation or warranty.

13.2 Remedies. Upon the occurrence of an Event of Default, and so long as such Event of Default shall be continuing, Lessor may, at its option, declare this Lease to be in default and may exercise in its sole discretion any one or more of the following remedies:

- (a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or
- (b) by notice in writing to Lessee terminate this Lease with respect to any or all of the Units, whereupon all rights of Lessee to the possession and use of such Unit or units shall absolutely cease and terminate as though this Lease had never been made, but Lessee shall remain liable as hereinafter provided; and thereupon Lessor may, by its agent or agents, enter upon the premises of Lessee or any other premises where any of such Units may be located and take possession of all or any of such Units and thenceforth hold, possess, operate, sell, lease, and enjoy such Unit or Units free from any right of Lessee to use such Unit or Units for any purpose whatsoever and without any duty to account to Lessee for any action or inaction or for any proceeds arising therefrom, but Lessor shall, nevertheless, have a right to recover from Lessee any and all amounts that under the provisions of this Lease and any applicable Equipment Schedule may then be due or which may have accrued to the date of such termination (computing the Rent for any number of days less than a full Rent payment period by multiplying the Rent for such full Rent payment period by a fraction the numerator of which is such number of days and the denominator of which is the total number of days in the full Rent payment period) and also to recover from Lessee as damages for loss of the bargain and not as a penalty, whichever of the following sums, with respect to each such Unit, Lessor, in its sole discretion, shall specify by written notice to Lessee: (a) an amount equal to the excess, if any, computed as of the Rent Date immediately succeeding the date of the Event of Default, of the Casualty Value for such Unit over the present value of the Fair Market Rental of such Unit for the remainder of the Term of this Lease following such Rent Date, such present value to be computed in each case using the Discount Rate specified in the applicable Equipment Schedule [*Author's Note: This is for an "in advance" rental structure*]; or (b) an amount equal to the excess, if any, computed as of the Rent Date immediately succeeding the date of the Event of Default, of the Casualty Value for such Unit over the Fair Market Value of such Unit [*Author's Note: This is for an "in advance" rental structure*]; and any reasonable costs and expenses (including legal and accounting fees) incurred in connection with the recovery, repair, repainting, return, and remarketing of such Unit or other exercise of Lessor's remedies hereunder.

The remedies in this Lease provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies existing in its favor at law or in equity.

Lessor shall use its best efforts to mitigate any damages suffered by it. IN NO EVENT SHALL LESSEE BE LIABLE FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND UNDER THE LEASE.

"Fair Market Value" and "Fair Market Rental," as to each Unit for all purposes in connection with this Lease, shall have the respective meanings and shall be determined in accordance with the procedure set forth in this Section 14. Fair Market Value and Fair Market Rental shall be determined on the basis of, and be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (or lessee, if determining Fair Market Rental), other than a lessee currently in possession or a used equipment dealer, under no compulsion to buy (or lease), and an informed and willing seller (or lessor, if determining Fair Market Rental) under no compulsion to sell (or lease), and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

In the event that a determination of Fair Market Value or Fair Market Rental of a Unit shall be made under any provision of this Lease, the party requesting the determination shall deliver a written notice to the other party so indicating and appointing an Appraiser selected by the requesting party to determine the Fair



Market Value or Fair Market Rental. Within fifteen (15) days after the receipt of such written notice the party receiving such notice shall deliver to the requesting party a written notice appointing an Appraiser of its selection to make such determination. The two Appraisers appointed in such written notices shall meet promptly to determine the Fair Market Value or Fair Market Rental of such Unit as of the applicable date. If within thirty (30) days after the initial written notice the two Appraisers so appointed by Lessor and Lessee shall be unable to agree upon the Fair Market Value or the Fair Market Rental of such Unit, whichever is applicable, such Appraisers shall within five (5) days thereafter appoint a third Appraiser. The decision of the three Appraisers so appointed shall be given within a period of ten (10) days after the appointment of such third Appraiser. Any decision in which any two Appraisers so appointed and acting hereunder concur shall in all cases be binding and conclusive upon Lessor and Lessee. The fees and expenses of the Appraisers shall be borne equally by Lessee and Lessor, unless the Lease shall have been terminated pursuant to Section 13 hereof, in which case Lessee shall pay all such fees and expenses.

15.1 Lessor Assignment. Lessor agrees that it will not assign all or any portion of its rights under, or interests in, this Lease or any of the Units unless such assignment is made pursuant to a security agreement relating to any borrowing by Lessor from one or more institutional lenders. Notwithstanding the foregoing, Lessor agrees that it will not make any such assignment to any entities listed on an Annex to any Equipment Schedule. Lessor agrees that if such a security interest in any Unit is granted, the security agreement covering such Unit shall expressly provide that the rights and interests of Lessee in and to such Unit as provided in this Lease shall remain paramount so long as no Event of Default shall have occurred and be continuing. Lessor shall give Lessee prompt written notice of any such assignment by Lessor. All the rights of Lessor hereunder (including without limitation the right to receive Rent payable under this Lease) shall inure to the benefit of Lessor's permitted assigns to the extent of such assignment. Any payment of Rent or other payment by Lessee to such assignee shall be full satisfaction of Lessee's obligation to make such payment under this Lease and Lessor hereby indemnifies Lessee against any damages, claims, costs, or expenses incurred by Lessee in connection therewith, but Lessee shall be under no obligation to make any payment to any such assignee until Lessor shall give Lessee written notice to make such payment to such assignee. Notwithstanding anything to the contrary herein, any permitted assignee of Lessor can declare an Event of Default hereunder only with respect to one or more Units subject to such assignee's security interest.

15.2 Lessee Possession and Assignment. So long as an Event of Default under this Lease shall not have occurred and be continuing, Lessee shall be entitled to the quiet enjoyment and peaceful possession and use of the Units in accordance with and subject to all the terms and conditions of this Lease, but without the prior written consent of Lessor, which consent shall not be unreasonably withheld, Lessee shall not, except as otherwise permitted herein, lease, assign, or transfer its leasehold interest in any or all of the Units.

15.3 Liens. Except as otherwise provided herein, Lessee, at its own expense, shall promptly pay or discharge any and all sums claimed by, or liabilities in favor of, any person that, if unpaid, would become a mortgage, lien, charge, security interest, or other encumbrance (any of the foregoing being herein referred to as a "Lien"), other than a Lien by, through, or under Lessor on or with respect to any Unit, including any accession thereto, or the interest of Lessor or Lessee therein, which shall include without limitation any Lien resulting from a breach of Lessor's covenant in Section 2.2 or resulting from claims against Lessor not related to the ownership or leasing of any Unit (any of the foregoing being herein referred to as a "Lessor's Lien"), and shall promptly discharge any such Lien that arises. Lessee shall not be required to pay or discharge any such Lien so long as the validity thereof is being contested in good faith. The existence of any Lessor's Lien or any Lien for taxes, assessments, or governmental charges, or levies (in each case so long as not due and delinquent), or inchoate materialmen's, mechanics', workmen's, repairmen's, employees' or other like Liens arising in the ordinary course of business and in each case not delinquent shall not constitute a breach of this covenant.

15.4 Lessee Sublease. So long as no Event of Default under this Lease shall have occurred and be continuing, Lessee shall be entitled without Lessor's consent to sublease any or all of the Units, or any part thereof, to, or permit their use by, any person or entity, including without limitation any subsidiary, affiliate, or parent corporation of Lessee, incorporated in the United States of America or any state thereof, but in all cases only upon and subject to all the terms and conditions of this Lease. No such sublease or other assignment of use by Lessee shall relieve Lessee of its obligations hereunder.

15.5 Merger or Consolidation. Notwithstanding anything herein to the contrary, Lessee may assign or transfer this Lease and its leasehold interest in the Units to any corporation incorporated under the laws of any state of the United States of America into or with which Lessee shall have merged or consolidated or which shall have acquired all or substantially all of the property of Lessee, provided that such assignee or

transferee will not, upon the effectiveness of such merger, consolidation, or acquisition and the assignment or transfer of this Lease to it, be in default under any provision of this Lease.

16.1 Purchase Right. Lessee shall have the right to purchase any Units provided in the applicable Equipment Schedule.

16.2 Renewal Right. Lessee shall have the right to renew this Lease as to any Unit as provided in the applicable Equipment Schedule.

16.3 Termination Right. Lessee shall have the right to terminate this Lease as to any Unit as provided in the applicable Equipment Schedule.

16.4 Upgrade Right. Lessee shall have the right to upgrade any Unit as provided in the applicable Equipment Schedule.

As soon as practicable on or after the expiration of the Term of this Lease as to each Unit, Lessee shall prepare the Unit for return to Lessor and deliver possession of such Unit to Lessor at the location of such Unit on the final day of the Term of this Lease. The Units shall be returned in the condition in which they are required to be maintained by Lessee under Section 12.3.

Anything herein to the contrary notwithstanding, any nonpayment of Rent or any other payment obligation with respect to any Unit after the due date shall result in the obligation on the part of Lessee promptly to pay with respect to such Unit, to the extent legally enforceable, interest on such Rent or other payment obligation for the period of time during which it is overdue at the Overdue Rate as specified in the applicable Equipment Schedule, or such lesser amount as may be legally enforceable.

Lessor agrees that it will not, without first obtaining Lessee's written consent, disclose to any person, firm, or enterprise, or use for its benefit, any information not generally available to the public relating to Lessee's business, including without limitation any pricing methods, processes, financial data, lists, apparatus, statistics, program, research, development, or related information concerning past, present, or future business activities of Lessee.

Neither Lessor nor Lessee shall use the name of the other in publicity releases or advertising without securing the prior written consent of the other.

Each of Lessor and Lessee represents and warrants to the other that:

(a) It is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation. It has full power and authority to carry on its business presently conducted, to own or hold under lease its properties, and to enter into and perform its obligations under this Lease; and it is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which the location of any Unit requires such qualification.

(b) Its execution, delivery, and performance of this Lease have been duly authorized by all necessary corporate action on its part, do not contravene its corporate charter or by-laws or any law, governmental rule, or regulation, or any order, writ, injunction, decree, judgment, award, determination, direction, or demand (collectively "Order") of which it is aware binding on it or its properties and do not and will not contravene the provisions of, or constitute a default under, or result in the creation of any Lien upon any Unit under, any material indenture, mortgage, contract, or other instrument to which it is a party or by which it or its property is bound.

(c) No consent or approval of, giving notice to, registration with, or taking of any other action by, any [state/province—as appropriate], federal or other governmental commission, agency, or regulatory authority required for the performance by it of the transactions contemplated by this Lease, or if any such approval, registration, or giving of notice is required it has been obtained, so registered, or given, as the case may be.

(d) This Lease has been duly entered into and delivered by it and constitutes a legal, valid, and binding agreement of it enforceable against it in accordance with its terms, except as limited by (i) any bankruptcy, insolvency, reorganization, or other similar laws of general application affecting the enforcement of creditors' or lessors' rights generally, (ii) emergency powers lawfully conferred upon any governmental agency, and (iii) laws or judicial decisions limiting the right to specific performance or other equitable remedies.

(e) To the best of its knowledge there are no actions, suits, or proceedings pending or threatened against or affecting it or any of its property in any court or before any arbitrator or before or by any federal, state,

municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign (collectively "Governmental Body"), except actions, suits, or proceedings of the character normally incident to the kind of business conducted by it as to which any adverse determination in excess of any accruals to reflect potential liability would not materially adversely affect its business, assets, operations, or condition, financial or otherwise, taken as a whole, or materially adversely affect its ability to perform its obligations under this Lease, and it is not in material default with respect to any material Order of any court, arbitrator, or Governmental Body.

(f) As to Lessee only, its consolidated balance sheet as of \_\_\_\_\_, and its related consolidated statements of income, retained earnings and changes in financial position for the two years then ended, heretofore delivered to Lessor, fairly present its consolidated financial position as of such date and its consolidated results of operations and consolidated changes in financial position for the two years then ended, all in conformity with general accepted accounting principles consistently applied during the periods. Since the date of such balance sheet there has not been any material adverse change in its business, assets, liabilities, results of operations, or condition, financial or otherwise.

(g) It is not a party to any agreement or instrument or subject to any charter or other corporate restriction that, so far as it is now aware, materially adversely affects or will, so far as it can now foresee, materially adversely affect, its business, operations, or properties or its ability to perform its obligations under this Lease.

(h) To the best of its knowledge it has filed all required tax returns in all jurisdictions in which such returns were required to be filed and has paid, or made provision for, all material taxes shown to be due and payable on such returns and all other material taxes and assessments that are payable by it, except for any taxes and assessments of which the amount, applicability, or validity is currently being contested in good faith and as to which any adverse determination in excess of any accruals to reflect potential liability would not materially adversely affect its ability to perform its obligations under this Lease.

During the term of this Lease, Lessee agrees to provide Lessor with its consolidated quarterly and annual financial statements promptly as they become available and such other financial information as may be provided to Lessee's shareholders from time to time.

23.1 Postponement of Payment Date. If any date on which a Rent or other payment is due and payable is not a Business Day, the payment otherwise payable on such date shall be due and payable on the next succeeding Business Day.

23.2 Payment Address. All Rent and other payments required to be made by Lessee to Lessor shall be made to Lessor at the address of Lessor set forth in Section 24 or at such other address as may be specified in writing by Lessor at least thirty (30) Business Days prior to the date such notice is intended to become effective.

23.3 Method of Payment. All Rent and other payments under this Lease shall be made in lawful money of the United States of America.

Any notice or document or payment to be delivered hereunder to any of the persons designated below, except as otherwise expressly provided herein, shall be deemed to have been properly delivered if delivered personally or deposited with the United States Postal Service, registered or certified mail, return receipt requested, postage prepaid, to the following respective addresses:

If to Lessor:

Attn.:

If to Lessee:

Attn.:

or such other address as may be furnished from time to time by any of the parties hereto upon at least thirty (30) days prior written notice.

It is expressly understood and agreed by and between the parties hereto that this instrument constitutes a lease of the Units, and nothing herein shall be construed as conveying to Lessee any right, title, or interest in the Units except as a lessee only. Neither the execution nor the filing of any financing statement with respect to any of the Units or the execution or filing of any financing statement with respect to this Lease or the

recording hereof shall in any manner imply that the relationship between Lessor and Lessee is anything other than that of lessor and lessee. Any such filing of financing statements or recordation of this Lease is solely to protect the interests of Lessor and Lessee in the event of any unwarranted assertions by any person not a party to this Lease transaction.

26.1 Severability. Any provision of this Lease that is prohibited or unenforceable by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

26.2 Complete Statement of Rights. This Lease exclusively and completely states the rights of Lessor and Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto.

26.3 Section Headings. All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

The terms and provisions of this Lease and all rights and obligations hereunder shall be governed in all respects by the laws of [ ].

Each of Lessor and Lessee agrees that at any time and from time to time, after the execution and delivery of this Lease, it shall, upon request of the other party, promptly execute and deliver such further documents and do such further acts and things the requesting party may reasonably request in order fully to effectuate the purposes of this Lease.

Any modification or waiver of any provision of this Lease, or any consent to any departure by Lessee or Lessor, as the case may be, therefrom, shall not be effective in any event unless the same is in writing and signed by the party to be charged, and then such modification, waiver, or consent shall be effective only in the specific instance and for the specific purpose given.

This Lease shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of Lessee and Lessor.

This Lease may be executed in any number of counterparts, each of which shall constitute an original and which taken together shall constitute one and the same Lease.

IN WITNESS WHEREOF, the parties, pursuant to due authority, have caused this Lease to be signed in their respective names by duly authorized officers or representatives as of the date first above written.

as Lessor

By:

Title:

as Lessee

By:

Title:

**Form: I-02a**  
**Disk File Name: I-02a.rtf**

**EQUIPMENT SCHEDULE**

**Form Purpose**

Form of master net finance equipment lease schedule. This form is integrated with a master lease agreement, Lease Agreement Form I-02.

*Executing Parties*  
 The equipment lessor.  
 The equipment lessee.

*See:*  
 Lease Agreement, Form I-02

**Exhibit A**

Equipment Schedule No. ("Schedule")  
 Dated as of \_\_\_\_\_,  
 to Master Lease of Computer Equipment ("Lease")  
 Dated as of \_\_\_\_\_,  
 between \_\_\_\_\_,  
 ("Lessor")  
 and \_\_\_\_\_,  
 ("Lessee")

1. Equipment Description

Quantity	Manufacturer	Model	New/Used	Description	Estimated Invoice
					Purchase Price
					Per Unit Aggregate

\*\*\*\*\*

[Insert Equipment Description]

Total Estimated Invoice Purchase Price \$

2. Basic Lease Commencement Date

The Basic Lease Commencement Date for each Unit shall commence on [insert relevant time, such as the first day of the month immediately following the Unit's Acceptance Date if the Acceptance Date does not fall on the first day of a month].

3. Cut-Off Date

Lessor shall be obligated to purchase and lease each Item of Equipment specified in Section 1 of this Schedule to Lessee provided such Item of Equipment has been accepted by Lessee for lease in accordance with the provisions of Section 2.5 of the Lease on or before \_\_\_\_\_.

4. Discount Rate

The Discount Rate applicable to each Unit shall be equal to an interest charge of \_\_\_\_\_ % per annum.

5. Lessor's Cost

The Lessor's Cost for each Item of Equipment subject to this Schedule shall be an amount equal to the Invoice Purchase Price for such Item of Equipment plus all sales taxes in connection with the purchase from Manufacturer of such Item of Equipment, transportation charges in connection with the delivery of such Item of Equipment from the Manufacturer to Lessee and [insert other relevant charges which are to be included].

## 6. Overdue Rate

The Overdue Rate for each Unit shall be equal to an interest charge of \_\_\_\_\_ % per annum.

## 7. Rent Date

The Rent Date as to each Unit shall be the \_\_\_\_\_ day of each \_\_\_\_\_ during the Primary Term and the \_\_\_\_\_ day of each \_\_\_\_\_ during any Renewal Term.

## 8. Unit Location

Each Unit shall be located at Lessee's place of business at \_\_\_\_\_.

## 9. Lessor Commitment

Lessor shall be obligated to purchase and lease Items of Equipment pursuant to the terms of the Lease and this Schedule with an aggregate Lessor's Cost of not less than \$ \_\_\_\_\_.

## 10. Lease Term

(a) The Primary Term for each Unit shall commence on the Basic Lease Commencement Date of such Unit and shall end on the anniversary date thereof that number of years indicated below opposite the relevant Unit thereafter.

*Unit Description*

*Primary Term in Years*

(b) The Renewal Term for each Unit shall be as specified in Section 13 of this Schedule.

## 11. Unit Rent

(a) The Interim Rent for each Unit as to any Interim Term shall be payable on the Basic Lease Commencement Date of such Unit and shall be an amount equal to the Basic Rent multiplied by a fraction, the numerator of which is that number of days in the Interim Term and the denominator of which is that number of days in a Primary Term Rent payment period.

(b) The Basic Rent shall be an amount equal to the product of the Basic Lease Rate Factor indicated below for the relevant Unit times the Lessor's Cost of such Unit.

*Unit Description*

*Basic Lease Rate Factor as a % of Lessor's Cost*

(c) The Renewal Rent for each Unit shall be payable on each Rent Date during the Renewal Term in the amounts specified in Section 13 of this Schedule.

## 12. Casualty Value

The Casualty Value of each Unit shall be that percentage of the Lessor's Cost for such Unit as specified on Annex B attached hereto opposite the Rent Date through which Lessee has paid Rent.

## 13. Purchase and Renewal Right

Provided that the Lease has not been terminated earlier and no Event of Default has occurred and is continuing not earlier than one hundred eighty (180) days and not later than ninety (90) days before the end of the Primary Term or each year of any Renewal Term of each Unit, Lessee may deliver to Lessor a written notice (a) tentatively electing either to purchase such Unit at the end of the Primary Term or each year of any Renewal Term for an amount equal to the Fair Market Value of such Unit at the end of such Term, or to extend the Term of this Lease at the end of the Primary Term or each year of any Renewal Term as to such Unit on a year-to-year basis (but such aggregate Renewal Term shall not exceed \_\_\_\_\_ years) at the Fair Market Rental at the end of such Term; and (b) appointing an Appraiser selected by Lessee to determine the Fair Market Value or the Fair Market Rental thereof, whichever is applicable, in accordance with the provisions of Section 14 of the Lease. If no such written notice is delivered by Lessee to Lessor within such period, Lessee shall be deemed to have waived any right to purchase or extend the Term with respect to such Unit. At any time within the fifteen (15) day period following the determination of Fair Market Value or Fair Market Rental, as appropriate, of such Unit, Lessee may deliver to Lessor a further written notice finally electing to purchase or extend the Term with respect to such Unit. If no such further notice is delivered by Lessee to Lessor within such fifteen (15) day period, Lessee shall be deemed to have waived any right to purchase or extend the Term with respect to such Unit. At the end of the Term, if Lessee has finally elected to purchase such Unit, Lessee shall purchase from Lessor, and Lessor shall sell to Lessee, such Unit for a cash consideration equal to the Fair Market Value of such Unit, and Lessor shall transfer title to such Unit to Lessee without recourse or warranty, except that Lessor shall represent and warrant that it owns such Unit free and clear of any Lessor's Lien.

## 14. Early Termination Right

(a) Provided an Event of Default shall not have occurred and be continuing, Lessee shall have the right at its option at any time with not less than ninety (90) days prior written notice to Lessor

to terminate the Lease with respect to any or all of the Units on the Primary Term Rent Date or any Primary Term Rent Date thereafter for any one or more such Units (hereinafter called the "Termination Date"), provided that Lessee shall have made a good faith determination that such Unit or Units are obsolete or surplus to Lessee's requirements. During the period from the giving of such notice until the Termination Date Lessee, as agent for Lessor, shall use its best efforts to obtain bids for the purchase of such Unit or Units by a person other than Lessee or an affiliate of Lessee. Lessee shall promptly certify in writing to Lessor the amount and terms of each bid received by Lessee and the name and address of the party submitting such bid. Subject to Lessor's right to retain such Unit or Units as provided in Subsection (b) below, on the Termination Date Lessor shall sell such Unit or Units for cash to the bidder or bidders who shall have submitted the highest bid for each such Unit prior to such date and shall transfer title to such Unit or Units to such purchaser or purchasers without recourse or warranty, except that Lessor shall represent and warrant that it owns such Unit or Units free and clear of any Lessor's Lien. The total sale price realized upon such sale shall be retained by Lessor and, in addition, on the Termination Date, Lessee shall pay to Lessor the amount, if any, by which the Termination Value of such Unit or Units as provided in Subsection (d) below, computed as of the Termination Date, exceeds the proceeds of such sale, whereupon the Lease shall terminate as to such Unit or Units except as herein otherwise expressly provided. Subject to the provisions of Subsection (c) below, in the event no bids are received by Lessee, Lessee shall pay to Lessor the Termination Value of such Unit or Units, computed as of the Termination Date, and deliver such Unit or Units to the Lessor in accordance with the provisions of Section 17 of the Lease, whereupon the Lease shall terminate as to such Unit or Units, except as herein otherwise expressly provided.

- (b) Notwithstanding the provisions of Subsection (a) above but subject to the provisions of Subsection (c) below, Lessor shall have the right at any time up to and including thirty (30) days prior to the Termination Date, within its sole discretion, to elect not to sell such Unit or Units to any prospective purchaser obtained by Lessee ("Third Party Purchaser"). In the event Lessor elects not to sell such Unit or Units to the Third Party Purchaser, Lessee shall return such Unit or Units to Lessor in accordance with the provisions of Section 17 of the Lease, and Lessor thereupon may retain such Unit or Units for its own account without further obligation under the Lease. If no sale shall have occurred on or as of the Termination Date because the Third Party Purchaser fails to consummate a proposed sale and Lessor shall not have requested the return of such Unit or Units pursuant hereto, the Lease shall continue in full force and effect as to such Unit or Units. In the event of any such sale or the return of such Unit or Units to Lessor pursuant hereto, and provided no Event of Default has occurred and is continuing, all obligations of Lessee to pay Rent and otherwise with respect to such Unit or Units for any period subsequent to the Termination Date shall cease.
- (c) If the Termination Value exceeds the highest bidder in the event no bids are received by Lessee, or if Lessor should exercise its election under Subsection (b) above, Lessee may, at its option, upon written notice given to Lessor not less than fifteen (15) days prior to the Termination Date, elect to (i) rescind and cancel Lessee's notice of termination with respect to any one or more of such Units, whereupon the Lease shall not terminate with respect to such Unit or Units pursuant to this Section 14 but shall continue in full force and effect as though no notice of termination had been given by Lessee with respect to such Unit or Units, or (ii) pay Lessor the applicable Termination Value with respect to any one or more of such Units, whereupon Lessor shall transfer title to such Unit or Units to Lessee without recourse or warranty, except that Lessor shall represent and warrant that it owns such Unit or Units free and clear of any Lessor's Lien. In the event Lessee fails to pay Lessor an amount of money equal to the applicable Termination Value on the Termination Date, the Lease as to such Unit or Units shall continue in full force and effect.
- (d) The Termination Value of any Unit shall be that percentage described on Annex C attached hereto of Lessor's Cost set forth opposite the Rent Date through which the Lessee has paid Rent.

#### 15. Upgrade Right

[*Author's note:* This must be negotiated on a case-by-case basis. There is no one standard form.]

#### 16. Representations and Warranties

Each of Lessor and Lessee represents and warrants to the other that:

- (a) Its representations and warranties contained in Section 21 of the Lease are true and accurate on and as of the date of this Schedule as though made on and as of such date.

- (b) It is not in default under any of the terms, covenants, agreements, or other provisions of the Lease.
- (c) Simultaneously with the execution and delivery hereof it has delivered to the other its Incumbency Certificate, Certified Resolutions, and Opinion of Counsel substantially in the respective forms of Annexes D, E, and F attached hereto, with such changes as the receiving party shall reasonably request.

17. Term Definitions

The terms used in this Schedule, where not defined in this Schedule to the contrary, shall have the same meanings as defined in the Lease.

, as Lessor

By:

Title:

, as Lessee

By:

Title:



**Form: I-02b**  
**Disk File Name: I-02b.rtf**

**CERTIFICATE OF ACCEPTANCE**

**Form Purpose**

Form of master net finance equipment lease equipment lessee certificate of acceptance. This form is integrated with a master lease agreement, Lease Agreement Form I-02.

*Executing Parties*

The equipment lessee.

*See:*

Lease Agreement, Form I-02

**Annex A**

**Certificate of Acceptance**

Date

Certificate of Acceptance No.

to Equipment Schedule No. ("Schedule")

dated as of \_\_\_\_\_,

to Master Lease of Computer Equipment ("Lease")

dated as of \_\_\_\_\_,

between

("Lessor")

and

("Lessee")

Lessee hereby confirms that the Acceptance Date of the Unit or Units described in Exhibit A attached hereto shall be the date of this Certificate.

Lessee confirms that (a) such Unit or Units have been examined by duly appointed and authorized representatives of Lessee, (b) such Unit or Units have been duly accepted by Lessee as Units for Leasing under the Lease, (c) such Unit or Units have become subject to and governed by the terms of the Lease, and (d) Lessee has become obligated to pay to Lessor the Rent provided for in the Lease and the Schedule with respect to such Unit or Units.

The terms used herein shall have the respective meanings given to such terms in the Lease.

\_\_\_\_\_, as Lessee

By:

Title:

**Form: I-02c**

**Disk File Name: I-02c.rtf**

**CASUALTY VALUE SCHEDULE**

**Form Purpose**

Form of master net finance equipment lease casualty value schedule. This form is integrated with a master lease agreement, Lease Agreement Form I-02.

*See:*

Lease Agreement, Form I-02

---

**Annex B  
Casualty Value Scedule**

*After Rent Date No.*

*Percentage of per Unit Cost*

**Form: I-02d**  
**Disk File Name: I-02d.rtf**

## **TERMINATION VALUE SCHEDULE**

### **Form Purpose**

Form of master net finance equipment lease termination value schedule. This form is integrated with a master lease agreement, Lease Agreement Form I-02.

*See:*  
Lease Agreement, Form I-02

---

**Annex C**  
**Termination Value Schedule**

*After Rent Date No.*

*Percentage of Lessor's Cost*

**Form: I-02e**  
**Disk File Name: I-02e.rtf**

**INCUMBENCY CERTIFICATE**

**Form Purpose**

Form of master net finance equipment lease incumbency certificate. This form is integrated with a master lease agreement, Lease Agreement Form I-02.

*Executing Parties*

The equipment lessee's secretary or assistant secretary.

*See:*

Lease Agreement, Form I-02

**Annex D**  
**Incumbency Certificate**

This Certificate is delivered by the undersigned pursuant to the Master Lease of Computer Equipment (the "Lease") dated as of \_\_\_\_\_, between \_\_\_\_\_ (the "Lessor"), and \_\_\_\_\_ (the "Lessee"):

The undersigned hereby certifies that the following persons are on the date hereof, and have been at all times since \_\_\_\_\_, duly elected or appointed, qualified, and acting officers of the undersigned holding the offices set forth opposite their respective names below and that the signatures set forth opposite their respective names and offices below are their genuine signatures:

<i>Name</i>	<i>Title</i>	<i>Signature</i>
-------------	--------------	------------------

\_\_\_\_\_  
Secretary

**Form: I-02f**  
**Disk File Name: I-02f.rtf**

**CERTIFIED RESOLUTIONS**

**Form Purpose**

Form of lessee's certified corporate resolutions authorizing the entering into of an equipment lease transaction. This form is integrated with a master lease agreement, Lease Agreement Form I-02.

*Executing Parties*

The equipment lessee's secretary or assistant secretary.

*See:*

Lease Agreement, Form I-02

**Annex E**  
**Certified Resolutions**

The undersigned, being the \_\_\_\_\_ of  
 a \_\_\_\_\_ corporation ("\_\_\_\_"), does hereby certify  
 that the following is a true and correct copy of certain resolutions duly adopted by the  
 of \_\_\_\_\_ on \_\_\_\_\_, and that such resolutions have not been modified  
 or rescinded and remain in full force and effect on the date hereof:

RESOLVED, that the proposed Master Lease of Computer Equipment (the "Lease"), including the proposed  
 Equipment Schedule attached as Annex A thereto (the "Schedule"), between as  
 and this Corporation as \_\_\_\_\_, in the form of the draft of \_\_\_\_\_,  
 filed with the records of this Corporation, be, and it hereby is, approved in all respects; and further

RESOLVED, that the officers of this Corporation be, and each and any of them hereby is, authorized and  
 empowered, in the name and on behalf of this Corporation, to execute and deliver the Lease and any Sched-  
 ule substantially in the form approved in the preceding resolution, together with such changes therein as such  
 officers or any of them, in conjunction with counsel to this Corporation, shall from time to time in their dis-  
 cretion deem necessary or desirable and shall approve, such approval to be conclusively evidenced by their  
 execution and delivery thereof, and to enforce all rights and perform all obligations of this Corporation there-  
 under; provided, however, that without further action by this Board of Directors the aggregate cost of equip-  
 ment to become subject to the Lease and all Schedules shall not exceed \$ \_\_\_\_\_; and further

RESOLVED, that the officers of this Corporation be, and each and any of them hereby is, authorized and  
 empowered, in the name and on behalf of this Corporation, to execute, deliver, file, and record any and all  
 such further agreements, undertakings, instruments, certificates, letters, and documents, and to perform any  
 and all such further actions, as such officers or any of them, in conjunction with counsel to this Corporation,  
 shall from time to time in their discretion deem necessary or desirable to fully effectuate the Lease and the  
 purposes of the foregoing resolutions.

IN WITNESS WHEREOF, the undersigned has made and executed this Certificate as of this \_\_\_\_\_ day  
 of \_\_\_\_\_, 20\_\_\_\_.

Secretary

**Form: I-02g**  
**Disk File Name: I-02g.rtf**

**OPINION OF COUNSEL**

**Form Purpose**

Form of master net finance lease lessee's counsel opinion. This form is integrated with a master lease agreement, Lease Agreement Form I-02.

*Executing Parties*

The equipment lessee's counsel.

*See:*

Lease Agreement, Form I-02

**Annex F**  
**Opinion of Counsel**

[Date]

Gentlemen:

As counsel to \_\_\_\_\_ (“\_\_\_\_\_”),  
 I have examined the Master Lease of Computer Equipment dated as of \_\_\_\_\_ (the “Lease”), between  
 \_\_\_\_\_ and \_\_\_\_\_ and Equipment Schedule No.  
 \_\_\_\_\_ to the Lease dated of even date herewith, such other documents and corporate records, and such questions  
 of law as I have deemed relevant for purposes of the opinions expressed below. The terms used herein have  
 the same meanings as defined in the Lease. Based on such examination, I am of the opinion that:

1. \_\_\_\_\_ is a corporation duly organized, validly existing, and in good  
 standing under the laws of the \_\_\_\_\_; has full power and authority to carry on its business  
 as presently conducted, to own or hold under lease its properties and to enter into and perform its obliga-  
 tions under the Lease; and is duly qualified to do business as a foreign corporation and is in good standing  
 in each jurisdiction in which the location of any Unit requires such qualification.

2. The execution, delivery, and performance by \_\_\_\_\_ of the Lease  
 have been duly authorized by all necessary corporate action on the part of \_\_\_\_\_,  
 do not materially contravene any law, governmental rule, regulation, or Order binding on \_\_\_\_\_ or its prop-  
 erties or the corporate charter or By-Laws of \_\_\_\_\_, and to the best of my knowledge do not contravene the  
 provisions of, or constitute a material default under, or result in the creation of any Lien upon the Units under,  
 any material indenture, mortgage, contract, or other instrument to which is a party or by which \_\_\_\_\_ or  
 its property is bound.

3. No consent or approval of, giving of notice to, registration with, or taking of any other action by, any  
 state, federal, or other governmental commission, agency, or regulatory authority is required for the perfor-  
 mance by \_\_\_\_\_ of the transactions contemplated by the Lease; or, if any such action is required, it has  
 been obtained, performed, or registered.

4. The Lease has been duly entered into and delivered by \_\_\_\_\_, and con-  
 stitutes a legal, valid, and binding agreement of \_\_\_\_\_ enforceable against in accor-  
 dance with its terms, except as limited by (a) bankruptcy, insolvency, reorganization, or other similar laws of  
 general application affecting the enforcement of creditors' or lessors' rights; (b) emergency powers lawfully  
 conferred upon any governmental agency; and (c) laws or judicial decisions limiting the right to specific per-  
 formance or other equitable remedies, and the Lease creates a valid leasehold interest in the Units.

5. To the best of my knowledge there are no actions, suits, or proceedings pending or threatened before any court, administrative agency, arbitrator, or Governmental Body which would, if determined adversely to \_\_\_\_\_, have a material adverse effect on the business, assets, operations, or condition, financial or otherwise, of \_\_\_\_\_, or materially adversely affect the ability of \_\_\_\_\_ to perform its obligations under the Lease; and to the best of my knowledge \_\_\_\_\_ is not in material default with respect to any material Order of any court, arbitrator, or Governmental Body.

6. No recorded Lien other than the Lease of any nature whatsoever which now covers or affects, or which will hereafter cover or affect, any property (or interests therein) of \_\_\_\_\_ now attaches or hereafter will attach to any of the Units, or materially adversely affects or will affect \_\_\_\_\_ right, title and interest in or to any of the Units.

Very truly yours,

**Form: I-02h**

**Disk File Name: I-02h.rtf**

**PROHIBITED LENDER ASSIGNEE SCHEDULE**

**Form Purpose**

Form of master net finance lease prohibited lender assignees. This form is integrated with a master lease agreement, Lease Agreement Form I-02.

*See:*

Lease Agreement, Form I-02

---

**Annex G**

Prohibited Lender Assignees



**Form: I-03****Disk File Name: I-03.rtf****LEASE AGREEMENT—SHORT FORM (GENERAL)****Form Purpose**

Short form, net finance master equipment lease agreement. The master format allows future equipment to be easily added by means of a schedule. This form is set up so that each schedule is a lease, making it easy to enter into loan arrangements with various lenders that provide equipment purchase funds, and is part of an integrated package, including all key closing documents.

*Executing Parties*

The equipment lessor.

The equipment lessee.

*See:*

Schedule, Form I-03a

Acceptance Certificate, Form I-03b

Casualty Value Table, Form I-03c

Amendment, Form a-14

Automatic Transfer of Title, Form o-16

Insurance Notification, Form i-02

Representation and Warranties, Form I-03d

Opinion of Counsel—Lessee, Form I-03e

Opinion of Counsel—Guarantor, Form I-03f

Purchase—Fair Market Value, Form o-11

Purchase—Fixed Price, Form o-12

Put, Form o-17

Renewal—Fair Market Value, Form o-13

Renewal—Fixed Price, Form o-14

Sublease Right, Form o-15

Secretary's Certificate—Lessee Resolutions, Form c-14

Secretary's Certificate—Guarantor's Resolutions, Form c-09

Master Agreement No.

**Master Agreement to Lease Equipment**

(Insert name of leasing company), Lessor

Home Office: Address:

Phone: (    )

and

a

, Lessee,

corporation, hereby agree as of this

day of

, as follows:

1. Agreement to Lease. This Agreement sets forth the basic terms and conditions upon which Lessor shall lease to Lessee and Lessee shall lease from Lessor items of equipment ("Units") specified in Schedules to be entered into from time to time. Each Schedule shall incorporate the terms and conditions of this Agreement and shall constitute a lease as to the Units specified in such Schedule. The term "Lease" as to each Unit as used in this Agreement shall mean the applicable Schedule which incorporates the terms and conditions of this Agreement.

2. Acceptance. Lessee shall accept each Unit for lease by delivering to Lessor an executed Acceptance Certificate in the form provided by Lessor whereupon such Unit shall be deemed accepted by Lessee and become subject to the Lease on the Acceptance Certificate Execution Date.

3. Rent and Lease Term. Lessee shall pay Lessor Rent for each Unit in the amounts and at the times specified in the Lease. The Lease Term for each Unit shall commence on the Acceptance Certificate Execution Date and shall continue for the period specified in the Lease. The Lease Term as to any Unit may not be terminated by Lessee unless otherwise expressly provided in the Lease.

4. Payment Obligation. All Rent and other payments under each Lease shall be made to Lessor at its address shown above, or at such other address as Lessor may designate, in immediately available funds in such coin or currency of the United States of America which at the time of payment shall be legal tender for the payment of public and private debts. EACH LEASE SHALL BE A NET LEASE, AND LESSEE'S OBLIGATION TO PAY ALL RENT AND OTHER SUMS THEREUNDER SHALL BE ABSOLUTE AND UNCONDITIONAL, AND SHALL NOT BE SUBJECT TO ANY ABATEMENT, REDUCTION, SETOFF, DEFENSE, COUNTERCLAIM, INTERRUPTION, DEFERMENT, OR RECOUPMENT, FOR ANY REASON WHATSOEVER.

5. Statement of Lease. Each Lease shall constitute a lease of personal property and Lessee agrees to take all actions necessary or reasonably requested by Lessor to ensure that each Unit shall be and remain personal property, and nothing in any Lease shall be constituted as conveying to Lessee any interest in any Unit other than its interest as a lessee. Lessee shall, at its expense, protect and defend the interests of Lessor in each Unit against all third party claims; keep each Unit free and clear of any mortgage, security interest, pledge, lien, charge, claim, or other encumbrance (collectively, "Lien"), except any Lien arising solely through acts of Lessor ("Lessor's Lien"); give Lessor immediate notice of the existence of any such Lien; and indemnify and defend Lessor against any claim, liability, loss, damage, or expense arising in connection with any of the foregoing.

6. Use. Each Unit shall be used and operated by Lessee only in the ordinary conduct of its business by qualified employees of Lessee and in accordance with all applicable manufacturer and vendor instructions as well as with all applicable legal and regulatory requirements. Lessee shall not change the location of any Unit from that specified in the Lease without obtaining Lessor's prior consent.

7. Maintenance and Alterations. Lessee shall, at its expense, repair and maintain each Unit so that it will remain in the same condition as when delivered to Lessee, ordinary wear and tear from proper use excepted. Such repair and maintenance shall be performed in compliance with all requirements necessary to enforce all product warranty rights and with all applicable legal and regulatory requirements. Lessee shall enter into and keep in effect during the Lease Term those maintenance agreements with respect to each Unit required by the Lease. Lessee shall, at its expense, make such alterations ("Required Alterations") to each Unit during the Unit's Lease Term as may be required by applicable legal and regulatory requirements. In addition, Lessee may at its expense, without Lessor's consent, so long as no Event of Default, or event which with the passage of time or giving of notice, or both, would constitute an Event of Default ("Incipient Default"), has occurred and is continuing, make alterations ("Permitted Alterations") to any Unit which do not impair the commercial value or originally intended function or use of such Unit and which are readily removable without causing material damage to such Unit. Any Permitted Alterations not removed by Lessee prior to the return of such Unit to Lessor, and all Required Alterations, shall immediately without further action become the property of Lessor and part of such Unit for all purposes of the Lease. Other than as provided in this Section 7, Lessee may make no alterations to any Unit. Any prohibited alterations to a Unit shall, at Lessor's election, immediately become the property of Lessor without further action and without Lessor thereby waiving any Incipient Default or Event of Default.

8. Return. At the expiration or earlier termination of the Lease Term as to each Unit, Lessee shall, at its expense, return such Unit to Lessor at the location in the continental United States specified by Lessor.

9. Identification. Lessee shall, at its expense, place and maintain permanent markings on each Unit evidencing Ownership, security and other interests therein, as specified from time to time by Lessor. Lessee shall not place or permit to be placed any other markings on any Unit which might indicate any ownership or security interest in such Unit. Any markings, on any Unit not made at Lessor's request shall be removed by Lessee, at its expense, prior to the return of such Unit in accordance with Section 8.

10. Inspection. Upon reasonable prior notice, Lessee shall make each Unit and all related records available to Lessor or its agents for inspection during regular business hours, at the location of such Unit.

11. No Lessee Sublease or Assignment. Lessee shall not, unless, expressly permitted in the Lease, sublease or otherwise, relinquish possession or control of, or assign, pledge, hypothecate, or otherwise transfer, dispose of, or encumber, any Unit, this Agreement or any Lease or any part thereof or interest therein, or any right or obligation with respect thereto.

12. **Lessor Assignment.** Lessor may from time to time without notice to Lessee sell, grant a security interest in, assign, or otherwise transfer (collectively "Transfer"), in whole or in part, this Agreement, one or more Leases, any or all Units, or any of its interests, rights, or obligations with respect thereto, including without limitation all Rent and other sums due or to become due under any Lease, to one or more persons or entities ("Assignee"). Each Assignee shall have, to the extent provided in any Transfer document, Lessor's rights, powers, privileges, and remedies with respect thereto, but shall not be obligated to Lessee, except to the extent expressly provided in any Transfer document, to observe or perform any duty, covenant, or condition required to be observed or performed by Lessor. Except to the extent expressly assumed by an Assignee in any Transfer document, no Transfer shall relieve Lessor from any of its obligations to Lessee. Lessee shall, upon receipt of notice of a Transfer from Lessor, be bound by such Transfer. Lessee shall not assert against any Assignee any claim, defense, counterclaim, or setoff that Lessee may at any time have against Lessor.

13. **Liens.** Lessee shall not directly or indirectly create, incur, assume, or suffer to exist any Lien on or with respect to any Unit or Lease, Lessor's title to any such Unit, or other interest or right of Lessor with respect thereto, except Lessor's, Liens. Lessee, at its expense, shall promptly pay, satisfy, and take such other action as may be necessary or reasonably requested by Lessor to keep each Unit and Lease free and clear of, and to duly and promptly discharge, any such Lien.

14. **Risk of Loss.** Lessee shall bear all risk of loss, damage, theft, taking, destruction, confiscation, or requisition with respect to each Unit, however caused or occasioned, which shall occur prior to the return of such Unit in accordance with Section 8. In addition, Lessee hereby assumes all other risks and liabilities, including without limitation personal injury or death and property damage, arising with respect to each Unit (unless arising solely through Lessor's willful misconduct), including without limitation those arising with respect to the manufacture, purchase, ownership, shipment, transportation, delivery, installation, leasing, possession, use, storage, and return of such Unit, howsoever arising, in connection with any event occurring prior to such Unit's return in accordance with Section 8.

15. **Casualty.** If any Unit shall become lost, stolen, destroyed, or irreparably damaged from any cause whatsoever, or shall be taken, confiscated, or requisitioned (any such event herein called an "Event of Loss"), Lessee shall promptly notify Lessor of the occurrence of such Event of Loss, and shall pay Lessor, within 15 days after the date of such Event of Loss (but in no event later than the Rent payment date next following such Event of Loss), an amount equal to the applicable Casualty Value of such Unit as specified in the Lease. Upon Lessor's receipt of such payment in full, the Lease shall automatically terminate as to such Unit, and Lessor's right, title, and interest in such Unit shall immediately without further action pass to Lessee, on an as-is, where-is basis, without recourse or warranty.

16. **Insurance.** Lessee shall, at its expense, cause to be carried and maintained for each Unit, commencing at the time any risk shall pass to Lessor as to such Unit and continuing until the return of such Unit in accordance with Section 8, insurance against such risks, in such amounts, in such form, and with such insurers, all as may be satisfactory to Lessor. If any insurance proceeds are received with respect to an occurrence which does not constitute an Event of Loss, and no Incipient Default or Event of Default has occurred and is continuing, such proceeds shall be applied to payment for repairs. If any insurance proceeds are received by Lessor with respect to an occurrence which constitutes an Event of Loss, and no Incipient Default or Event of Default has occurred and is continuing, such proceeds shall be applied toward Lessee's obligation to pay the applicable Casualty Value for such Unit. If an Incipient Default or Event of Default has occurred and is continuing, any insurance proceeds received shall be applied as Lessor in its sole discretion may determine. At the time each Schedule is executed and thereafter on a date not less than 30 days prior to each insurance policy expiration date, Lessee shall deliver to Lessor certificates of insurance or other evidence satisfactory to Lessor showing that such insurance coverage is and will remain in effect in accordance with Lessee's obligations under this Section 16. Lessor shall be under no duty to ascertain the existence of any insurance coverage or to examine any certificate of insurance or other evidence of insurance coverage or to advise Lessee in the event the insurance coverage does not comply with the requirements hereof. Lessee shall give Lessor prompt notice of any damage, loss, or other occurrence required to be insured against with respect to any Unit.

17. **Taxes and Fees.** Lessee hereby assumes liability for, and shall pay when due, and on a net after-tax basis shall indemnify and defend Lessor against, all fees, taxes, and governmental charges (including without limitation interest and penalties) of any nature imposed upon or in any way relating to Lessor, Lessee, any Unit (including without limitation the manufacture, purchase, ownership, shipment, transportation, delivery, installation, leasing, possession, use, operation, storage, and return of such Unit) or any Lease, except state and local taxes on or measured by Lessor's net income payable to each state and locality in which Lessor maintains one or more places of business immediately prior to the date of the applicable Lease (other than any such tax which is in substitution for or relieves Lessee from the payment of taxes it would otherwise be obligated to pay or reimburse Lessor as provided), and federal taxes on Lessor's net income. Lessee shall

at its expense file when due with the appropriate authorities any and all tax and similar returns and reports required to be filed with respect thereto (with copies to Lessor) or, if requested by Lessor, notify Lessor of all such requirements and furnish Lessor with all information required for Lessor to effect such filings, which filings shall also be at Lessee's expense.

18. Indemnification. Lessee hereby assumes liability for, and shall pay when due, and shall indemnify and defend Lessor against, any and all liabilities, losses, damages, claims, and expenses in any way relating to or arising out of any Lease or any Unit, including without limitation the manufacture, purchase, ownership, shipment, transportation, delivery, installation, leasing, possession, use, operation, storage, and return of such Unit. Lessee shall give Lessor prompt notice of any occurrence, event, or condition in connection with which Lessor may be entitled to indemnification hereunder. The provisions of this Section 18 are in addition to, and not in limitation of, the provisions of Section 17.

19. Limited Warranty. Lessor warrants to Lessee that, so long as no Incipient Default or Event of Default has occurred and is continuing, Lessor will not interfere with Lessee's use and possession of the Units. LESSOR, NOT BEING THE MANUFACTURER OR VENDOR OF THE UNITS NOR A DEALER IN SIMILAR EQUIPMENT, MAKES NO OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION THE DESIGN OR CONDITION OF THE UNITS, THEIR MERCHANTABILITY, DURABILITY, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, INFRINGEMENT, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE UNITS, OR THE CONFORMITY OF THE UNITS TO THE PROVISIONS OR SPECIFICATIONS OF ANY PURCHASE ORDER RELATING THERETO, AND LESSOR HEREBY SPECIFICALLY DISCLAIMS ANY AND ALL SUCH REPRESENTATIONS AND WARRANTIES. LESSEE ACKNOWLEDGES THAT IT HAS MADE THE SELECTION OF EACH UNIT BASED UPON ITS OWN JUDGMENT AND EXPRESSLY DISCLAIMS ANY RELIANCE ON STATEMENTS MADE BY LESSOR AND AGREES THAT LESSOR SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE UNITS. LESSEE AGREES THAT THE UNITS ARE LEASED "AS IS." Lessor hereby appoints Lessee as Lessor's agent, so long as no Incipient Default or Event of Default has occurred and is continuing, to assert at Lessee's expense any right Lessor may have against any manufacturer or vendor to enforce any product warranties with respect to each Unit during such Unit's Lease Term; provided, however, Lessee shall indemnify and defend Lessor against all claims, expenses, damages, losses, and liabilities incurred or suffered by Lessor in connection with any such action taken by Lessee.

20. Events of Default. An "Event of Default" shall occur if (a) Lessee fails to make any Rent or other payment under any Lease when due and such failure continues for a period of 5 days thereafter; (b) Lessee violates any covenant set forth in Section 8, 11, or 16 or the last sentence of this Section 20; (c) Lessee violates any other provision of this Agreement, any Lease or any document furnished Lessor in connection herewith or therewith and such violation shall continue unremedied for a period of 20 days after notice from Lessor; (d) Lessee or any guarantor of Lessee's obligations under any Lease ("Guarantor") or any material subsidiary of Lessee or Guarantor ("Subsidiary") shall be in default with respect to any other agreement with Lessor or any other obligation for the payment of borrowed money or rent; (e) Lessee, any Guarantor or any Subsidiary shall commit an act of bankruptcy or become or be adjudicated insolvent or bankrupt or make an assignment for the benefit of creditors or become unable or admit in writing its inability to pay its debts as they become due, or a trustee receiver or liquidator shall be appointed for Lessee, any Guarantor or any Subsidiary, or for a substantial part of its property, with or without its consent, or bankruptcy, arrangement, reorganization, composition, readjustment, liquidation, insolvency, dissolution, or similar proceedings under any present or future statute, law, or regulation shall be instituted by or against Lessee, any Guarantor, or any Subsidiary, or Lessee, any Guarantor, or any Subsidiary shall file an answer admitting the material allegations of a petition filed against it in any such proceeding, or any execution or writ or process shall be issued under any proceeding whereby any Unit may be taken or restrained, or Lessee, any Guarantor, or any Subsidiary shall cease doing business as a going concern; or Lessee, any Guarantor, or any Subsidiary shall, without Lessor's prior consent, sell, transfer, pledge, or otherwise dispose of all or any substantial part of its assets, or consolidate or merge with any other entity; or (f) any representation or warranty made by Lessee, any Guarantor, or any Subsidiary in any document furnished Lessor under or pursuant to this Agreement or any Lease shall be incorrect or incomplete at any time in any material respect. Lessee shall promptly notify Lessor of the occurrence of any Incipient Default or Event of Default.

21. Remedies. If one or more Events of Default shall have occurred and be continuing, Lessor, at its option, may (a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of the applicable covenants of each Lease or to recover damages for the breach thereof, including without limitation net after-tax losses of federal, state, and local income tax benefits to which Lessor would otherwise be entitled as a result of owning any Unit or leasing such Unit to Lessee, or (b) by notice to Lessee terminate any or all Leases with respect to any one or more of the Units covered thereby, whereupon

all rights of Lessee to the possession and use of such Units shall absolutely cease and terminate as though each such Lease as to such Units had never been entered into; provided, however, Lessee shall nevertheless remain liable under each such Lease; and thereupon Lessor may, by its agent or agents, enter upon the premises of Lessee or any other premises where any of such Units may be located and take possession of all or any of such Units and from that point hold, possess, operate, sell, lease, and enjoy such Units free from any right of Lessee, its successors and assigns, to use such Units for any purposes whatsoever without any duty to account to Lessee for any action or inaction or for any proceeds arising therefrom; provided, however, Lessor shall nevertheless have a right to recover from Lessee any and all amounts which under the terms of each such Lease may be then due or which may have accrued to the date of such termination and also to recover immediately from Lessee (x) as damages for loss of the bargain and not as a penalty, whichever of the following sums, with respect to each such Unit, Lessor in its sole discretion shall specify by notice to Lessee: (i) an amount equal to the excess, if any, of the Casualty Value for such Unit, in effect for the Rent payment period during which the specified Event of Default occurred, over the present value (computed as of the Rent payment date next following the date of such notice) of the rent which Lessor reasonably estimates will be realized for such Unit for the remainder of the initially specified Lease Term of such Unit following the termination of the Lease, such present value to be computed by discounting such estimated rent payments at a 5% per annum rate of interest (based on a 360-day year and 30-day month), or (ii) an amount equal to the excess, if any, of the Casualty Value for such Unit in effect for the Rent payment period during which the specified Event of Default has occurred over the amount Lessor reasonably estimates to be the sales value of such Unit as of the date of the estimate specified in such notice and (y) all damages, losses, liabilities, claims, and expenses (including without limitation expenses incurred in connection with the recovery, repair, repainting, return, and remarking of any Unit or other exercise of Lessor's remedies hereunder and reasonable attorneys' fees) which Lessor shall sustain in connection with any Event of Default. No remedy referred to in this Section 21 shall be deemed exclusive, but all such remedies shall be cumulative and shall be in addition to all other remedies in Lessor's favor existing under this Agreement, any Lease or otherwise at law or in equity.

22. **Financial Information.** Lessee agrees to furnish Lessor (a) as soon as available, and in any event within 120 days after the last day of each fiscal year of Lessee, a copy of the financial statements of Lessee as of the end of such fiscal year, certified by an independent certified public accounting firm of recognized standing reasonably satisfactory to Lessor, (b) within 45 days after the last day of each fiscal quarter of Lessee a copy of its financial statements as of the end of such quarter certified by the principal financial officer of Lessee, and (c) such additional information concerning Lessee, any Guarantor, and any Subsidiary as Lessor may reasonably request.

23. **Lessor's Qualified Obligation.** Lessor shall not be obligated to lease any Unit specified in a Lease to Lessee if (i) such Unit is not accepted by Lessee on or before the Acquisition Expiration Date specified in such Lease or (ii) the Acquisition Cost of such Unit, when added to the Acquisition Cost of the Units specified in such Lease previously accepted for lease, is in excess of the Aggregate Acquisition Cost set forth in such Lease. In addition, anything in this Agreement or any Lease to the contrary notwithstanding, Lessor shall not be obligated to acquire or lease to Lessee any Units not already subject to a Lease if Lessor determines Lessee's financial or business condition (or that of any Guarantor or any Subsidiary) has suffered any material adverse change from the condition existing or represented to Lessor as at the date of such Lease. In such event, Lessee shall promptly pay Lessor and indemnify and defend Lessor against all amounts which Lessor has expended or may be or become obligated to expend with respect to each such Unit and the transactions contemplated under the Lease and shall assume, undertake, and relieve Lessor of, and indemnify and defend Lessor against, all damages, losses, claims, liabilities, obligations, and duties under any related requisition, purchase order, purchase contract, or otherwise with respect thereto.

24. **Late Charges; Security Deposit; Advance Rentals.** Any nonpayment of Rent or other amounts payable under any Lease shall result in Lessee's obligation to promptly pay Lessor as additional Rent on such overdue payment, for the period of time during which it is overdue (without regard to any grace period), interest at a rate equal to the lesser of (a) the Late Charge set forth in the Lease, or (b) the maximum rate of interest permitted by law. Lessor may apply any security deposit required under any Lease toward any oblig-

ation of Lessee thereunder; shall return any unspoiled balance to Lessee, without interest, unless otherwise required by applicable law, upon satisfaction of Lessee's obligations thereunder; and may, unless otherwise required by applicable law, commingle such security deposit with its other funds. In the event that Lessor applies a security deposit to satisfy an obligation of Lessee under any Lease, Lessee shall immediately replace any portion of the security deposit so applied by Lessor. Lessee shall pay any advance rental payments provided for in any Lease at the time Lessee executes such Lease. All such advance rental payments shall (i) be deemed earned by Lessor immediately upon their receipt by Lessor, (ii) be applied immediately in satisfaction of Lessee's advance rental payment obligations under such Lease, and (iii) not be refundable to Lessee for any reason, including in connection with any premature termination of such Lease.

25. Lessor's Right to Perform for Lessee. If Lessee fails to duly and promptly pay, perform, or comply with any of its obligations, covenants, or agreements under any Lease, Lessor may itself pay, perform, or comply with any of such obligations, covenants, or agreements for the account of Lessee without thereby waiving any Incipient Default or Event of Default. In such event, any amount paid or expense incurred by Lessor in connection therewith shall immediately on demand, together with interest as provided in Section 24, be paid to Lessor as additional Rent, and Lessee shall indemnify and defend Lessor against any damage, loss, claim, liability, or expense suffered or incurred by Lessor in connection therewith.

26. Notices. Any consent, instruction, or notice required or permitted to be given under any Lease shall be in writing and shall become effective when delivered, or if mailed when deposited in the United States mail with proper postage prepaid for registered or certified mail, return receipt requested, addressed to Lessor or Lessee, as the case may be, at their respective addresses set forth herein or at such other address as Lessor or Lessee shall from time to time designate to the other party by notice similarly given.

27. Miscellaneous. Lessee shall, at its expense and upon Lessor's demand, promptly execute, acknowledge, deliver, file, register, and record any and all further documents and take any and all other action reasonably requested by Lessor from time to time, for the purpose of fully effectuating the intent and purposes of each Lease, and to protect the interests of Lessor, its successors and assigns. Any provision of any Lease which is prohibited or not fully enforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without otherwise invalidating or diminishing Lessor's rights thereunder or under the remaining provisions thereof in such jurisdiction, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Lessee hereby waives its rights under any provision of law now or hereafter in effect which might limit or modify or otherwise render unenforceable in any respect any remedy or other provision of any Lease. No term or provision of any Lease may be amended, altered, waived, discharged, or terminated except by an instrument in writing signed by a duly authorized officer of the party against which the enforcement of the amendment, alteration, waiver, discharge, or termination is sought. No delay by Lessor in exercising any right, power, or remedy under any Lease shall constitute a waiver, and any waiver by Lessor on any one occasion or for any one purpose shall not be construed as a waiver on any future occasion or for any other purpose. Except as otherwise specifically provided in any Lease, each Lease shall be governed in all respects by, and construed in accordance with, the laws of the State of \_\_\_\_\_, without regard to its choice of laws principals. All of the covenants and agreements of Lessee contained in each Lease shall survive the expiration or earlier termination of such Lease and the Lease Term of the Units leased thereunder. Subject to all of the terms and provisions of each Lease, all of the covenants, conditions, and obligations contained in such Lease shall be binding upon and inure to the benefit of the respective successors and assigns of Lessor and Lessee. Each Lease, and any documents executed and delivered in connection therewith, shall constitute the entire agreement of Lessor and Lessee with respect to the Units leased thereby, and shall automatically cancel and supersede any and all prior oral or written understandings with respect thereto. This Agreement and each Lease may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original (except that to the extent, if any, this Agreement or any Lease constitutes chattel paper, no security interest therein may be created except through the transfer or possession of the original counterpart, which shall be identified by Lessor), but all

such counterparts taken together shall constitute one and the same instrument. The headings in this Agreement and each Lease shall be for convenience of reference only and shall form no part of this Agreement or such Lease.

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

(Insert name of leasing company), Lessor

By:

Title:

, Lessee

By:

Title:

Address:

Phone: ( )

**Form: I-03a**  
**Disk File Name: I-03a.rtf**

**SCHEDULE**

**Form Purpose**

Schedule to short form, net finance master equipment lease agreement. This form is integrated with Lease Agreement Form I-03. The Schedule sets forth those terms and conditions that will vary from time to time with respect to equipment identified in the Schedule.

*Executing Parties*  
The equipment lessor.  
The equipment lessee.

*See:*  
Lease Agreement, Form I-03



Master Agreement No.

Schedule No. ("Lease"),

Dated as of \_\_\_\_\_, to Master Agreement to Lease

Equipment, Dated as of \_\_\_\_\_, between

\_\_\_\_\_, Lessor

Home Office: Address:

Phone: ( )

and \_\_\_\_\_, Lessee

Address:

Phone: ( )

1. Equipment Description:

<i>Manufacturer or Vendor</i>	<i>Unit Description</i>	<i>New/ Model Used</i>	<i>Acquisition Cost Per Unit</i>	<i>Total</i>	<i>Qty.</i>
-----------------------------------	-----------------------------	----------------------------	--------------------------------------	--------------	-------------

Aggregate Acquisition Cost \$

2. Equipment Location:

<i>Unit Description</i>	<i>Street Address</i>	<i>City</i>	<i>County</i>	<i>State</i>	<i>Zip</i>
-------------------------	-----------------------	-------------	---------------	--------------	------------

3. Acquisition Cost:

The "Acquisition Cost" of each Unit shall mean the sum of the actual purchase price of such Unit plus the additional expenses listed below (not to exceed in the aggregate % of the actual purchase price of such Unit):

4. Acquisition Expiration Date: \_\_\_\_\_

5. Lease Term:

The "Lease Term" of each Unit shall be that period specified below:

<i>Unit Description</i>	<i>Primary Term</i>
-------------------------	---------------------

plus a period of time ("Interim Term"), if any, from the Acceptance Certificate Execution Date to, but not including,

6. Rent:

The daily Rent for each Unit for the Interim Term, if any, shall be equal to the daily equivalent (based on a 30-day month and a 360-day year) of the Rent specified below.



The Rent for each Unit during the Primary Term shall be payable in that number of consecutive, level payments indicated below, in \_\_\_\_\_ on the \_\_\_\_\_ day of each \_\_\_\_\_ and each Rent payment shall be in an amount equal to the indicated percentage of Acquisition Cost of such Unit.

<i>Unit Description</i>	<i>Number of Rent Payments</i>	<i>Percentage of Acquisition Cost</i>
-------------------------	--------------------------------	---------------------------------------

7. Late Charge:

\_\_\_\_\_ % per annum.

8. Casualty Value:

The Casualty Value from time to time of each Unit shall be as specified on Annex A to this Lease.

9. Maintenance Agreement Requirements:

(If none, so state.)

10. Identification:

Lessee shall place the following identification marking prominently on each Unit:

(Insert name of leasing company), Lessor/Owner, (Insert City of Lessor) (Insert State of Lessor)

11. Special Terms:

The following Riders attached hereto shall constitute a part of this Lease:

12. Definitions:

The terms used in this Lease which are not otherwise defined herein shall have the meanings set forth in the Master Agreement to Lease Equipment identified above.

13. Terms of Schedule:

Lessor and Lessee agree that this Lease shall constitute a lease of each Unit described in Section 1 of this Lease, upon the execution and delivery to Lessor by Lessee of an Acceptance Certificate with respect to such Unit in the form of Annex B to this Lease, and of which each such Unit shall be subject to the terms and conditions of this Lease and of the Master Agreement to Lease Equipment, the terms and conditions of which are hereby incorporated by reference in full in this Lease and made a part of this Lease to the same extent as if such terms and conditions were set forth herein.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease to be duly executed by their authorized representatives as of the date first above written.

\_\_\_\_\_, Lessor

By:

Title:

\_\_\_\_\_, Lessee

By:

Title:

**Annex A to Schedule No.**

[See Casualty Value Table, Form I-03c]

**Annex B to Schedule No.**

[See Acceptance Certificate, Form I-03b]

**Form: I-03b**  
**Disk File Name: I-03b.rtf**

**ACCEPTANCE CERTIFICATE**

**Form Purpose**

Lessee equipment certificate of acceptance. This form is integrated with a master equipment lease agreement, Lease Agreement Form I-03.

*Executing Parties*

The equipment lessee.

*See:*

Lease Agreement, Form I-03

**Annex B to Schedule No.**

Acceptance Certificate No. \_\_\_\_\_ under Schedule No. \_\_\_\_\_, dated as of \_\_\_\_\_, to  
Master Agreement to Lease Equipment dated as of \_\_\_\_\_, between \_\_\_\_\_, Lessor,  
and \_\_\_\_\_, Lessee

Acceptance Certificate Execution Date:

This Acceptance Certificate is issued pursuant to the Master Agreement to Lease Equipment and Schedule designated above.

Lessee acknowledges that each Unit specified on Exhibit A (i) has been delivered to, inspected by, and accepted as of this date for lease by Lessee, (ii) is of a size, design, capacity, and manufacture acceptable to Lessee and suitable for Lessee's purposes, (iii) is in good working order, repair, and condition, and (iv) has been installed to Lessee's satisfaction or located, as the case may be, at the location specified on Exhibit A.

Lessee confirms and agrees that (i) no Incipient Default or Event of Default under any Lease entered into pursuant to the Master Agreement to Lease Equipment has occurred and is continuing and (ii) the representations and warranties in the Officer's Certificate dated \_\_\_\_\_ executed and delivered in connection with the Lease are correct and complete as though made on and as of the date hereof and shall continue to be correct and complete throughout the Lease Term of each Unit accepted hereby.

The person signing this Acceptance Certificate on behalf of Lessee hereby certifies that such person has read and acknowledges all terms and conditions of the Lease, and is duly authorized to execute this Acceptance Certificate on behalf of Lessee.

The terms used in this Acceptance Certificate shall have the same meanings defined in the Master Agreement to Lease Equipment and the Schedule designated above.

\_\_\_\_\_, Lessee

By:

Title:

**Exhibit A to**

Acceptance Certificate No. \_\_\_\_\_, dated \_\_\_\_\_, to Schedule No. \_\_\_\_\_,  
 dated \_\_\_\_\_, to Master Agreement to Lease Equipment, dated \_\_\_\_\_, between  
 \_\_\_\_\_, Lessor and \_\_\_\_\_, Lessee

Qty.	Vendor	Mfr. or Unit	Descrip. Model	Term	Periodic Primary Rent (in Dollars)	New/ Used	Location	I.D. or Ser. No.	Acquisition Cost	
									Per Unit	Total

Aggregate Acquisition Cost of Units subject to this Acceptance Certificate \$ \_\_\_\_\_

**Form: I-03c**  
**Disk File Name: I-03c.rtf**

## **CASUALTY VALUE TABLE**

### **Form Purpose**

Equipment casualty value table. This form is integrated with a master equipment lease agreement, Lease Agreement, Form I-03.

#### *Executing Parties*

The equipment lessee.

#### *See:*

Lease Agreement, Form I-03

---

### **Annex A to Schedule No.**

The Casualty Value of any Unit shall be an amount equal to the product of the Acquisition Cost of such Unit times the percentage below corresponding to the number of the last Rent payment received by Lessor, plus any unpaid Rent with respect to the Rent payment period during which the applicable Event of Loss occurred. [See table on next page.]

<i>After Rent Payment No.</i>	<i>Percentage</i>	<i>After Rent Payment No.</i>	<i>Percentage</i>	<i>After Rent Payment No.</i>	<i>Percentage</i>
0					
1		41		81	
2		42		82	
3		43		83	
4		44		84	
5		45		85	
6		46		86	
7		47		87	
8		48		88	
9		49		90	
10		50		90	
11		51		91	
12		52		92	
13		53		93	
14		54		94	
15		55		95	
16		56		96	
17		57		97	
18		58		97	
19		49		99	
20		60		100	
21		61		101	
22		62		102	
23		63		103	
24		64		104	
25		65		105	
26		66		106	
27		67		107	
28		68		108	
29		69		109	
30		70		110	
31		71		111	
32		72		112	
33		73		113	
34		74		114	
35		75		115	
36		76		116	
37		77		117	
38		78		118	
39		79		119	
40		80		120	

Acknowledged by Lessee this \_\_\_\_\_ day of, 20\_\_\_\_.

\_\_\_\_\_, Lessee

By:

Title:

**Form: I-03d**  
**Disk File Name: I-03d.rtf**

**REPRESENTATION AND WARRANTIES**

**Form Purpose**

Lessee representation and warranty Rider integrated with a master equipment lease agreement, Lease Agreement, Form I-03.

*Executing Parties*

The equipment lessee.

*See:*

Lease Agreement, Form I-03

RIDER to Schedule No. dated as of , to Master Agreement to  
 Lease Equipment, dated as of , between , Lessor, and  
 Lessee.

**Lessee's Representations and Warranties**

The undersigned ("Lessee"), in connection with the execution and delivery of the Equipment Leasing Agreement ("Lessee") dated as of the date hereof, entered into between ("Lessor") and Lessee, hereby represents and warrants to you, and agrees with you, as follows:

(a) Lessee is a corporation duly organized, validly existing, and in good standing under the laws of the State of ; Lessee has full power and authority and all necessary licenses and permits to carry on its business as presently conducted, to own or hold under lease its properties and to enter into the Lease and to perform its obligations under the Lease; and Lessee is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which the character of its properties or the nature of its business or the performance of its obligations under the Lease requires such qualifications.

(b) The execution and delivery by Lessee of the Lease and the performance by Lessee of its obligations under the Lease have been duly authorized by all necessary corporate action on the part of Lessee; do not contravene any law, governmental rule or regulation, or any order, writ, injunction, decree, judgment, award, determination, direction, or demand (collectively "Order") binding on Lessee or its properties or the corporate charter or by-laws of Lessee, and do not and will not contravene the provisions of, or constitute a default (either with or without notice or lapse of time, or both) under, or result in the creation of any security interests in or lien, charge, claim, or encumbrance upon, the Equipment or any property of Lessee under any indenture, mortgage, contract, or other instrument to which Lessee is a party or by which Lessee or its properties is bound.

(c) No consent or approval of, giving of notice to, registration with, or taking of any action by, any state, federal or other governmental commission, agency, or regulatory authority or any other person or entity is required for the consummation or performance by Lessee of the transactions contemplated under the Lease.

(d) The Lease has been duly entered into and delivered by Lessee, and constitutes a legal, valid, and binding agreement of Lessee enforceable against Lessee in accordance with its terms, except as limited by any bankruptcy, insolvency, reorganization, or other similar laws of general application affecting the enforcement of creditor or lessor rights.

(e) There are no actions, suits, or proceedings pending or threatened against or affecting Lessee or any property of Lessee in any court, before any arbitrator of any kind or before or by any federal, state, municipal, or other governmental department, commission, board, bureau agency, or instrumentality (collectively "Governmental Body"), which if adversely determined, would materially adversely affect the business, assets, operations, or conditions, financial or otherwise, of Lessee, or adversely affect the ability of Lessee to perform its obligations under the Lease; and Lessee is not in default with respect to any Order of any court, arbitrator, or Governmental Body.

(f) Each financial statement of Lessee furnished to Lessor by Lessee fairly presents the financial information set forth therein with respect to Lessee as of and for the period ended on each date specified therein

in conformity with generally accepted accounting principles and practices consistently applied, and since the latest such date of each type of financial statement furnished to Lessor by Lessee, there has not been any material adverse change in the information set forth therein, in the business or condition, financial or otherwise, of Lessee.

(g) Lessee is not a party to any agreement or instrument or subject to any charter or other corporate restriction which materially adversely affects or, so far as Lessee can now foresee, will materially adversely affect the business, operations or properties of Lessee or the ability of Lessee to perform its obligations under the Lease.

(h) Lessee has filed all required tax returns in all jurisdictions in which such returns were required to be filed and has paid, or made provision for, all taxes shown to be due and payable on such returns and all other taxes and assessments which are payable by it, except for any taxes and assessments of which the amount applicability or validity is currently being contested in good faith by appropriate proceedings and which in the aggregate do not involve material amounts.

(i) Lessee is not in default in the payment of the principal or interest on any indebtedness for borrowed money or in default under any instrument or agreement under or subject to which any indebtedness for borrowed money has been issued; no event has occurred and is continuing under the provisions of any such instrument or agreement which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default thereunder; Lessee is not in violation of any provision of its corporate charter or by-laws or of any term of any material agreement, lease of real or personal property, including any term providing for the payment of rent, or other instrument; and no Event of Default has occurred and is continuing with respect to the Lease as of the date hereof.

(j) Lessee has not taken and will not take any action or maintain any position inconsistent with treating the Lease as a valid leasehold interest in the Equipment.

The terms used herein which are defined in the Lease shall have the respective meanings set forth in the Lease, unless otherwise defined herein.

Dated:

, Lessee

By:

Title:

Attest:

Clerk/Secretary, if corporate Lessee

**Form: I-03e**  
**Disk File Name: I-03e.rtf**

**OPINION OF COUNSEL—LESSEE FORM**

**Form Purpose**

A Lessee's counsel form of legal opinion. The form opinion is integrated with master lease agreement, Lease Agreement, Form I-03.

*Executing Parties*  
 Counsel for the equipment lessee.

*See:*  
 Lease Agreement, Form I-03

---

**[Form of Opinion to Be Delivered by Counsel for Lessee]**

Dated

[Insert name and address of leasing company]

Re: Equipment Lease dated \_\_\_\_\_,  
 by and between (insert name of lessor),  
 and (insert name of lessee)

Dear Sirs:

We have acted as counsel for \_\_\_\_\_, a \_\_\_\_\_ corporation ("Lessee"), in connection with the execution and delivery of a lease between you, as Lessor, and Lessee, in the form of a Schedule, dated \_\_\_\_\_ ("Lease"), relating to the lease of certain equipment described therein, entered into pursuant to a Master Agreement to Lease Equipment, dated \_\_\_\_\_, between you, as Lessor, and Lessee ("Agreement"). The Lease incorporates the terms and provisions of the Agreement.

This opinion is furnished to you in connection with Lessee's execution and delivery to you of the Lease. The terms used herein which are defined in the Lease shall have the meanings set forth in the Lease, unless otherwise defined herein.

In connection with this opinion, we have examined executed counterparts of the Agreement and the Lease and such corporate documents and records of Lessee, certificates of public officials and of officers of Lessee, and such other documents and questions of fact and law as we have deemed necessary or appropriate for the purposes of this opinion.

Based upon the foregoing, we are of the opinion that:

(1) Lessee is a corporation duly organized and validly existing in good standing under the laws of the State of \_\_\_\_\_ and is duly qualified and authorized to do business and is in good standing in every other jurisdiction where the nature of Lessee's business or activities and the transactions contemplated by the Agreement and the Lease require such qualification;

(2) Lessee is duly authorized to lease the Units, execute and deliver the Agreement and the Lease, and to perform its obligations under the Lease;

(3) The execution and delivery of the Agreement and the Lease by Lessee, and the performance by Lessee of its obligations under the Lease, do not and will not conflict with any provision of law or any provision of the charter or by-laws of Lessee or of any indenture, mortgage, deed of trust, or other agreement or instrument binding upon Lessee or its properties or to which Lessee is a party;



(4) The execution and delivery of the Agreement and the Lease by Lessee, and the performance and consummation by Lessee of the transactions contemplated thereunder, do not require the consent, approval, or authorization of, or giving of notice to, or registration or filing with, any federal, state, or local governmental authority or public regulatory body or any other person or entity;

(5) The Lease is a legal, valid, and binding obligation of Lessee enforceable against Lessee in accordance with its terms, except as limited by any bankruptcy, insolvency, reorganization, or other similar laws of general application affecting the enforcement of creditor or lessor rights;

(6) There are no pending or threatened actions or proceedings before any arbitrator, court, or administrative agency which will, if adversely determined, adversely affect to a material extent the financial condition or operations of Lessee or its ability to perform its obligations under the Lease; and

(7) There exists no person, partnership, corporation, or other entity which is or will as a result of Lessee's execution, delivery, and performance of the Lease be entitled to a Lien (except Lessor's Liens) with respect to any Unit.

Very truly yours,

**Form: I-03f**  
**Disk File Name: I-03f.rtf**

**OPINION OF COUNSEL—GUARANTOR FORM**

**Form Purpose**

A lessee guarantor's counsel form of legal opinion. The form opinion is integrated with the master lease agreement, Lease Agreement, Form I-03.

*Executing Parties*

Counsel for the equipment lessee's guarantor.

*See:*

Lease Agreement, Form I-03

**[Form of Opinion to Be Delivered by Counsel for Guarantor of Lessee's Obligations]**

Dated

[Insert name and address of leasing company]

Re: Equipment Lease dated \_\_\_\_\_,  
 by and between (insert name of lessor), and \_\_\_\_\_  
 (insert name of lessee).

Dear Sirs,

We have acted as counsel for \_\_\_\_\_, a \_\_\_\_\_ corporation ("Guarantor"), in connection with the execution and delivery of the Guaranty, dated \_\_\_\_\_ ("Guaranty"), made by the Guarantor in your favor. The Guaranty relates to the performance by \_\_\_\_\_, a \_\_\_\_\_ corporation ("Lessee"), of its obligations under a lease in the form of a Schedule, dated \_\_\_\_\_, between you, as Lessor, and Lessee ("Lease"), relating to the lease of certain equipment described therein, entered into pursuant to a Master Agreement to Lease Equipment, dated \_\_\_\_\_, (the "Agreement").

This opinion is furnished to you in connection with Guarantor's execution and delivery of the Guaranty.

In connection with this opinion, we have examined executed counterparts of the Agreement, the Lease and the Guaranty, and such corporate documents and records of Guarantor, certificates of public officials and of officers of Guarantor, and such other documents and questions of fact and law as we have deemed necessary or appropriate for the purposes of this opinion.

Based upon the foregoing, we are of the opinion that:

- (1) Guarantor is a corporation duly organized and validly existing in good standing under the laws of the State of \_\_\_\_\_ and is duly qualified and authorized to do business and is in good standing in every other jurisdiction where the nature of Guarantor's business or activities and the performance of its obligations under the Guaranty require such qualification;
- (2) Guarantor is duly authorized to execute and deliver the Guaranty and to perform its obligations thereunder;
- (3) The execution and delivery of the Guaranty by Guarantor, and the performance by Guarantor of its obligations thereunder, do not conflict with any provision of law or any provision of the charter or by-laws of Guarantor or of any indenture, mortgage, deed of trust, or agreement or instrument binding upon Guarantor or its properties or to which Guarantor is a party;

- (4) The execution, delivery, and performance of the Guaranty by Guarantor do not require the consent, approval, or authorization of, or giving of notice to, or registration or filing with, any federal, state, or local governmental authority or public regulatory body or any other person or entity;
- (5) The Guaranty is a legal, valid, and binding obligation of the Guarantor enforceable against Guarantor in accordance with its terms, except as limited by any bankruptcy, insolvency, reorganization, or other similar laws of general application affecting the enforcement of creditor or lessor rights; and
- (6) There are no pending or threatened actions or proceedings before any arbitrator, court, or administrative agency which will if adversely determined, adversely affect to a material extent the financial condition or operations of Guarantor or its ability to perform its obligations under the Guaranty.

Very truly yours,

**Form: I-04****Disk File Name: I-04.rtf****LEVERAGED LEASE (AIRCRAFT/GENERAL)****Form Purpose**

A comprehensive equipment lease agreement, part of a leveraged lease financing transaction. The transaction contemplates the sale of an aircraft by the manufacturer to an airline, and then the entering into of a sale/leaseback between the airline (lessee) and the aircraft lessor. Although the form contemplates the lease of an aircraft, modifications can be made for any type of equipment. This form is integrated with typical documents found in a leveraged lease transaction. (*Author's Note:* The capitalized terms, which are not defined in the lease agreement, or the other transaction documents [see below], are defined in the Participation Agreement, Form I-04b, as is customary; specifically in Appendix A to the agreement. This form, although it covers the lease of an aircraft, is an excellent reference for a wide variety of leasing concepts and provisions.)

*Executing Parties*

The equipment lessor.

The equipment lessee.

*See:*

Assignment of Rights Under Purchase Agreement, Form I-04a

Participation Agreement, Form I-04b

Trust Indenture and Security Agreement, Form I-04c

Trust Agreement, Form I-04d

Tax Indemnity Agreement, Form I-04e

FORM ON CD ONLY

**Form: I-04a****Disk File Name: I-04a.rtf****ASSIGNMENT OF RIGHTS UNDER PURCHASE AGREEMENT****Form Purpose**

An assignment of rights under an equipment purchase agreement in which the parties set forth the terms and conditions of the equipment purchase. This form is part of a leveraged lease transaction and is integrated with a Participation Agreement, a Trust Indenture and Security Agreement, a Trust Agreement, and a Lease Agreement.

*Executing Parties*

The equipment lessee.

The owner participant.

*See:*

Participation Agreement, Form I-04b

Trust Indenture and Security Agreement, Form I-04c

Trust Agreement, Form I-04d

Leveraged Lease, Form I-04

Tax Indemnity Agreement, Form I-04e

FORM ON CD ONLY

**Form: I-04b**  
**Disk File Name: I-04b.rtf**

**PARTICIPATION AGREEMENT**

**Form Purpose**

A leveraged lease participation agreement in which all parties to the leveraged lease transaction set forth the terms and conditions of their participation in the financing transaction. This form is integrated with a Leveraged Lease Agreement, an Assignment of Rights Under Purchase Agreement, a Trust Indenture and Security Agreement, a Trust Agreement, and a Tax Indemnity Agreement.

*Executing Parties*

The equipment lessee.  
 The equipment lessor.  
 The equipment lenders.  
 The lender trustee.

*See:*

Leveraged Lease, Form I-04  
 Assignment of Rights Under Purchase Agreement, Form I-04a  
 Trust Indenture and Security Agreement, Form I-04c  
 Trust Agreement, Form I-04d  
 Tax Indemnity Agreement, Form I-04e

FORM ON CD ONLY

**Form: I-04c**  
**Disk File Name: I-04c.rtf**

**TRUST INDENTURE AND SECURITY AGREEMENT**

**Form Purpose**

A leveraged lease trust indenture and security agreement in which all parties to the leveraged lease transaction set forth the terms and conditions of lending arrangement. This form is integrated with a Participation Agreement, a Trust Agreement, an Assignment of Rights Under Purchase Agreement, a Lease Agreement, and a Tax Indemnity Agreement.

*Executing Parties*

The owner trustee.  
 The indenture trustee.

*See:*

Assignment of Rights Under Purchase Agreement, Form I-04a  
 Leveraged Lease, Form I-04  
 Participation Agreement, Form I-04b  
 Trust Agreement, Form I-04d  
 Tax Indemnity Agreement, Form I-04e

FORM ON CD ONLY

**Form: I-04d**  
**Disk File Name: I-04d.rtf**

**TRUST AGREEMENT**

**Form Purpose**

A leveraged lease trust agreement in which the lending party in the leveraged lease transaction sets forth the terms and conditions of trust arrangement. This form is integrated with a Participation Agreement, a Trust Indenture and Security Agreement, an Assignment of Rights Under Purchase Agreement, a Lease Agreement, and a Tax Indemnity Agreement.

*Executing Parties*

The owner participant.

The indenture trustee.

*See:*

Assignment of Rights Under Purchase Agreement, Form I-04a

Leveraged Lease, Form I-04

Participation Agreement, Form I-04b

Trust Indenture and Security Agreement, Form I-04c

Tax Indemnity Agreement, Form I-04e

FORM ON CD ONLY

**Form: I-04e**  
**Disk File Name: I-04e.rtf**

**TAX INDEMNITY AGREEMENT**

**Form Purpose**

A leveraged lease tax indemnity agreement in which the lessor sets forth the terms and conditions of the tax indemnity arrangement. This form is integrated with a Participation Agreement, a Trust Indenture and Security Agreement, a Trust Agreement, an Assignment of Rights Under Purchase Agreement, and a Lease Agreement.

*Executing Parties*

The owner participant.

The equipment lessee.

*See:*

Assignment of Rights Under Purchase Agreement, Form I-04a

Leveraged Lease, Form I-04

Participation Agreement, Form I-04b

Trust Indenture and Security Agreement, Form I-04c

Trust Agreement, Form I-04d

FORM ON CD ONLY

**Form: I-05****Disk File Name: I-05.rtf****LOAN AND SECURITY AGREEMENT—SHORT FORM****Form Purpose**

A short form equipment loan and security agreement setting forth a nonrecourse loan arrangement between a lender and an equipment leasing company, the proceeds of which are to be used by the leasing company to pay for equipment subject to lease. By deleting the nonrecourse limitation, the form can be used to document a recourse loan arrangement. This form references a promissory note and an assignment, both of which have been integrated with this form.

*Executing Parties*

The borrower (equipment lessor).

The lender.

*See:*

Promissory Note—Integrated, Form p-02

Assignment of Lease to Lender—Multiple Takedowns, Form a-05

**Loan and Security Agreement**

This Loan and Security Agreement, dated \_\_\_\_\_, (the "Agreement") by and between \_\_\_\_\_, a (insert jurisdiction of incorporation) (the "Borrower"), with a place of business at \_\_\_\_\_, and a (insert jurisdiction of incorporation) (the "Lender"), with a place of business at \_\_\_\_\_.

Subject to the terms and conditions of this Agreement, Lender agrees to lend to Borrower on or before \_\_\_\_\_, an aggregate amount (the "Loan") equal to \_\_\_\_\_ % of the purchase price of certain newly manufactured equipment, as described in Exhibit A hereto (the "Units") which are subject to an Equipment Lease Agreement dated as of \_\_\_\_\_ between Borrower, as lessor, and \_\_\_\_\_, as lessee (the "Lessee") (said lease together with its (two) equipment schedules, hereinafter referred to as the "Lease").

1. Use of Loan Proceeds. The proceeds of the Loan shall be applied toward the cost to Lessor of the Units (the "Purchase Price") which are the subject of the Lease.

2. Closing; Conditions Precedent. It is anticipated that the Loan will be made in (two) installments. The first will be made on (insert appropriate date) with respect to Units accepted for lease by Lessee prior to such date. The second installment will be made on (insert appropriate date) with respect to all other Units leased by Lessee. On each such date that an installment is made (a "Closing Date"), Borrower will deliver to Lender a promissory note substantially in the form annexed hereto as Exhibit A [*Author's Note:* For promissory note integrated with this Loan and Security Agreement, see Form p-02], in the principal amount of the loan being made on such Closing Date (a "Note"). The obligation of Lender to make the Loan hereunder is subject to the performance by Borrower of all of its respective covenants, agreements, and other obligations required to be performed under this Agreement, and to the following further conditions:

(a) On or prior to the first Closing Date, Lender shall have received:

(i) an assignment executed by Borrower in substantially the form annexed hereto as Exhibit B [*Author's Note:* For assignment agreement integrated with this form, see Form a-05] (the "Assignment");

(ii) an opinion of counsel for Borrower, in form and substance satisfactory to Lender, to the effect that (A) Borrower is a corporation duly organized and existing and in good standing under the laws of the jurisdiction of its incorporation, with adequate power to enter into and perform this Agreement and the Lease and (B) this Agreement, the Lease, the Assignment, and the Notes have been duly authorized, executed, and delivered by Borrower and are (or will be in the case of the Notes) legal, valid, and binding instruments enforceable in accordance with their respective terms (which opinion of counsel may be subject to appropriate qualifications as to applicable bankruptcy law and other similar laws affecting creditors' rights generally);

- (iii) Lessor's original, executed copy of the Lease; and
  - (iv) such other documents as Lender shall reasonably request.
- (b) In respect of each Closing Date Lender shall have received:
- (i) notice of Lessee's acceptance of Units for lease, the date of such acceptance and the amount of the Purchase Price of the Units to be paid by Borrower for such Units, and (ii) a Note in the principal amount of the Loan being made on such Closing Date and payable to Lender.
- (c) The first Closing shall be held at the offices of \_\_\_\_\_ or as otherwise agreed to by the parties. Each Loan shall be made by a bank wire transfer or by a certified or official bank check in New York Clearing House funds payable to the order of Borrower. On each Closing Date Borrower shall execute and deliver to Lender a single Note in the principal amount of the Loan being made on such date.

3. Repayment. The principal amount of each Note shall be repaid by Borrower to Lender in such number of installments and on such dates ("Payment Dates") as are specified in the Note. The unpaid balance of the Note shall bear interest from the Closing Date in respect thereof at the rate of \_\_\_\_\_ % per annum. Interest shall be payable on each Payment Date and on such other dates as are set forth in the Note. The principal amount of the Note payable on each Payment Date shall be calculated so that the aggregate of the principal and interest payable on each of the Payment Dates shall be substantially equal and the aggregate of all such payments will completely amortize the Loan. Interest under the Notes shall be determined on the basis of a 360-day year of twelve 30-day months. Borrower will pay Lender interest, computed at a rate per annum equal to \_\_\_\_\_ %, on all installments of principal and, to the extent legally enforceable, interest remaining unpaid after the same shall have become due and payable. All payments shall be made in immediately available and lawful money of the United States of America. Lender agrees to furnish Borrower as a schedule to each Note, an amortization table showing the respective amounts of principal and interest payable on each Payment Date and the unpaid principal amount outstanding ("Loan Schedules").

It is anticipated that once all Units have been accepted for lease, Borrower and Lessee will consolidate the various (quarterly) rental payment schedules with respect to all Units. In such event, Borrower and Lender will consolidate the Notes based on the amount of unamortized principal into a single Note which shall be amortized with Payment Dates concurrent with the consolidated lease payment dates.

In the event that Lessee shall pay amounts in respect of a casualty occurrence or condemnation or seizure of any Units as set forth in the Lease, a sum equal to such payment shall be applied to the prepayment without penalty of the applicable Note secured by such Units. Each such prepayment shall be applied, first, to the payment of all accrued and unpaid interest under such Note to the date of such prepayment and, second, to the pro rata reduction of the respective principal amounts of the remaining unpaid installments of the Note, and the amount of interest included in each future installment shall be correspondingly reduced to reflect such reductions in principal amount. Borrower shall pay such amounts together with an amount equal to interest at \_\_\_\_\_ % per annum compounded monthly from the date said accelerated payments are due to and including the date of receipt.

Upon acceleration of a Note as provided in this Agreement, Borrower shall pay an amount equal to interest at a rate of \_\_\_\_\_ % per annum compounded monthly from the date said amounts are due and payable to the date of receipt, not to exceed the maximum interest rate permitted by law.

Borrower hereby authorizes Lender (i) to collect all payments to be made by Lessee under the Lease and (ii) to separate and retain for Lender's account the applicable payments as and when due to Lender. Borrower agrees to direct Lessee to make all payments to be made by it under the Lease, directly to Lender. Borrower agrees that should it receive any such payments with respect to the Units or the Lease that have been assigned to Lender pursuant to the Assignment; it will promptly forward such payments to Lender for disbursement in accord with the terms hereof. Lender agrees to apply amounts from time to time received by it (from Lessee, Borrower, or otherwise) with respect to the Lease or the Units, to the extent such amounts have been assigned to Lender pursuant to the Assignment, first to the payment of the principal of and interest on any Note then due and any other amounts then due and payable under this Agreement, and then, if no event of default hereunder shall have occurred and be continuing, promptly to pay any balance to Borrower no later than the day after receipt of such payment by depositing such payments to the account of Borrower in Borrower's account at \_\_\_\_\_ or such other account as Borrower may designate in writing. Any



payments Lender receives with respect to the Lease or Units that have not been assigned to Lender shall be remitted by Lender to the said account of Borrower.

4. Security. Borrower hereby grants to Lender a security interest in the Units (subject to the rights to the use of the Units by Lessee pursuant to the Lease) and in the Lease, and for such purpose, assigns to Lender the Lease and all payments due or to become due thereunder pursuant and subject to the terms of the Assignment, to secure obligations of Borrower hereunder and under the Notes. Borrower hereby authorizes Lender to file or record this Agreement, the Assignment or financing statements with respect to Lender's security interest in the Units and the Lease with any appropriate governmental office in order to perfect such security interest. The security interest created thereunder will terminate when all obligations of Borrower hereunder and under the Notes are discharged, and Lender, at the request of Borrower, will then execute termination statements and such other documents as may be necessary or appropriate to make clear upon the public records the termination of such security interest.

Borrower hereby appoints Lender its true and lawful attorney, with full power of substitution, to enforce Borrower's rights as Lessor under the Lease, and to take any action which Lender may deem necessary or appropriate to protect and preserve the security interest of Lender.

5. Limitation on Liability. The liability of Borrower with respect to the payments specified in Section 3 hereof shall be nonrecourse to the Buyer and shall be limited to the Units, the Lease, and "income and proceeds therefrom," but Borrower's liability hereunder shall not be so limited in respect of any breach or inaccuracy of the covenants, warranties, and agreements contained in Section 6 hereof. As used herein the phrase "income and proceeds therefrom" shall mean:

- (i) all Rent (as defined in the Lease) and any other sums due or to become due under the Lease which have been assigned to Lender, including but not limited to all proceeds of insurance, or payments due as a result of a casualty occurrence or condemnation, and
- (ii) any and all payments or funds received by Borrower or Lender for or with respect to the Units as a result of the sale or other disposition thereof.

Notwithstanding the limitation on liability of Borrower otherwise herein contained, the obligation of Borrower to pay the principal of and interest on the Loan and all other amounts payable to Lender hereunder shall be fully enforceable (by appropriate proceedings against Borrower in law or in equity or otherwise) against Borrower's right, title, and interest in the Units, the Lease, the Rent, and any other assigned sums due or to become due under the Lease, and nothing contained herein limiting the liability of Borrower shall derogate from the right of Lender to enforce its security interest in the Units or the Lease for the unpaid principal of and interest on the Loan and all other amounts payable to Lender hereunder and under the Notes, including, without limitation, the right to accelerate the maturity of payments on the Loan as provided herein upon an event of default hereunder and to proceed against Lessee under the Lease and to realize upon the Units.

6. Covenants, Warranties, and Agreements of Borrower.

Borrower covenants, warrants, and agrees that:

- (a) it will not, except with the prior written consent of Lender, agree to modify any material provision of the Lease or give any consent thereunder;
- (b) on each Closing Date Borrower will have good and marketable title to the subject Units and the interest of Borrower in the Units, the Lease, the Rent, and any other assigned sums due or to become due under the Lease will continue to be held free and clear of security interests, liens, claims, encumbrances, and rights of others (excepting only the rights of Lender hereunder and of Lessee under the Lease);
- (c) this Agreement, the Assignment, and the Loan have been duly authorized by Borrower;
- (d) the execution and delivery of this Agreement, the Assignment, the Notes, the Lease, and the carrying out of the transactions contemplated hereby and thereby do not and will not constitute a default under, or result in the creation of any lien, charge, encumbrance, or security interest upon any assets of Borrower under, any agreement, (except this Agreement) or instrument to which Borrower is a party or by which its assets may be bound or affected;
- (e) Borrower, at its expense, will fulfill all its obligations under the Lease and, upon default, will, upon the request of Lender, enforce all its rights as Lessor under the Lease or such other rights as Lender shall request;
- (f) Borrower will maintain, preserve, and keep in full force and effect its corporate existence and all rights and qualifications necessary for the enforcement of the Lease by Borrower or Lender; and

(g) except for the Lease and this Agreement, Borrower will not sell, loan, pledge, mortgage, assign, or otherwise dispose of, or create or suffer to be created any levies, liens, or encumbrances on the Units, the Lease, or any interest or part thereof.

7. Representations of Lender. Lender represents that except as heretofore disclosed in writing to special counsel for Lender, it is acquiring the Notes for its own account for investment and not with a view to, or for sale in connection with, any distribution thereof, but subject, nevertheless, to any requirement of law that the disposition of its property shall at all times be within its control. Lender understands that the Notes to be issued hereunder have not been registered under the Securities Act of 1933, as amended.

Lender hereby agrees that any transfer or assignment of the Notes or of all or any part of its interest hereunder shall be on the express condition that the transferee or assignee shall be bound by the terms of this Agreement.

8. Default.

(a) Any of the following events shall constitute an event of default hereunder:

(i) payment of any part of the principal of or interest on the Note shall not be made when and as the same shall become due and payable (irrespective of the limitations contained in Section 5 hereof), and such default shall continue unremedied for 10 days;

(ii) Borrower shall default in the due observance or performance of any other covenants, conditions, or provisions hereof or of the Assignment or the Lease and such default shall continue for more than 10 days after written notice from Lender specifying the default and demanding the same to be remedied;

(iii) Borrower shall cease doing business as a going concern, make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudicated a bankrupt or an insolvent, file a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar arrangement under any present or future statute, law, or regulation or file an answer admitting the material allegations or a petition filed against it in any such proceeding, or consent to or acquiesce in the appointment of a trustee, receiver, or liquidator of it or all or any substantial part of its assets or properties, or if any of them shall take action looking to its dissolution or liquidation or if any, within 30 days after the commencement of any proceedings against Borrower seeking reorganization, arrangement, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, such proceedings shall not have been dismissed, or if within 30 days after the appointment without Borrower's consent or acquiescence of any trustee, receiver, or liquidator of it or of all or any substantial part of its assets or properties, such appointment shall not be vacated; and

(v) an Event of Default (as the term is defined in the Lease) shall have occurred and be continuing under the Lease.

In case an event of default shall have occurred and be continuing hereunder, Lender may declare the entire unpaid principal amounts of the Notes outstanding and unpaid interest thereon and any other sums owed hereunder immediately due and payable, subject, however, to the limitations as to the liability of Borrower contained in Section 5 hereof, and Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code. If an Event of Default shall have occurred and be continuing under the Lease, Lender may exercise all rights and remedies of Borrower, as Lessor under the Lease and apply any amounts realized in consequence thereof against the unpaid principal amount of the Note and unpaid interest thereon.

(b) Notwithstanding the foregoing, an Event of Default under the Lease resulting from nonpayment of Rent due thereunder on a specific Payment Date shall not be an event of default hereunder provided that (i) Borrower shall have paid the full amount of such defaulted Rent within ten days of notification to Borrower of such nonpayment (notwithstanding the limitation of Borrower's obligation set forth in Section 5 hereof), (ii) Lender shall have reasonably determined that the delaying of a declaration of such an event of default would not have a materially adverse effect on the exercise or realization of Lender's rights hereunder with respect to the Units or (iii) Lessee shall have made the next preceding payment of Rent when due, together with the payment of Rent then in arrears.

9. Notes. Lender, upon payment to it of all amounts payable to it hereunder and under the Notes, will surrender the Notes to Borrower. Lender shall be entitled to all payments due hereunder and under the Notes without being required to surrender the Notes. However, Lender agrees to make appropriate notation on the Notes before any transfer thereof to reflect all payments of principal and interest theretofore received.

10. Notice. All notices required or permitted to be delivered hereunder shall be in writing and shall be deemed given when delivered or when deposited in the United States mails, certified, postage prepaid and addressed with the full name and address of the appropriate party set forth below:

If to Borrower:

If to Lender:

11. Execution; Controlling Law; Successors and Assigns. This Agreement may be executed in one or more counterparts, each of which, when so executed, shall be deemed to be an original, and such counterparts, together shall constitute one and the same agreement, which shall be sufficiently evidenced by one of such original counterparts. This Agreement shall be governed by and be construed in accordance with the laws of the State of \_\_\_\_\_ and shall inure to the benefit of and be binding upon, Borrower and Lender and the permitted successors and assign.

Borrower:

(Insert name of borrower)

By:

Title:

Lender:

(Insert name of lender)

By:

Title:

#### **Exhibit A**

[Insert equipment description.]

#### **Exhibit B**

[See Form p-02.]

#### **Exhibit C**

[See Form a-05.]

**Form: I-06****Disk File Name: I-06.rtf****LOAN AND SECURITY AGREEMENT—LONG FORM (RAILCARS/GENERAL)****Form Purpose**

A comprehensive long form loan and security and loan agreement for railcar lending. This form contemplates a nonrecourse loan arrangement with respect to two separate equipment lease transactions. With minor modifications, the form may be used for any type of equipment, as well as cover a recourse loan arrangement. Collateral documents necessary to complete the loan transaction are integrated with this form (see below).

*Executing Parties*

The borrower.

The lender.

*See:*

Form of Note, Form I-06a

Form of Guaranty, Form I-06b

Form of Bill of Sale, Form I-06c

Form of Certificate of Acceptance, Form I-06d

Form of Certificate of Cost, Form I-06e

Form of Legal Opinion in General, Form I-06f

Form of Legal Opinion for Lessee—Special Counsel, Form I-06g

FORM ON CD ONLY

**Form: I-06a****Disk File Name: I-06a.rtf****FORM OF NOTE****Form Purpose**

A promissory note for use in connection with an equipment loan transaction. This form is integrated with Loan and Security Agreement, Form I-06.

*Executing Parties*

The borrower.

*See:*

Loan and Security Agreement, Form I-06

FORM ON CD ONLY

**Form: I-06b****Disk File Name: I-06b.rtf****FORM OF GUARANTY****Form Purpose**

A form of borrower guaranty for use with an equipment loan transaction. This form is integrated with Loan and Security Agreement, Form I-06.

*Executing Parties*

Borrower's guarantor.

*See:*

Loan and Security Agreement, Form I-06

FORM ON CD ONLY

**Form: I-06c****Disk File Name: I-06c.rtf****FORM OF BILL OF SALE****Form Purpose**

An equipment bill of sale for use in connection with an equipment loan transaction. This form is integrated with Loan and Security Agreement, Form I-06.

*Executing Parties*

The equipment vendor.

*See:*

Loan and Security Agreement, Form I-06

FORM ON CD ONLY

**Form: I-06d****Disk File Name: I-06d.rtf****FORM OF CERTIFICATE OF ACCEPTANCE****Form Purpose**

An equipment certificate of acceptance for use in connection with an equipment loan transaction. This is integrated with Loan and Security Agreement, Form I-06.

*Executing Parties*

The equipment lessee.

*See:*

Loan and Security Agreement, Form I-06

FORM ON CD ONLY

**Form: I-06e****Disk File Name: I-06e.rtf****FORM OF CERTIFICATE OF COST****Form Purpose**

A certificate of equipment cost for use in connection with an equipment loan transaction. This form is integrated with Loan and Security Agreement, Form I-06.

*Executing Parties*

The borrower.

*See:*

Loan and Security Agreement, Form I-06

FORM ON CD ONLY

**Form: I-06f****Disk File Name: I-06f.rtf****FORM OF LEGAL OPINION—GENERAL****Form Purpose**

A form of legal opinion for use by counsel for borrower and its guarantor in connection with an equipment loan transaction. This form is integrated with Loan and Security Agreement, Form I-06.

*Executing Parties*

Counsel for borrower and guarantor.

*See:*

Loan and Security Agreement, Form I-06

FORM ON CD ONLY

**Form: I-06g****Disk File Name: I-06g.rtf****FORM OF LEGAL OPINION—SPECIAL COUNSEL****Form Purpose**

A form of legal opinion for use by special counsel for borrower in connection with an equipment loan transaction. This form is integrated with Loan and Security Agreement, Form I-06.

*Executing Parties*

Special counsel for borrower.

*See:*

Loan and Security Agreement, Form I-06

FORM ON CD ONLY

**Form: I-07****Disk File Name: I-07.rtf****LOAN AND SECURITY AGREEMENT—MASTER FORMAT****Form Purpose**

Form of master equipment security and loan agreement. The master format allows future equipment loans to be easily added by means of a schedule, and is integrated with all collateral closing documents (see below).

*Executing Parties*

The borrower.

The lender.

*See:*

Loan Supplement, Form I-07a

Promissory Note, Form I-07b

Acknowledgment and Consent to Assignment of Equipment Lease, Form I-07c

Supplement, Form I-07d

**Master Loan and Security Agreement**

dated as of

between

[                      ]

Lender

and

[                      ]

Borrower

Master Loan and Security Agreement

**Table of Contents**

## Sections

1. Definitions
2. Loan Request
3. Loan
4. Place of Payment
5. Loan Prepayment
6. Payment Lease Amounts Due; Limitation of Liability
7. Lender Application of Amounts Received
8. Late Payments; Other Charges
9. Assignment and Grant of Security Interests
10. Lender Appointment as Attorney-in Fact
11. Assignments; Encumbrances; Transfers
12. Borrower's Representations and Warranties
13. Covenants of Borrower
14. Indemnity
15. Events of Default

16. Remedies
17. Lessee Quiet Enjoyment Right
18. Receipt of Funds by Borrower
19. Notices
20. Payment of Expenses and Taxes
21. Performance by Lender of Borrower's Obligations
22. Loan Request Right Termination
23. Miscellaneous

Exhibit A. Loan Supplement, See Form I-07a

Exhibit B. Promissory Note, See Form I-07b

Exhibit C. Acknowledgment and Consent to Assignment of Equipment Lease, See Form I-07c

Exhibit D. Supplement, See Form I-07d

MASTER LOAN AND SECURITY AGREEMENT (the "Master Agreement") entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ corporation having its principal place of business at \_\_\_\_\_ ("Lender") and \_\_\_\_\_, a corporation having its principal place of business at \_\_\_\_\_ ("Borrower").

WHEREAS, Borrower will be entering into arrangements from time to time for the purchase of certain equipment, which equipment will be, at the time of purchase, subject to various equipment leases between Borrower and various lessees;

WHEREAS, Borrower desires to obtain, from time to time, loans to finance a portion of the purchase price of certain Borrower specified equipment it will be purchasing and which will be subject to certain Borrower specified equipment leases; and

WHEREAS, pursuant to, and in accordance with, the terms of this Master Agreement Lender is willing to make loans, which loans meet Lender's lending criteria, to Borrower to purchase such equipment.

NOW, THEREFORE, In consideration of the foregoing and of the mutual covenants and conditions contained herein, Lender and Borrower hereby agree as follows:

The following terms shall have the respective meanings set forth below for all purposes of this Master Agreement (Terms defined in the singular shall have a comparable meaning when used in the plural and vice versa.):

### 1.1 Specific Definitions

"Business Day" shall mean a calendar day, excluding Saturdays, Sundays, and all days on which banking institutions in the State of \_\_\_\_\_ are authorized or required to be closed.

"Code" shall mean the Uniform Commercial Code, or comparable law, as now or hereafter in effect in any applicable jurisdiction.

"Collateral" with respect to a Loan shall have the meaning set forth in Section 9 of this Master Agreement.

"Cut-Off Date" shall mean the date specified in a Loan Supplement after which Lender shall not be obligated to make a Loan.

"Default" shall have the meaning set forth in Section 16 of this Master Agreement.

"Documents" shall have the meaning set forth in Section 23.1 of this Master Agreement.

"Equipment" shall mean the equipment described on a Loan Supplement together with all attachments, accessories, additions, parts, and equipment whenever affixed thereto.

"Equipment Lease" shall mean each equipment leasing agreement identified in a Loan Supplement, including without limitation all equipment schedules or supplements and all exhibits, and documents related to the equipment lease.

"Event of Default" shall mean any of the events or conditions specified in Section 15 of this Master Agreement.

"Event of Loss" shall have the meaning set forth in a Loan Supplement.

"Governmental Body" shall have the meaning set forth in Section 12.8 of this Master Agreement.

"Item of Equipment" shall mean an item of equipment described in a Loan Supplement.



*"Interim Loan Term"* as to any Loan shall mean the period of time, if any, commencing on the Loan Closing Date and ending on the day immediately preceding the date that the Primary Loan Term begins.

*"Lessee"* shall mean the Lessee identified in a Loan Supplement, and any and each guarantor of such Lessee obligations under the applicable Equipment Lease.

*"Lessee Consent"* shall mean an Acknowledgment and Consent to Assignment of Equipment Lease, as Lender may require a Lessee to execute and deliver on a Loan Closing Date.

*"Lien"* shall mean any mortgage, pledge, hypothecation, assignment, security interest, lien, charge, or encumbrance, priority, or other security agreement or arrangement or other claim or right of any kind or nature whatsoever created by Borrower (including any conditional sale or other title retention agreement, any lease, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction), other than the rights of Lessee under an Equipment Lease and the rights of Lender under a Loan Agreement.

*"Loan"* shall mean the amount of money which Lender lends Borrower on the Loan Closing Date pursuant to a Loan Agreement.

*"Loan Agreement"* shall mean a Loan Supplement and all documentation attached thereto or delivered pursuant thereto, together with the Master Agreement made a part thereof as the same may from time to time be amended, supplemented, or otherwise modified. Each Loan Supplement shall be considered a separate and enforceable agreement incorporating the terms and conditions of this Master Agreement.

*"Loan Closing Date"* shall mean the date on which Borrower shall have received Loan proceeds.

*"Loan Commencement Date"* with respect to each Loan shall mean the date on which the Loan Term shall begin, as specified in a Loan Supplement.

*"Loan Fee"* shall be that fee, if any, specified as such in a Loan Supplement.

*"Loan Interest Rate"* with respect to a Loan shall mean that per annum interest rate specified in a Loan Supplement.

*"Loan Request"* shall have the meaning set forth in Section 2.2 of this Master Agreement.

*"Loan Supplement"* shall mean each supplement, substantially in the form of Exhibit A hereto, which shall refer to this Master Agreement and which shall become a part hereof as executed from time to time by the parties hereto, covering one or more Loans.

*"Loan Term"* with respect to a Loan shall mean the Primary Loan Term and any Interim Loan Term.

*"Manufacturer"* as to each Item of Equipment shall mean the manufacturer or vendor thereof specified in a Loan Supplement.

*"Note"* shall mean each secured promissory note, substantially in the form of Exhibit A hereto, including any amortization schedule attached thereto, issued and delivered by Borrower to Lender in connection with a Loan and which evidences the Loan repayment obligation of Borrower to Lender.

*"Order"* shall have the meaning set forth in Section 12.3 of this Master Agreement.

*"Overdue Rate"* shall mean the per annum interest charge specified in a Loan Supplement.

*"Permitted Early Equipment Lease Termination"* shall have the meaning set forth in Section 7.3 of this Master Agreement.

*"Primary Loan Term"* with respect to a Loan shall mean that period of time commencing on, and including, the date specified in a Loan Supplement on which the Primary Term shall begin, and ending that period of time thereafter, as designated in the applicable Loan Supplement, unless earlier terminated pursuant to the provisions of the applicable Loan Agreement.

*"Prime Rate"* shall mean the rate publicly announced from time to time by [insert name of financial institution to be sued] as its prime lending rate to its commercial customers. The Prime Rate for purposes of a Loan Agreement shall be determined at the close of business on the 15th day of each calendar month and shall become effective as of the first day of the calendar month succeeding such determination and shall continue in effect to, and including, the last day of said calendar month.

*"Principal Amount"* shall mean the principal amount of a Loan, as set forth in a Loan Supplement.

*"Purchase Cost"* as to each Item of Equipment shall mean the amount paid, or payable, by Borrower to Manufacturer for such Item of Equipment, and evidenced by one or more Manufacturer's invoices for such Item of Equipment, plus any additional cost so identified in a Loan Supplement, all as set forth in a Loan Supplement.

*"Secured Obligations"* with respect to a Loan shall have the meaning set forth in Section 9 of this Master Agreement.

*"Term"* shall mean the term of this Master Agreement which shall commence on the date of first execution and delivery of this Master Agreement by the parties hereto and continue in effect until all Notes have been paid in full and all other obligations, responsibilities, and liabilities, including Secured Obligations, of Borrower pursuant to this Master Agreement and all Loan Agreements have been fully satisfied and discharged.

“Total Equipment Cost” shall mean the aggregate Equipment Purchase Cost, plus additional costs and expenses, all as specified in a Loan Supplement.

## 1.2 General Word Definitions

“Hereof,” “herein,” and “thereunder” and words of similar import when used in this Master Agreement or in any Loan Supplement, Note, or other agreement shall refer to such agreement as a whole and not to any particular portion or provision thereof.

“Including” when used in this Master Agreement or in any Loan Supplement, Note, or other agreement shall mean including but not by way of limitation.

“Original” when used in this Master Agreement or in any Loan Supplement, Loan Agreement, or other agreement shall mean the execution copy of such document or, when executed in counterparts the counterpart of a document designated as such by Lender for collateral, security interest, filing, and/or any other purpose.

## 2.1 General Borrowing

Borrower may request equipment loans from time to time during the Term of this Master Agreement in accordance with the procedure in Section 2.2 hereof.

## 2.2 Loan Request Procedure

In the event Borrower shall desire to obtain equipment loan financing, Borrower shall make a loan request by delivering to Lender a written request for a loan pursuant to the terms of this Master Agreement (hereinafter referred to as a “Loan Request”) at least thirty (30) days prior to the Borrower’s requested loan closing date, supplying such information as Lender shall require, including satisfactory-to-Lender financial statements and other credit information of the equipment lessee(s), a complete copy of the equipment lease agreement(s) and related documents, a detailed description of the type of equipment involved, and specifying the proposed Principal Amount, Loan Term, Loan repayment schedule, and Loan Closing Date.

## 3.1 Equipment Loans

Subject to the terms and conditions of this Master Agreement, and each applicable Loan Supplement, Lender agrees to make one or more Loans to Borrower which will be used to finance a portion of the Purchase Cost of the Items of Equipment.

## 3.2 Loan Term and Principal Amount

Each Loan shall be for a Loan Term, and Principal Amount, as set forth in the applicable Loan Supplement.

## 3.3 Loan Repayment and Note

Each Loan shall be repayable in that number of consecutive periodic installments as set forth in the applicable Loan Supplement. Borrower’s obligation to repay each Loan shall be evidenced by a Note. The Principal Amount of each Note will be repaid, together with interest accruing thereon at the Loan Interest Rate on the unpaid balance thereof, in that number of consecutive periodic installments set forth in the Note, in such amounts and at such times as specified in the Note.

## 3.4 Conditions Precedent

The obligation of Lender to make a Loan shall be subject to the following conditions:

### 3.4.1 Loan Request

Lender shall have received from Borrower a Loan Request in accordance with Section 2 of this Master Agreement, along with such additional information as Lender shall request to evaluate the Loan Request.

### 3.4.2 Lending Criteria Satisfied

The loan requested by Borrower pursuant to the Loan Request shall satisfy all lending criteria adopted from time to time by, and governing, Lender, as determined within its sole discretion.

### 3.4.3 Formal Notice

Lender shall have notified Borrower in writing that the loan as requested in the Loan Request has been approved by Lender.

### 3.4.4 Security Interest

Each Loan shall be based on, among other things, a satisfactory-to-lender and its legal counsel continuing first priority security interest in the applicable Equipment and Equipment Lease as specified in the applicable Loan Supplement.

### 3.4.5 No Financial Change

No material adverse change in the business or the financial condition of Borrower or any Lessee under the applicable Equipment Lease shall have occurred and be continuing since the respective dates of the most recent financial statements and other credit information furnished by each of them to Lender.

### 3.4.6 Approvals and Filings

All acts, conditions, and actions (including, without limitation, the obtaining of any necessary regulatory approvals and the making of any required filings, recordings, or registrations) required to be done or performed or to have happened prior to the execution, delivery, and performance of the Master Agreement and the Loan Agreement, and Note and Equipment Lease shall have been done and performed to the satisfaction of Lender and its legal counsel.

### 3.4.7 Corporate Authorization

All corporate and legal proceedings, and all documents and instruments, in connection with the authorization of the Master Agreement, Loan Agreement, Note, and Equipment Lease shall be delivered to Lender and shall be satisfactory in form and substance to Lender and its legal counsel, and Lender shall have received all other Lender requested and related documents and instruments, including records of corporate proceedings, which Lender and its legal counsel may reasonably have requested in connection therewith, such documents and instruments, where appropriate, to be certified by proper corporate or government authorities.

### 3.4.8 Equipment Lease

With respect to a Loan, Lender shall have received the sole original of each applicable Equipment Lease satisfactory in form and substance to Lender and its legal counsel, and related documents, and the duly executed originals of the Loan Agreement and the Note and all ancillary documentation related thereto and delivered in connection therewith and shall have received all other documents, agreements, and instruments relating to any aspect of the transactions contemplated hereby, including the Supplement, substantially in the form of Exhibit C hereto, and the Acknowledgment and Consent to Assignment of Equipment Lease, substantially in the form of Exhibit D hereto (hereinafter referred to as the "Lessee Consent").

### 3.4.9 Insurance

Lender shall have received evidence of insurance as to the Equipment, satisfactory in form and amount to Lender and its legal counsel.

### 3.4.10 Counsel Opinion for Borrower

Lender shall have received, in form and substance satisfactory to Lender and its counsel, the written opinion addressed to it of legal counsel for Borrower, as to matters contained in Section 12, Subsections 12.1

through 12.4 inclusive and 12.7 through 12.11 inclusive, and as to such other matters incident to the transactions contemplated by this Master Agreement as Lender may request.

#### 3.4.11 Counsel Opinion for Lessee

Lender shall have received, in form and substance satisfactory to Lender and its counsel, a written opinion addressed to it of counsel for Lessee, as to matters incident to the transactions contemplated by the Loan Agreement as Lender may request.

#### 3.4.12 Equipment Ownership

Borrower shall own the Equipment free and clear of all Liens (except for the first priority security interest of Lender created by the Loan Agreement, and the rights of the Lessee created by the applicable Equipment Lease) and Lender shall have received such lien searches, consents, waivers, releases, or the like as it shall deem necessary or desirable to establish the same and shall have received, in form and substance satisfactory to it, copies of such invoices, bills of sale, and evidence of payment, as it shall deem necessary or desirable as evidence of Borrower's ownership of the Equipment.

#### 3.4.13 Transaction Matters Satisfactory

All legal, financial, and documentation matters, and all documents executed, in connection with the contemplated transaction shall be satisfactory in form and substance to Lender and its legal counsel.

### Section 4. Place of Payment

Payment of principal, interest, and other sums due or to become due with respect to each Loan and all the Secured Obligations are to be made at the office of Lender referred to in Section 19 of this Master Agreement, in lawful money of the United States of America in immediately available funds.

### Section 5. Loan Prepayment

Borrower may not prepay any Note unless otherwise specifically provided for in, and then only in accordance with the terms and conditions of, the applicable Loan Supplement.

### Section 6. Payment from Lease Amounts Due; Limitation of Liability

#### 6.1 Payment from Lease Amounts Due

Lender and Borrower agree that, except as otherwise provided in Section 16 hereof, payment due under each Note shall be made by the Lessee's payment of the rentals and other amounts due or to become due (including, without limitation amounts due as Equipment casualty or purchase payments, or as to any early lease termination permitted under the applicable Equipment Lease) under the applicable Equipment Lease, assigned as collateral security for such Note, directly to Lender; provided, however, that nothing contained herein shall be deemed to alter or diminish the Borrower's absolute and unconditional obligation to make the payments to Lender required under the terms of the Note.

#### 6.2 Limitation of Borrower's Liability

Notwithstanding anything to the contrary in Section 6.1, and subject to the succeeding sentence, with respect to each Loan, Lender agrees that it will look solely to the Collateral for such Loan for repayment for the Loan, without recourse against Borrower, and that Borrower shall not be personally liable to Lender for any amounts payable under such Loan; *provided, however*, Borrower expressly agrees that Borrower shall have personal recourse liability to Lender for any damages suffered by Lender in the event any representation, covenant, or warranty made by Borrower contained in this Master Agreement, Loan Agreement, Note, or Equipment Lease shall prove to be untrue in any material respect when made or has been breached in any material respect; including any representation, covenant, or warranty as to the indemnity made in Section 14.3 hereof, any representations and warranties made in Section 12 hereof, any covenants made in Sections 11.1, 13, 18, 20, and 21 hereof, and for its own gross negligence or willful misconduct. The foregoing limitation of recourse liability shall not limit, restrict, or impair the rights of Lender to accelerate the maturity of

any Note upon any Event of Default, or to exercise all rights and remedies provided under this Master Agreement, any Loan Agreement, Note, or Equipment Lease, or otherwise realize upon the Collateral.

#### Section 7. Lender Application of Amounts Received

##### 7.1 Rent Payments

So long as no Default or Event of Default or event which with notice, lapse of time, or the happening of any further condition, event, or act would constitute an Event of Default shall have occurred and be continuing, each payment of an installment of rent under each Equipment Lease (including each payment of interest on overdue installments of rent) received by Lender shall be applied (i) *first*, to the payment of the installments of principal and interest (including interest on overdue principal) on the applicable Note(s) which have become due or which become due on or before the day on which such installment of rent is due from the applicable Lessee, and (ii) *second*, the balance, if any, of such installment of rent shall be paid by Lender to Borrower.

##### 7.2 Casualty Payments

So long as no Default or Event of Default or event which with notice, lapse of time, or the happening of any further condition, event, or act would constitute an Event of Default shall have occurred and be continuing, any amounts received by Lender as a result of an Event of Loss with respect to an Item of Equipment (including, without limitation, any payment of casualty or stipulated loss value, insurance or condemnation, or similar, proceeds) shall be applied (i) *first*, to the prepayment amounts required to be paid by any mandatory prepayment requirement in a Loan Agreement, (ii) *second*, to the payment in full of all other Secured Obligations which are then due and payable, and (iii) *third*, the balance, if any, shall be paid by Lender to Borrower for distribution in accordance with the terms of the applicable Equipment Lease.

##### 7.3 Permitted Early Lease Termination

So long as no Default or Event of Default or event which with notice, lapse of time, or the happening of any further condition, event, or act would constitute an Event of Default shall have occurred and be continuing, any amounts received by Lender as a result of an early equipment lease termination permitted under an Equipment Lease with respect to an Item of Equipment (“Permitted Early Equipment Lease Termination”), including, without limitation, any payment of early termination value, or similar, proceeds, shall be applied (i) *first*, to the prepayment amounts required to be paid by any mandatory prepayment requirement in a Loan Agreement, (ii) *second*, to the payment in full of all other Secured Obligations which are then due and payable, and (iii) *third*, the balance, if any, shall be paid by Lender to Borrower for distribution in accordance with the terms of the applicable Equipment Lease.

##### 7.4 Other Amounts

So long as no Default or Event of Default or event which with notice, lapse of time, or the happening of any further condition, event, or act would constitute an Event of Default shall have occurred and be continuing, all amounts from time to time received by Lender (other than amounts specified in Section 6 or Sections 7.1, 7.2, or 7.3), (i) if due to Lender pursuant to the terms of a Loan Agreement, shall be applied by Lender to the purpose for which such payment was made, (ii) if provision as to its application is made in this Master Agreement or in an Equipment Lease, Lender shall, in its sole discretion, either apply such payment to the purpose for which it was made or pay it to Borrower, which shall so apply it, and (iii) if due to Borrower or Lessee, pay it to Borrower for distribution by Borrower in accordance with the terms of the applicable Equipment Lease.

##### 7.5 Application After Declaration

All payments received and amounts realized by Lender after an Event of Default or event which with notice, lapse of time, or the happening of any further condition, event, or act would constitute an Event of Default shall have occurred and be continuing and after Lender has either declared (as assignee from Borrower of the Equipment Lease) the Equipment Lease to be in default pursuant to the provisions thereof or declared the Notes to be due and payable pursuant to Section 16 hereof, as well as all payments or amounts then held by Lender as part of the Collateral, shall be applied pursuant to said Section 16.

## 7.6 Application After Event of Default

All payments received and amounts realized by Lender after an Event of Default or event which with notice, lapse of time, or the happening of any further condition, event, or act would constitute an Event of Default shall have occurred and be continuing, but prior to the declaration of an Equipment Lease to be in default or the acceleration of the Notes, which funds would, but for the provisions of this Section 7.6, be paid to Borrower, shall be held by Lender as part of the Collateral until such time as no Events of Default or event which with notice, lapse of time, or the happening of any further condition, event, or act would constitute an Event of Default shall be continuing thereunder (at which time such funds shall be paid to Borrower) or until such funds are applied pursuant to Section 16 hereof.

## Section 8. Late Payments; Other Charges

If any installment or other amount due with respect to the repayment of a Loan or any portion of the Secured Obligations is not paid when the same shall be due, Borrower shall pay interest on any such overdue amount at the applicable Overdue Rate.

## Section 9. Assignment and Grant of Security Interests

As collateral security for the prompt and complete payment when due (whether at the stated maturity, by prepayment, by acceleration, or otherwise) of all indebtedness and other obligations of Borrower to Lender under or arising out of each Loan Agreement and/or evidenced by each Note, including any extensions or renewals thereof, and for the payment of all obligations of each Lessee under each Equipment Lease (all of which are referred to collectively herein as the "Secured Obligations"), the Borrower hereby: (a) assigns, pledges, and hypothecates to Lender, its successors and assigns, and grants to Lender, a continuing first priority security interest in and to, all of its present and future right, title, and interest in, to and under each Equipment Lease identified in each applicable Loan Supplement (including any extensions or renewals thereof) and all rentals, other sums payable thereunder (including without limitation any amounts payable in connection with an Equipment casualty or Permitted Equipment Lease Early Termination), and any and all cash and non-cash proceeds (including proceeds of insurance) thereof, and all rights, powers, and remedies (BUT NONE OF THE DUTIES OR OBLIGATIONS, IF ANY) of Borrower, as lessor, including without limitation the rights to give and receive any notice, consent, waiver, demand, or approval under or in respect to each applicable Equipment Lease, to exercise any election or option thereunder or in respect thereof, to accept a surrender of any of the applicable Equipment and to do all other things which the Borrower is entitled to do as lessor under each applicable Equipment Lease, and (b) assigns, pledges, and hypothecates to Lender, and grants to Lender a continuing first priority security interest in and to all Equipment and any and all accessories and additions thereto, substitutions and replacements therefor, and proceeds (including without limitation, insurance proceeds or condemnation awards) thereof. All of the property, rights, benefits, and interests referred to in clauses (a) and (b) of this Section 9 are referred to collectively herein as the "Collateral".

## Section 10. Lender Appointment as Attorney-in-Fact

### 10.1 Lender Appointment

Borrower hereby irrevocably constitutes and appoints Lender and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Borrower and in the name of Borrower or in its own name, from time to time in Lender's discretion, for the purpose of carrying out the terms of each Loan Agreement, to take any and all appropriate action and to execute any and all documents or instruments which may be deemed necessary or desirable by Lender to protect and preserve, and/or exercise its rights and remedies with respect to, the Collateral and, without limiting the generality of the foregoing, hereby gives Lender the power and right, on behalf of Borrower and without notice to or assent by Borrower, to do the following: to demand, enforce, collect, receive, receipt, and give release for any monies due or to become due under or arising out of or with respect to, any of the Collateral, and to endorse all checks and other instruments, and to do and take all such other actions relating to any of the Collateral, to file any claims or institute any proceedings with respect to any of the foregoing which Lender deems necessary or desirable, and to compromise any such demand, claim or action.

## 10.2 Borrower Ratification

Borrower hereby ratifies all that Lender as attorney-in-fact shall lawfully do or cause to be done by virtue of this Section 10. This power of attorney is a power coupled with an interest and shall be irrevocable.

## 10.3 Right to Extend

Borrower consents and agrees that any of the liabilities of each Lessee under each Equipment Lease may be extended by Lender in whole or in part, without notice to Borrower and without affecting the liability of Borrower thereunder.

## 10.4 No Lender Duty

The powers conferred on Lender thereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees, or agents shall be responsible to Borrower for any act or failure to act, except for its gross negligence or willful misconduct.

## Section 11. Assignments; Encumbrances; Transfers

### 11.1 No Borrower Assignment

Borrower will not, without the prior written consent of Lender, assign, convey, transfer, sell, exchange, further lease, or otherwise dispose of any of its right, title, or interest in, to or under any of the Collateral, or this Master Agreement, any Loan Agreement, or any Note, or create, incur, or suffer to exist any Lien upon any of the Collateral (except the security interests and the assignments created by the applicable Loan Agreement).

### 11.2 Permitted Lender Assignment

Lender may, without notice to, or the written consent of, Borrower, assign, convey, transfer, sell, exchange, or otherwise dispose of any of its right, title, or interest in, to or under any of the Collateral, or this Master Agreement, any Loan Agreement, or any Note, or create, incur, or suffer to exist any Lien upon any of the Collateral; provided, however, any such action shall be subject to each applicable Lessee's right of quiet enjoyment as set forth in Section 17 of this Master Agreement.

## Section 12. Borrower's Representations and Warranties

Borrower represents and warrants to Lender that as of the date of this Master Agreement, and (with respect only to the Loan being made as of such date) each Loan Closing Date as follows:

### 12.1 Not Insolvent

Borrower is not insolvent within the meaning of applicable state or federal law.

### 12.2 Good Standing

Borrower is a corporation duly organized and validly existing in good standing under the laws of the jurisdiction of its incorporation, (i) is duly qualified to do business and is in good standing in each jurisdiction (x) in which the location of its properties and any Equipment requires such qualification, and (y) where failure to qualify would materially and adversely affect Lender's ability to enforce its rights under any Equipment Lease or Loan Agreement, and (ii) has full power, authority, and legal right to purchase, own, and hold under lease its properties, and to transact the business in which it is engaged.

### 12.3 Loan Transaction Power and Authority

The (i) acquisition of the Equipment and the leasing of the Equipment to each Lessee pursuant to the applicable Equipment Lease(s), and (ii) execution, delivery, and performance by Borrower of this Master

Agreement, and as of the applicable Loan Closing Date, each Loan Agreement, Note, and Equipment Lease, and any related documents and the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of Borrower and do not, and will not, as the case may be, contravene any provisions of law applicable to Borrower or the certificate of incorporation or by-laws of Borrower, and do not conflict or are not inconsistent with, and will not result (with or without the giving of notice) in a breach of or constitute a default or require any consent under, or result in the creation of any Lien upon the Collateral pursuant to, the terms of any judgment, award, order, injunction, determination, direction, demand, writ, or decree of any court or Governmental Body (collectively "Order"), credit agreement, indenture, mortgage, purchase agreement, deed of trust, security agreement, guarantee, or other instrument to which Borrower is a party or by which Borrower may be bound or to which any of its property may be subject.

#### 12.4 Transaction Document Binding Nature

This Master Agreement, and, as of each Loan Closing Date when executed and delivered by Borrower, each Note, and Loan Agreement is a legal, valid, and binding obligation of Borrower enforceable in accordance with its respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium, or other similar law or equitable principles relating to or affecting the enforcement of creditor's rights in general and subject to general principles of equity.

#### 12.5 Binding Equipment Lease

As of the applicable Loan Closing Date, each Equipment Lease constitutes the legal, valid, and binding obligation of the respective Lessee, enforceable against such Lessee in accordance with its terms thereof, except as limited by bankruptcy, insolvency, reorganization, moratorium, or other similar law or equitable principles relating to or affecting the enforcement of creditor's rights in general and subject to general principles of equity.

#### 12.6 No Financial Change

No material adverse change in the business or the financial condition of Borrower, or as of the applicable Loan Closing Date with respect to the applicable Lessee, shall have occurred and be continuing since the respective dates of the most recent financial statements and other credit information furnished by each of them to Lender.

#### 12.7 No Adverse Proceedings

There is no action, suit, investigation, or proceeding (whether or not purportedly on behalf of Borrower) pending or, to Borrower's knowledge, threatened against or affecting Borrower or any of its assets in any court or before any arbitrator or before and/or by any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentally, domestic or foreign (collectively, "Governmental Body"), (a) which involves any of the Equipment or any of the transactions contemplated by this Master Agreement, any Loan Agreement, Note, or Equipment Lease or (b) which, if adversely determined, would have a material adverse effect upon the financial condition, business, or operations of Borrower or upon the transactions contemplated by this Master Agreement, any Loan Agreement, Note, or Equipment Lease, and Borrower is not in material default with respect to any material Order of any Court, arbitrator, or Governmental Body.

#### 12.8 Sales, Use, Property Taxes

All sales, use, property or other taxes, licenses, tolls, inspection or other fees, bonds, permits, or certificates which were or may be required to be paid or obtained in connection with the acquisition by Borrower of the Equipment or its subsequent lease to each applicable Lessee will have been, or when due will be, paid in full or obtained, as the case may be.

#### 12.9 Good, Valid, and Marketable Title

Borrower has good, valid, and marketable title to the Collateral free and clear of all liens, claims, and encumbrances, except for (i) the rights of the Lessee as user of the applicable Equipment in accordance with



the terms of each applicable Equipment Lease, and (ii) the liens, claims, and encumbrances in favor of Lender created by each Loan Agreement.

#### 12.10. Perfected Security Interest

At the time each Loan is made, Lender will have a perfected continuing first priority security interest in and to all of the applicable Loan Collateral.

#### 12.11 Tax Return Filings

Borrower has as of the date of execution of this Master Agreement, and as of each Loan Closing Date will have, filed all required tax returns in all jurisdictions in which such returns were required to be filed and has paid, or made provision for, all material taxes shown to be due and payable on such returns and all other material taxes and assessments that are payable by it, except for any taxes and assessments of which the amount, applicability, or validity is currently being contested in good faith and as to which any adverse determination in excess of any accruals to reflect potential liability would not materially adversely affect its ability to perform its obligations under this Master Agreement, any Loan Agreement, Note, or Equipment Lease.

#### 12.12 Equipment Lease Counterparts

Any counterpart of any Equipment Lease which has not been delivered to Lender bears the following legend on the face and signature pages thereof: "Counterpart No. \_\_\_\_\_ of \_\_\_\_\_ manually executed counterparts. Only the manually executed counterpart numbered 1 is sufficient to transfer Lessor's interest, or to grant a security interest herein." Each such counterpart also bears a legend on the face and signature pages thereof specifying Lender as the assignee of the Equipment Lease.

#### 12.13 Equipment Lease Statements Correct

All amounts, statements, and conditions of fact stated in each Equipment Lease are true and correct.

#### 12.14 Lease Performance

As of each applicable Loan Closing Date, Borrower, and to the best of Borrower's knowledge, each Lessee, have performed and observed each term, provision, covenant, and condition contained in the applicable Equipment Lease to be performed or observed by Borrower, as lessor, and as lessee, respectively, up to and including such Loan Closing Date.

#### 12.15 Entire Lease Agreement

As of each Loan Closing Date, each applicable Equipment Lease constitutes the entire agreement of Borrower and the applicable Lessee with respect to the Equipment and the lease thereof, and has not been amended, supplemented, or otherwise modified in any manner, and Borrower has not entered into any understanding or agreement (oral or in writing), relating to the Equipment, or to such Equipment Lease, the transactions contemplated thereby, or any other transactions contemplated or permitted by this Master Agreement or any applicable Loan Agreement, or Note, with any person or entity.

#### 12.16 No Assignment

As of each Loan Closing Date Borrower has not theretofore alienated, assigned, granted a security interest in, or otherwise disposed of any interest in each applicable Equipment Lease, amounts due Lender or to become due Lender thereunder, Borrower's leasehold interest or the applicable Equipment.

#### 12.17 No Defense; Setoff

As of each Loan Closing Date, there are no defenses, setoffs, or counterclaims which each applicable Lessee has, or may have, in connection with the applicable Equipment Lease, or, any such defense, claim, or setoff on the part of any entity in connection with any of the obligations set forth in such Equipment Lease, or of any event which with the passage of time or giving of notice or both would constitute a default with respect to any of the foregoing.

### 12.18 Borrower's Place of Business

The chief place of business and the chief executive office of Borrower and the office where Borrower keeps its records relating to the Collateral, is located at the address set forth in Section 19 hereof.

## Section 13. Covenants of Borrower

Borrower covenants and agrees that from and after the date hereof and so long as any of the Secured Obligations are outstanding:

### 13.1 Loan Proceeds Use

The proceeds of each Loan will be used exclusively for commercial or business purposes to finance the acquisition of Equipment for which the Loan has been provided under a Loan Agreement.

### 13.2 Notices

Borrower will promptly give written notice to Lender of (i) the occurrence of any Event of Default or of any event which with notice, lapse of time, or both would constitute an Event of Default, of which it has knowledge, (ii) the occurrence of any Event of Loss of which it has knowledge, and (iii) the commencement or threat of any material litigation or other proceedings affecting Borrower or any Lessee or any other entity that involves any of the Collateral that might materially interfere with the normal business operations of Borrower or any Lessee.

### 13.3 Lessee Communications

Borrower will promptly deliver, no later than five (5) days after receipt thereof, to Lender a copy of each communication received from each Lessee with respect to each Equipment Lease or the transactions contemplated thereby.

### 13.4 Compliance with Laws; Corporate Existence; Governmental Approvals

Borrower will (i) duly observe and conform to all valid requirements of governmental authorities necessary to the performance of its obligations under this Master Agreement and each Loan Agreement, Note, and Equipment Lease, (ii) maintain its corporate existence and obtain and keep in full force and effect all rights, franchises, licenses, and permits which are necessary to the proper conduct of its business, and (iii) obtain or cause to be obtained as promptly as possible any governmental, administrative, or agency approval and make any filing or registration therewith which shall be required with respect to the performance of its obligations under this Master Agreement, and each Loan Agreement, Note, and Equipment Lease.

### 13.5 Performance of Equipment Leases

Borrower will duly observe and perform all covenants and obligations to be performed by it under each Equipment Lease and, subject to Section 13.10 hereof, will promptly take any and all action as may be necessary to enforce its rights under each such Equipment Lease or to secure the performance by the applicable Lessee of such Lessee's obligations under such Equipment Lease.

### 13.6 Equipment Location Change

Borrower shall cause the Equipment to be used solely by each Lessee in accordance with the terms of the applicable Equipment Lease, and shall not consent to a change in the location of any Item of Equipment as specified in the applicable Equipment Lease, without the prior written consent of Lender.

### 13.7 Equipment Insurance

Borrower shall cause each Lessee to provide insurance coverage with respect to the applicable Equipment in accordance with the terms of the applicable Equipment Lease; shall further cause each such Lessee to cause such insurance to be endorsed to provide that losses, if any, shall be payable to Borrower, Lender,

and such Lessee, as their interest may appear; shall further cause it to be further endorsed to provide that such insurer will give Lender thirty (30) days' prior written notice of the effective date of any material alteration or cancellation or nonrenewal of any such policy; shall further cause it to provide that all provisions of such policy, except the limits of liability, will operate in the same manner as if there were a separate policy governing such additional insured; shall further cause it to provide that as to Lender's interest, such insurance shall not be invalidated by reason of any breach of representation or violation of warranty by Lessee to the insurer in connection with obtaining such policy to insurance or maintaining the same in full force and effect; and shall further cause such insurance to meet such other reasonable requirements as Lender may request from time to time.

### 13.8 Security Interest Filing Costs

Borrower will pay, or reimburse Lender for, any and all fees, costs, and expenses of whatever kind or nature incurred in connection with the creation, preservation, and protection of Lender's security interests in the Collateral, including, without limitation, all fees and taxes in connection with the recording or filing of instruments and documents in public offices, payment or discharge of any taxes or Liens of any nature upon or in respect of the Collateral, premiums for insurance with respect to the Collateral and all other fees, costs, and expenses in connection with protecting, maintaining, or preserving the Collateral and Lender's interests therein, whether through judicial proceedings or otherwise, or in defending or prosecuting any actions, suits, or proceedings arising out of or related to the Collateral; and all such amounts that are paid by Lender shall, until reimbursed by Borrower, constitute Secured Obligations of Borrower secured by the Collateral.

### 13.9 No Liens

Borrower will not create, assume, or suffer to exist any Lien of any kind upon any of the Collateral, of or by any individual (or association of individuals), entity or governmental instrumentality, claimed or asserted against, through or under Borrower, except the interest granted hereby to Lender, and any Liens expressly permitted by Lender pursuant to Section 11 hereof, and Borrower shall promptly notify, no later than five (5) days after the receipt thereof, Lender upon the receipt of any Lien, or judicial proceeding affecting any Equipment in whole or in part, and Borrower shall cause Lessee to maintain the Equipment free from all Liens, and legal processes of Lessee.

### 13.10 Restriction on Equipment Lease Actions

Borrower will not, without the prior written consent of Lender, declare a default under any Equipment Lease, exercise any remedies under any Equipment Lease or enter into or consent to or permit any cancellation, termination, amendment, supplement or modification of or waiver with respect to any Equipment Lease, and any such attempted declaration, exercise, cancellation, termination, amendment, supplement, modification, or waiver shall be void and of no effect.

### 13.11 Change in Office Location

Borrower will not change its principal place of business or chief executive office or remove its books and records concerning the Collateral from the address set forth in Section 19 hereof unless it shall have given at least thirty (30) days' prior written notice of such change or removal to Lender, specifying the new address.

### 13.12 Further Assurances

Borrower will promptly, at any time and from time to time, at its sole expense, execute and deliver to Lender such further instruments and documents, and take such further action, as Lender may from time to time reasonably request in order to carry out the intent and purpose of this Master Agreement, and each Loan Agreement, Note, and Equipment Lease and to establish and protect the rights, interests, and remedies created, or intended to be created, in favor of Lender hereby and thereby, including, without limitation, the execution, delivery, recordation, and filing of financing statements and continuation statements with respect to the Collateral. Borrower hereby authorizes Lender, in such jurisdictions where such action is authorized or permitted by law, to effect any such recordation or filing without the signature of Borrower thereto, and Lender's expenses with respect thereto shall be payable by Borrower on demand.

### 13.13 Indemnification

Without limiting the generality of any other provision hereof, Borrower shall indemnify, protect, save, and keep harmless Lender from and against any reduction in the amount payable out of the Collateral to Lender with respect to the Secured Obligations, or any other loss, cost, or expense (including legal fees) incurred by Lender, as the result of Borrower's breach of Section 13.9 hereof.

## Section 14. Indemnity

### 14.1 Fees, Assessments, and Taxes

Borrower agrees to pay when due, and to indemnify and hold Lender harmless from all license, filing and registration fees and assessments, and all sales, use, property, excise, and other taxes and charges (other than those measured by Lender's net income) now or hereafter imposed by any Governmental Body upon or with respect to (i) this Master Agreement, or any Loan Agreement, Note, or Equipment Lease, or the creation and continued perfection of the security interest created hereby or thereby, and (ii) any of the Collateral, including without limitation the use, possession, ownership, and operation of any of the Equipment.

### 14.2 Equipment Operation and Use Expenses

Borrower hereby assumes liability for, and indemnifies and holds Lender harmless against, all claims, costs, expenses (including reasonable legal fees), damages, and liabilities arising from or pertaining to the manufacture, assembly, installation, use, operation or sale, or disposition of, or in any way relating to, the Equipment or any interest therein.

### 14.3 Lawsuit Costs

Without limiting the generality of the foregoing, Borrower hereby agrees that in any suit, proceeding, or action brought by Lender under any Equipment Lease for any sum owing thereunder, or to enforce any provision thereof, Borrower will save, indemnify, and keep Lender harmless from and against all expense, loss, or damage suffered by reason of any defense, setoff, counterclaim, recoupment, or reduction of liability whatsoever of Lessee, arising out of a breach by Borrower of any obligation under such Equipment Lease or arising out of any other agreement, indebtedness, or liability at any time owing to or in favor of Lessee from Borrower.

### 14.4 Survival

The indemnities set forth in this Section 14 shall survive the expiration or earlier termination of this Master Agreement and each Loan Agreement, Note, and Equipment Lease with respect to acts or events occurring or alleged to have occurred prior to such expiration or earlier termination.

## Section 15. Events of Default

During the Term of this Master Agreement, the occurrence of any of the following events shall constitute an "Event of Default":

### 15.1 Nonpayment

Borrower fails to pay, or cause to be paid, any amount owing pursuant to this Master Agreement, any Loan Agreement, or Note, including, but not limited to the principal or interest of any Note, when due (whether at the stated maturity, by acceleration or otherwise), and such failure shall continue for a period of ten (10) days.

### 15.2 Nonperformance

Borrower disaffirms or fails to perform or observe any other covenant, agreement, obligation, or undertaking under this Master Agreement or under any Loan Agreement, Note, or any Equipment Lease, or under any agreement contemplated hereby or thereby to which Borrower is a party, or under any other agreement

or document given to evidence or secure any of the Secured Obligations, and such failure shall continue for a period of thirty (30) days.

### 15.3 Event of Default Occurrence

If an event of default (as therein defined) occurs under any Equipment Lease or a default by any Lessee of its obligations under its Lessee Consent occurs.

### 15.4 Breach of Representation or Warranty

Any representation or warranty, made by Borrower in connection with any transaction contemplated by this Master Agreement, any Loan Agreement, or any Note, whether contained in any Equipment Lease, any related document, in this Master Agreement, in any Loan Agreement, in any Note, or in any certificate or other related document delivered to Lender in connection herewith or therewith, shall prove to be incorrect or untrue in any material respect.

### 15.5 Bankruptcy Proceedings

Borrower institutes proceedings to be adjudicated a bankrupt or insolvent, or consents to the institution of bankruptcy or insolvency proceedings against it, or commences a voluntary proceeding or case under any applicable federal or state bankruptcy, insolvency, or other similar law, or consents to the filing of any such petition or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, or sequestrator (or other similar official) of Borrower or of any substantial part of its property, or makes any assignment for the benefit of creditors or the admission by it of its inability to pay its debts generally as they become due or becomes willing to be adjudicated a bankrupt or fails generally to pay its debts as they become due or takes any corporate action in furtherance of any of the foregoing or Borrower shall file any such proceeding, or any execution or writ of process shall be issued under any proceeding whereby any Item of Equipment may be taken or restrained.

### 15.6 Entered Decree or Order

A decree or order is entered for relief by a court having jurisdiction in respect of Borrower adjudging the Borrower a bankrupt or insolvent, or approving as properly filed a petition seeking a reorganization, arrangement, adjustment or composition of or in respect of Borrower in an involuntary proceeding or case under any applicable federal or state bankruptcy, insolvency, or other similar law, or appointing a receiver, liquidator, or assignee, custodian, trustee, or sequestrator (or similar official) of Borrower or of any substantial part of its property, or ordering the winding-up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of thirty (30) days.

### 15.7 Business Cessation

Borrower shall cease doing business as a going concern or shall be dissolved.

## Section 16. Remedies

Upon the occurrence of an Event of Default, and so long as such Event of Default shall be continuing, Lender may, at its option, declare this Master Agreement and/or any or all Loan Agreements in default (herein referred to as a "Default") and may exercise, at its option, one or more of the following remedies:

### 16.1 Right of Acceleration

Lender may accelerate the full amount of any or all of the then outstanding Secured Obligations in which event such amounts will become immediately due and payable by the Borrower without presentment, demand, protest, or other notice of any kind, all of which are hereby expressly waived, and Lender may thereafter pursue any or all of the rights and remedies with respect to the Collateral accruing to Lender thereunder or by operation of law as a secured creditor under the Code or other applicable law, as it may elect in its sole discretion, and all such available rights and remedies, to the full extent permitted by the law, shall be cumulative and not exclusive.

## 16.2 Additional Remedies

If an Event of Default shall occur and be continuing, Lender may exercise in addition to all other rights and remedies granted to it in this Master Agreement, in any Loan Agreement, Note, or Equipment Lease and in any other instrument or agreement securing, evidencing, or relating to the Secured Obligations, all rights and remedies of secured parties under the Code or under any other applicable law. Without limiting the generality of the foregoing, Borrower agrees that in any such event, Lender, without demand of performance or other demand, advertisement, or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon Borrower or any other person (all and each of which demands, advertisements, and/or notices are hereby expressly waived), may forthwith collect, receive, appropriate, and realize upon the Collateral, or any part thereof, and may take possession of (subject to the right of quiet enjoyment with respect to any Lessee pursuant to Section 17 hereof) any or all Equipment or any part thereof and/or may forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral (or contract to do so), or any part thereof, in one or more parcels at public or private sale or sales, at any exchange or broker's board or at any of Lender's offices or elsewhere at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Lender shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in Borrower, which right or equity is hereby expressly waived or released to the extent permitted by law. Borrower further agrees (subject to the right of quiet enjoyment with respect to any Lessee pursuant to Section 17 hereof), at Lender's request, to assemble the Collateral, make it available to Lender at places which Lender shall reasonably select, whether at Borrower's premises or elsewhere. Lender shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization, and/or sale (after deducting all costs and expenses of every kind incurred therein or incidental to the care, safekeeping, or otherwise of any or all of the Collateral or in any way relating to the rights of Lender thereunder, including attorney's fees and legal expenses) to the payment in whole or in part of the Secured Obligations, in such order as Lender may elect and only after so applying such net proceeds and after the payment by Lender of any other amount required by any provision of law, need Lender account for the surplus, if any, to Borrower. To the extent permitted by applicable law, Borrower waives all claims, damages, and demands against Lender arising out of the repossession, retention, or sale of the Collateral, including any costs of evaluation and or appraisal of the Collateral or any part thereof. Borrower agrees that Lender need not give more than ten (10) days' prior written notice (which notification shall be deemed given when mailed, postage prepaid, addressed to Borrower at its address set forth in Section 19 hereof) of the time and place of any public sale or of the time after which a private sale may take place and that such notice is reasonable notification of such matters.

## 16.3 Lease Action

If an Event of Default referred to in Section 15.3 shall occur and be continuing, Lender (as assignee of Borrower) may declare the applicable Equipment Lease to be in default and may exercise all rights, powers, and remedies of Borrower under the applicable section of such Equipment Lease, either in Lender's own name or in the name of Borrower for the use and benefit of Lender.

## 16.4 Waiver of Presentment

Borrower hereby waives presentment, demand, protest, and (to the extent permitted by applicable law) notice of any kind in connection with this Master Agreement, each Loan Agreement, each Note, or any Collateral.

## 16.5 Rights, Powers, and Remedies Cumulative

All rights, powers, and remedies herein specifically given to Lender shall be cumulative and shall be in addition to all other rights, powers, and remedies herein specifically given or now or hereafter existing at law, in equity or by statute, and all rights, powers, and remedies whether specifically given herein or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by Lender and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the waiver of the right to exercise at the same time or at any other time any other right, power, or remedy. No delay or omission by Lender in the exercise of any right, remedy, or power, or in the pursuance of any right, remedy, or power shall impair any such right, power, or remedy or be construed to be a waiver of any Event of Default on the part of Lender.

## 16.6 Discontinuance of Proceeding

In case Lender shall have proceeded to enforce any right, power, or remedy under, or arising out of, or in connection with, this Master Agreement, any Loan Agreement, Note, Equipment Lease or any other related agreement, document, by foreclosure, entry, or otherwise, any such proceeding or any portion thereof shall have been discontinued or abandoned for any reason or shall have been determined adversely to Lender, then and in every such case Borrower and Lender shall be restored to their former position and rights hereunder or thereunder with respect to the Collateral subject to such proceeding or portion thereof, and all rights, remedies, and powers of Lender shall continue as if no such proceeding or portion thereof had been taken.

## Section 17. Lessee's Quiet Enjoyment Right

So long as a Lessee is not in default of its obligations under the applicable Equipment Lease or of its obligations to Lender under the applicable Lessee Consent, Lender will not interfere with the Lessee's peaceful use and enjoyment of the applicable Equipment for its intended purposes as provided for by the terms of such Equipment Lease.

## Section 18. Receipt of Funds by Borrower

Should Borrower, notwithstanding the assignment of the Equipment Leases and the granting to Lender of a first priority security interest in and to the Collateral, at any time while any of the Secured Obligations remain unsatisfied, receive any amount representing funds due, or proceeds of, any of the Collateral, such sums shall be held by Borrower in trust for Lender, shall be segregated from other funds of Borrower, and shall be immediately paid by Borrower to Lender in the form so received, together with any necessary endorsement thereon.

## Section 19. Notices

Any notice or document or payment to be delivered thereunder to any of the persons designated below, except as otherwise expressly provided herein, shall be deemed to have been properly delivered if delivered personally or deposited with the United States Postal Service, registered or certified mail, return receipt requested, postage prepaid, to the following respective addresses:

If to Borrower:

If to Lender:

or such other address as may be furnished from time to time by any of the parties hereto upon at least thirty (30) days' prior written notice.

## Section 20. Payment of Expenses and Taxes

Borrower agrees, whether or not the transactions contemplated by this Master Agreement and each Loan Agreement shall be consummated, to pay (i) all costs and expenses of Lender in connection with the negotiation, preparation, execution, and delivery of this Master Agreement, and the other documents relating hereto, including, without limitation, the reasonable fees and disbursements of counsel to Lender; (ii) all fees and taxes in connection with the recording of this Master Agreement and any Loan Agreement or Note or any other document or instrument required hereby; and (iii) all costs and expenses of Lender in connection with the enforcement of this Master Agreement, and each Loan Agreement and each Note, including all legal fees and disbursements arising in connection therewith. Borrower also agrees to pay, and to indemnify and save Lender harmless from any delay in paying, all taxes, including without limitation, sales, use, stamp, and personal property taxes (other than any corporate income, capital, franchise, or similar taxes payable by Lender with respect to the payments made to Lender hereunder) and all license, filing, and registration fees and assessments and other charges, if any, which may be payable or determined to be payable in connection with the execution, delivery, and performance of this Master Agreement, each Loan Agreement, and each Note or any modification thereof.

## Section 21. Performance by Lender of Borrower's Obligations

If Borrower fails to perform or comply with any of its agreements contained herein, or in any Loan Agreement or document related hereto or thereto, and Lender shall itself perform or comply, or otherwise cause

performance or compliance, with such agreement, the expenses of Lender incurred in connection with such performance or compliance, together with interest thereon at the Overdue Rate provided for in the applicable Loan Agreement, shall be payable by Borrower to Lender on demand and until such payment shall constitute Secured Obligations secured hereby.

## Section 22. Loan Request Right Termination

Without affecting any of Lender's rights, or Borrower's duties, obligations, or liabilities, under this Master Agreement, or any Loan Agreement, or Note, Lender may terminate Borrower's future right to submit Loan Requests pursuant to Section 2 of this Master Agreement, with or without cause, by sending a written notice to that effect to Borrower at Borrower's address specified in Section 19.

## Section 23. Miscellaneous

### 23.1 Survival of Representations and Warranties

All representations and warranties made in, or pursuant to, this Master Agreement, any Loan Agreement, or Note and any documents, instruments, or certificates delivered pursuant hereto or thereto (collectively herein referred to as "Documents") shall survive the execution and delivery of the Documents, and the making of the Loans thereunder, and the agreements contained in Section 20 hereof, shall survive payment of the Notes until all obligations of Borrower to Lender are satisfied in full.

### 23.2 Modification, Waiver, and Consent

Any modification or waiver of any provision of this Master Agreement, any Loan Agreement, or Note, nor any terms hereof or thereof, or any consent to any departure by Lender or Borrower, as the case may be, therefrom, shall not be effective in any event unless the same is in writing and signed by the party to be charged, and then such modification, waiver, or consent shall be effective only in the specific instance and for the specific purpose given.

### 23.3 Headings

The headings of the Sections and Subsections are for convenience only, are not part of this Master Agreement and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

### 23.4 Binding Effect

This Master Agreement and each Loan Agreement, and Note shall be binding upon and inure to the benefit of Borrower and Lender and their permitted respective successors and assigns.

### 23.5 Complete Statement of Rights

This Master Agreement, and each Loan Agreement, exclusively and completely states the rights and agreements with respect to the subject matter hereof and thereof, and supersedes all other agreements, oral or written, with respect thereto.

### 23.6 Law Governing

The terms and provisions of this Master Agreement, each Loan Agreement, and each Note and all rights and obligations thereunder shall be governed in all respects by the laws of the State of \_\_\_\_\_.

### 23.7 Construction

Any provision contained in this Master Agreement, in any Loan Agreement, or in any Note, or in any agreement or document delivered in connection therewith, or related thereto, which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent



permitted by law, Borrower hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect. A waiver by Lender of any right or remedy in any one instance shall not operate as a waiver of such right or remedy in any other instance, and a waiver by Lender of any breach of the terms hereof or Event of Default thereunder shall not be a waiver of any additional or subsequent breach or Event of Default.

### 23.8 Execution in Counterparts

This Master Agreement and each Loan Agreement may be executed by the parties hereto in any number of separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, Borrower and Lender have caused this Master Agreement to be executed on their behalf by their duly authorized representatives as of the day and year first above written.

---

Lender

By:

Title:

---

Borrower

By:

Title:

**Form: I-07a**  
**Disk File Name: I-07a.rtf**

**LOAN SUPPLEMENT**

**Form Purpose**

A loan supplement to be used in connection with a master equipment security and loan agreement. This form is integrated with Loan and Security Agreement, Form I-07.

*Executing Parties*

The borrower.

The lender.

*See:*

Loan and Security Agreement, Form I-07

**Exhibit A**  
**Loan Supplement**

Loan Supplement No.                    (“Loan Supplement”)  
 Dated as of

to Master Loan and Security Agreement,  
 (“Master Agreement”)  
 Dated as of

between

   (“Lender”)

and

   (“Borrower”)

**1. Incorporation by Reference of Master Agreement**

The Master Agreement and all documentation attached thereto, or delivered in connection therewith, or pursuant to thereto, including all terms and conditions thereof, are specifically incorporated herein by reference, and made a part hereof, as if set forth at length herein, as the same may from time to time be amended, supplemented, or otherwise modified. This Loan Supplement shall be considered a separate and enforceable agreement incorporating the terms and conditions of the Master Security Agreement and all documentation attached thereto, or delivered in connection therewith, or pursuant to thereto, and is referred to as a Loan Agreement.

**2. Lessee**

[Insert name]

**3. Lessee Guarantor**

[Insert name]

**4. Description of Equipment Lease**

[Insert description]

## 5. Equipment Description

*Qty. Manufacturer Model New/ Used Description Install. Location I. D./ Ser. # Purchase Cost Per Item Aggregate*

[Insert description]

Total Equipment Cost \$

## 6. Loan Principal Amount

The Principal Amount of the Loan to be extended pursuant to this Loan Supplement shall be equal to \$ , but in no event shall it be less than \$ , nor shall it be greater than \$ , and shall be evidenced by a Note.

## 7. Loan Commencement Date

The Loan Commencement Date for the Note shall be the Loan Closing Date.

## 8. Loan Term

### 8.1 Primary Term

The Primary Loan Term shall commence on the Loan Closing Date, unless the Loan Closing Date shall not fall on the 1st day of a month, in which case the Primary Loan Term shall commence on the 1st day of the month immediately following the Loan Closing Date, and shall end on the anniversary date thereof years thereafter.

### 8.2. Interim Term

If the Loan Closing Date does not fall on the 1st day of a month, there shall be an Interim Loan Term.

## 9. Loan Payment Dates

The Loan Payment Dates with respect to the Loan shall be the day of each during the Loan Term, and, in the event there is an Interim Term, any Interim Loan Payment shall be made on the Loan Closing Date, all payments to be payable in lawful money of the United States and in immediately available funds.

## 10. Loan Interest Rate

### 10.1 Loan Interest Rate

The Note shall bear interest during the Primary Loan Term at a per annum interest rate equal to % (calculated on the basis of a 360-day year and 30-day month).

### 10.2 Interim Loan Term Interest

The Note shall bear interest during any Interim Loan Term at an interest rate equal to the daily equivalent of the Primary Loan Term Interest Rate.

## 11. Loan Amortization Schedule

Attached hereto as Annex A is the Loan Amortization Schedule.

## 12. Loan Proceeds Instructions

Lender shall pay to Borrower the Principal Amount of the Loan by electronic wire transfer in accordance with written wire instructions from Borrower submitted prior to the Loan Closing Date.

### 13. Cutoff Date

Lender shall not be obligated to make the Loan provided for in this Loan Supplement unless the Loan Closing Date occurs on or before \_\_\_\_\_.

### 14. Loan Fee

Borrower shall pay to Lender a loan commitment fee equal to \_\_\_\_\_ on the date of execution of this Loan Supplement.

### 15. Overdue Rate

The Overdue Rate (calculated on the basis of a 360-day year and 30-day month) for the Note shall be a per annum amount equal to two percent (2%) above the Prime Rate (not to exceed, however, the highest rate permitted by applicable law).

### 16. Loan Prepayment

#### 16.1 Mandatory Prepayment in the Event of Loss

16.1.1 *Event of Loss Prepayment.* In the event that the Equipment or any item thereof subject to this Loan Supplement shall be lost, stolen, destroyed, damaged beyond repair, or rendered permanently unfit for normal use for any reason, or in the event of any condemnation, confiscation, seizure, or requisition of title to or use of any Item of Equipment as to result in the Lessee's loss of possession or use, or the Item of Equipment shall be deemed to have incurred a casualty loss under the applicable Equipment Lease (each of the foregoing being hereinafter called a "Event of Loss"), provided that Lessee is not replacing such Item of Equipment pursuant to any provisions permitting such replacement in the applicable Equipment Lease, Borrower shall make a prepayment on the Note in an amount equal to the sum of:

(i) that proportionate share of the then outstanding Principal Amount of such Note determined by multiplying the outstanding Principal Amount by a fraction, the numerator of which is the Borrower's Purchase Cost of the Item(s) of Equipment which was the subject of the Event of Loss and the denominator of which is the Total Equipment Cost of all Items of Equipment covered by the Loan Supplement to which the Note corresponds;

(ii) all accrued interest, late charges, if any, and any other sums which may be due Lender with respect to the Item(s) of Equipment which was the subject of the Event of Loss, to the date of such payment; and

(iii) a casualty prepayment fee equal to the product of (x) the principal amount prepaid and (y) the product obtained by multiplying 10% by a fraction, the numerator of which will be the number of installment payment dates with respect to such Note remaining after such date of prepayment (including the installment payment date on which such prepayment is made) and the denominator of which shall be the total number of installment payment dates with respect to such Note.

#### 16.1.2 Mandatory Early Lease Termination Prepayment

[If an Early Equipment Lease termination is permitted, this subsection will incorporate the appropriate mandatory Note prepayment provision.]

### 17. Representations and Warranties

Borrower represents and warrants that:

(a) Its representations and warranties contained in Section 12 of the Master Agreement are true and accurate on and as of the date of this Loan Supplement as though made on and as of such date.

(b) It is not in Default under any of the terms, covenants, agreements, or other provisions of any Loan Agreement, Note, or Equipment Lease, or the Master Agreement, and no Event of Default, or event which with notice, lapse of time, or the happening of any further condition, event, or act would constitute an Event of Default shall have occurred and is continuing thereunder.

18. Term Definitions

The terms used in this Loan Supplement, where not defined herein to the contrary, shall have the same meanings as defined in the Master Agreement.

\_\_\_\_\_  
Lender

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

Title: \_\_\_\_\_

\_\_\_\_\_  
Borrower

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

Title: \_\_\_\_\_

**Annex A to Loan Supplement No.**

[values to be inserted]

**Exhibit B**

[see Form 1-07b]

**Exhibit C**

[see Form 1-07c]

**Exhibit D**

[see Form 1-07d]

**Form: I-07b**  
**Disk File Name: I-07b.rtf**

**PROMISSORY NOTE**

**Form Purpose**

A promissory note to be used in connection with a master equipment loan and security agreement. This form is integrated with Loan and Security Agreement, Form I-07.

*Executing Parties*  
 The borrower.

*See:*  
 Loan and Security Agreement, Form I-07

**Exhibit B**  
**Form of Promissory Note**

[Insert city, state where executed, such as New York, New York]

\$ \_\_\_\_\_

Date: \_\_\_\_\_

FOR VALUE RECEIVED, \_\_\_\_\_ (“the Undersigned”) promises to pay to the order of \_\_\_\_\_ (“Lender”) at its office at \_\_\_\_\_ in lawful money of the United States, the principal sum of \_\_\_\_\_ DOLLARS (\$) and to pay interest in like money on the unpaid principal amount thereof to maturity at the rate of interest of \_\_\_\_\_ percent ( \_\_\_\_\_ %) per annum, computed on the basis of 360-day year consisting of twelve 30-day months. The principal and interest shall be paid in \_\_\_\_\_ equal consecutive installments of principal and interest, each in the amount of \$ \_\_\_\_\_, in accordance with the attached Loan Amortization Schedule. The first of such installments shall be due on \_\_\_\_\_, and each of the remaining installments shall be due on the same day of each \_\_\_\_\_ thereafter, continuing through \_\_\_\_\_. Each installment of principal shall bear interest from and after the date due through the date payment is received by Lender at \_\_\_\_\_ %.

This Note is one of the Notes referred to in, and is issued pursuant to, a Loan Supplement (the “Loan Supplement”), dated as of \_\_\_\_\_, by and between the Undersigned and Lender, which Loan Supplement incorporates by reference the terms and conditions of a Master Loan and Security Agreement (“Master Agreement”) by and between the Undersigned and Lender, dated as of \_\_\_\_\_, (the Loan Supplement and Master Agreement are collectively referred to herein as the “Loan Agreement”) and the holder hereof is entitled to the benefits thereof. Terms defined in the Loan Agreement are used with the same meanings herein. This Note is secured as provided in the Loan Agreement, and is subject to prepayment only as provided therein. Reference is herein made to the Loan Agreement for a description of the provisions upon which the Note is issued and secured, and the nature and extent of the security and the rights of the holder hereof.

Upon the occurrence of any one or more of the Events of Default specified in the Loan Agreement, the unpaid principal balance of this Note, together with interest accrued to the date of payment, shall be immediately due and payable without notice or demand, although not yet due in accordance with the terms hereof.

The Undersigned hereby waives presentment, demand for payment, notice of dishonor, and any and all other notices or demands in connection with the delivery, acceptance, performance, default, or enforcement of this Note.

In the event that any holder shall institute any action for the enforcement or collection of this Note, there shall be immediately due and payable, in addition to the then unpaid principal balance hereof and any accrued interest, any late charges and all costs and expenses of such action including attorney's fees. The Undersigned and Lender in any litigation (whether or not relating to this Note) in which Lender and the Undersigned shall be adverse parties, waive trial by jury, and the Undersigned waives the right to interpose any setoff, counterclaim, or defense of any nature whatsoever.

This Note shall be governed by, and construed and interpreted in accordance with, the laws of the State of \_\_\_\_\_.

\_\_\_\_\_  
Borrower

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

Title: \_\_\_\_\_

**Loan Supplement No.  
Loan Amortization Schedule**

(values to be inserted)

**Form: I-07c**  
**Disk File Name: I-07c.rtf**

**ACKNOWLEDGMENT AND CONSENT TO ASSIGNMENT OF EQUIPMENT LEASE**

**Form Purpose**

An acknowledgment and consent of assignment of an equipment lease agreement to be used in connection with a master equipment security and loan agreement. This form is integrated with Loan and Security Agreement, Form I-07.

*Executing Parties*

The borrower.  
 The equipment lender.  
 The equipment lessee.

*See:*

Loan and Security Agreement, Form I-07

**Exhibit C**

**Acknowledgment and Consent to Assignment of Equipment Lease**

Dated: \_\_\_\_\_

[Insert name and address of Lender]

Gentlemen:

Reference is made to that certain Equipment Leasing Agreement dated as of \_\_\_\_\_, (the Equipment Leasing Agreement together with all exhibits, attachments, and schedules thereof, and ancillary and related documents are herein referred to as the "Equipment Lease") between ("Lessor"), as lessor, and \_\_\_\_\_ (the "Company"), as lessee. The Company understands that Lessor and \_\_\_\_\_ ("Lender") have entered into a Master Loan and Security Agreement, dated as of \_\_\_\_\_, (the "Master Agreement"), and a Loan Supplement No. \_\_\_\_\_ dated as of \_\_\_\_\_, together with all exhibits, attachments, and schedules thereto, and ancillary and related documents thereto (collectively referred to herein as the "Loan Agreement") and that pursuant to the Loan Agreement, Lender shall make one or more loans to Lessor to finance its acquisition of Equipment (as hereinafter defined). In consideration of Lender's financing the acquisition of the Equipment, of the mutual covenants hereinafter set forth, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Company hereby covenants and agrees with Lender as follows:

1. The Company hereby acknowledges and consents to the assignment by Lessor to Lender of all of Lessor's right, title, and interest in, to and under the Equipment Lease, including without limitation the right to receive all remaining rental payments payable under the Equipment Lease and all other monies from time to time payable to or receivable by Lessor under any of the provisions of the Equipment Lease (all such amounts hereinafter referred to as the "Monies"). The items of Equipment subject to the Equipment Lease are referred to hereinafter as the "Equipment."

The Company confirms that as of the date hereof, (a) the remaining term of the Equipment Lease is \_\_\_\_\_ months, and the Company's remaining rental obligation thereunder is to pay the sum of \$ \_\_\_\_\_ in \_\_\_\_\_ consecutive installments commencing \_\_\_\_\_, and ending \_\_\_\_\_, each in the amount of \$ \_\_\_\_\_ exclusive of applicable taxes.

2. The Company hereby represents and warrants that the documents attached hereto as Exhibit A are true and correct copies of the Equipment Lease, that all dates, amounts, equipment descriptions, and other facts set forth therein are correct (and that the rental amounts set forth therein are exclusive of applicable taxes), and that the Equipment is in its possession and control at the addresses shown in the Equipment



Lease. Further the Company represents and warrants that there are no agreements between Lessor and the Company relative to the Equipment or the lease thereof other than the Equipment Lease, and this Consent.

3. The Company agrees (i) to remit and deliver all rentals directly to Lender at the above address (or at such other address as may be specified in writing by Lender), ABSOLUTELY AND UNCONDITIONALLY, WITHOUT ABATEMENT, REDUCTION, COUNTERCLAIM, OR OFFSET, and (ii) to promptly deliver copies of all notices and other communications given or made by the Company pursuant to the Equipment Lease to Lender at the address shown above at the time as required for such delivery to Lessor, or other parties, under the Equipment Lease. The Company further agrees that (a) it shall not enter into any agreement amending, modifying, or terminating the Equipment Lease without the prior written consent of Lender, and (b) any such attempted agreement to amend, modify, or terminate the Equipment Lease without such consent shall be void.

4. Without limiting the generality of clause (i) of Paragraph 3 above, the Company hereby expressly affirms its understanding that notwithstanding any breach of or default under the Equipment Lease by Lessor, that the Company's obligations under the Equipment Lease are absolute and unconditional, and that the Company's recourse for any such breach by Lessor is solely against Lessor.

5. The Company hereby affirms that all representations and warranties made by it in the Equipment Lease are true and correct on the date hereof with the same force and effect as if made on the date hereof, and that Lender may rely upon the same.

6. The Company hereby affirms its understanding that the assignment made by Lessor to Lender is an assignment of rights, benefits, and remedies only and that Lender has not assumed any duties or obligations whatsoever as lessor under the Equipment Lease, and shall not, now or hereafter, have any duty or obligation as lessor under the Equipment Lease, notwithstanding its receipt of Payments due under the Equipment Lease or its exercise of any other rights and/or remedies of "Lessor" thereunder, and the Company hereby agrees that it shall not now or hereafter look to Lender for performance or satisfaction of any such duties or obligations.

7. The Company will furnish to Lender (a) as soon as available, but in any event not later than 120 days after the end of each fiscal year, its (a) consolidated balance sheet as at the end of such fiscal year, and consolidated statements of income and changes in financial position for such fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved and certified by certified public accountants selected by the Company and acceptable to Lender; (b), if applicable, as soon as available, but in any event not later than 90 days after the end of each of the first three quarterly periods of each fiscal year, the Form 10-Q report filed by Lessee with the Securities and Exchange Commission for such quarterly period, certified by the chief financial officer of Lessee; and (c) promptly, such additional financial and other information as Lender may from time to time reasonably request.

8. Section \_\_\_\_\_ of the Equipment Lease is hereby amended by adding the following:

*(Author's Note: This is to be conformed as necessary.)*

9. The Equipment Lease is hereby amended by deleting Section \_\_\_\_\_ thereof and substituting the following:

*(Author's Note: This is to be conformed as necessary.)*

10. The Company agrees to furnish to Lender, before Lender shall make any loan to Lessor pursuant to the terms of the Loan Agreement, (a) the written opinion of counsel for the Company, as to matters contained in paragraphs [ \_\_\_\_\_ through \_\_\_\_\_ ] inclusive of Lessee's Representations and Warranties set forth in the Equipment Lease, and as to such other matters incident to the transactions contemplated by the Equipment Lease and the Agreement as Lender may request; and (b), if applicable, the Form 10-Q report filed by lessee with the Securities and Exchange Commission for such quarterly period ending \_\_\_\_\_, in form and substance satisfactory to Lender and certified by the chief financial officer of Lessee.

11. The Company hereby affirms that it shall not voluntarily terminate the Equipment Lease for any reason whatsoever.

12. In consideration of the covenants and agreements made by the Company herein, Lender hereby agrees that so long as no Event of Default (as defined in the Equipment Lease) shall have occurred and be continuing, and the Company shall not be in default of its obligations hereunder to Lender, neither Lender nor any party claiming through or under Lender, will disturb the Company's quiet and peaceful possession of the Equipment and its unrestricted use thereof for its intended purpose under the terms of the Equipment Lease.

13. This Consent may not be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by the party against which enforcement of a change, waiver, discharge, or termination is sought. This Consent shall be binding upon and inure to the benefit of Lender and the Company and their respective successors and assigns. This Consent shall be governed by, and construed and interpreted in accordance with, the laws of the State of [Insert appropriate state, such as New York].

IN WITNESS WHEREOF, the Company has executed this Consent as of the \_\_\_\_\_ day of \_\_\_\_\_ .

\_\_\_\_\_  
Company

By: \_\_\_\_\_  
(Insert name)

Title: \_\_\_\_\_

ACKNOWLEDGED AND AGREED:

\_\_\_\_\_  
Lessor

By: \_\_\_\_\_  
(Insert name)

Title: \_\_\_\_\_

\_\_\_\_\_  
Lender

By: \_\_\_\_\_  
(Insert name)

Title: \_\_\_\_\_

**Form: I-07d**  
**Disk File Name: I-07d.rtf**

**SUPPLEMENT**

**Form Purpose**

A supplement to be used for individual loan takedowns in connection with a master equipment loan and security agreement. This form is integrated with Loan and Security Agreement, Form I-07.

*Executing Parties*  
The borrower.

*See:*  
Loan and Security Agreement, Form I-07

**Exhibit D**  
**Supplement**

This Supplement is executed and delivered by \_\_\_\_\_ (“Borrower”) pursuant to the terms of a Loan and Security Agreement (“Loan Agreement”) dated as of \_\_\_\_\_, between Borrower and \_\_\_\_\_ (“Lender”). Terms defined in the Loan Agreement shall have the respective meanings given them in the Loan Agreement unless otherwise defined herein or unless the context otherwise requires.

1. Borrower hereby confirms that the proceeds of the Loan made this date shall be used to purchase the items of personal property (“Unit of Equipment”) set forth below:

<i>Qty.</i>	<i>Model</i>	<i>Mfgs.</i>	<i>Description</i>	<i>Serial No.</i>	<i>Cost</i>
-------------	--------------	--------------	--------------------	-------------------	-------------

[Insert equipment information]

2. Borrower hereby represents and warrants that the above described items of personal property have been delivered to it, duly assembled, and are in good working order at: \_\_\_\_\_.

3. Borrower hereby affirms that the representations and warranties set forth in Section 12 of the Loan Agreement are true and correct as of the date hereof.

4. Borrower hereby affirms that Lender has made a Loan to it for the purchase of the above described Unit of Equipment, which loan is evidenced by a Note, in the principal amount of \$ \_\_\_\_\_ dated \_\_\_\_\_.

5. Borrower hereby affirms that Lender has a security interest in the items of personal property described above as set forth in Section 9 of the Loan Agreement.

\_\_\_\_\_  
Borrower:

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

Title: \_\_\_\_\_

**Form: m-01**  
**Disk File Name: m-01.rtf**

**CREDIT APPLICATION**

**Form Purpose**

Equipment leasing company credit approval guideline handout.

**ABLE LEASING COMPANY**  
**Lessee Credit Application**

**Company Information**

Legal Name: \_\_\_\_\_

Trade Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_

Years in Business: \_\_\_\_\_

Type of Business (Please Check One):

Proprietorship \_\_\_ Partnership (Gen or LP) \_\_\_ Corporation \_\_\_ Limited Liability Company \_\_\_

Description of Business: \_\_\_\_\_

**Reference Credit Information**

Bank Reference: \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_

Account Number: \_\_\_\_\_

Contact: \_\_\_\_\_

Trade Reference: \_\_\_\_\_

Telephone Number & Contact: \_\_\_\_\_

Trade Reference: \_\_\_\_\_

Telephone Number & Contact: \_\_\_\_\_

Trade Reference: \_\_\_\_\_

Telephone Number & Contact: \_\_\_\_\_

**Owner Information**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

**Equipment Information**

Equipment Description: \_\_\_\_\_

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

Cost: \_\_\_\_\_ Financing Term: \_\_\_\_\_

**Form: m-02**

**Disk File Name: m-02.rtf**

**CREDIT GUIDELINES—SMALL TICKET**

**Form Purpose**

Equipment leasing company credit approval guideline handout.

**ABLE LEASING COMPANY**

**Lessee Credit Approval Guidelines**

Your creditworthiness is the most important consideration in the lessor's decision. If you are aware of any credit problem you've had during your period in business, please bring it to our attention so we may work with you to package your financing and have it presented in the best possible manner. Chances of a subsequent approval are reduced if a problem is discovered after you've submitted your financing package.

To qualify for financing under the ALC Quick Finance Program, your business must meet the following guidelines. If it does not, please call us to discuss your financing. We may be able to obtain an exception if credit augmentation is possible. Remember, we're here to work to get your business financing needs met.

Able Leasing Company will conduct a preliminary "lease acceptability review" before formally submitting a transaction to our Credit Committee to head off potential problems. Very often issues that could result in a turndown can be addressed to facilitate an approval before the application is submitted.

**Guidelines**

**Minimum Time in Business**

You must have a minimum verifiable time in business of two years. Three years is required in the case of applications over \$25,000 and four years in the case of applications over \$100,000.

**Existing Banking Relationship**

You must have a business bank relationship of at least two years and the bank account must show a minimum low four figure average balance. In the case of transactions exceeding \$25,000, the minimum average account balance must be in the low five figures. There cannot be any overdrafts or check returns for insufficient funds.

**Trade References**

You must provide three significant business trade references, each of whose relationship goes back at least six months. COD trade references will not be acceptable.

**Good Personal Credit**

Personal credit reports must be forthcoming that contain no derogatory information.

**Financial Statements**

Financial statements must be supplied for transactions exceeding \$25,000. Current assets must exceed current liabilities and, for transactions in excess of \$50,000, a minimum equity of \$75,000 must be present.

**Form: m-03**  
**Disk File Name: m-03.rtf**

## **FINANCING INSTRUCTIONS—SMALL TICKET**

### **Form Purpose**

Equipment leasing company finance instruction handout.

---

### **ABLE LEASING COMPANY** **Financing Instructions**

Your application for equipment financing can be processed quickly and your financing will be trouble-free, provided you carefully follow the instructions below. If you have any questions, don't guess. Call us and we'll help.

#### **1. Check Over the Lessee Credit Approval Guidelines**

If your business qualifies, go to Step 2. If it does not, we will be happy to explore with you any alternatives or credit augmentation in order for you to obtain financing.

#### **2. Fill Out and Fax Us the ALC Credit Application**

The application must be complete or it cannot be processed.

#### **3. Tell Us Now About Any Personal or Business Credit Problems**

If you have had, or now have, any credit problem, such as late credit card payments or judgments, describe them on a sheet included along with your credit application.

#### **4. Complete All Paperwork Carefully**

When your financing is approved, you will receive the necessary paperwork for documenting the financing. Complete it exactly as indicated and return it to us in the return envelope.

#### **5. Fill Out and Return the Equipment Lease Acceptance Form**

When your equipment arrives and you are satisfied that it is operating to your complete satisfaction, fill out and return to us the equipment acceptance-for-lease form included with your financing documentation.

#### **6. Make Sure You Deliver Your Financing Payments On Time**

If you don't, it may damage your credit rating.

#### ***Able Leasing Company***

Fax Number:

Telephone Number:

Address:

24-Hour OnLine HotLine:

**Form: m-04****Disk File Name: m-04.rtf****FINANCING LEASE RATE SHEET—SMALL TICKET****Form Purpose**

Equipment leasing company lease rate sheet handout.

**Lessee Financing Rates and Terms**

The Able Leasing Company lease financing rates and terms are as follows:

<i>Transaction Size*</i>	<i>Lease Term</i>	
	<i>3 Years</i>	<i>5 Years</i>
\$1,500 to \$4,999	%	%
\$5,000 to \$24,999	%	%
\$25,000 to \$50,000	%	%

\*Financing for transactions in excess of \$50,000 will also be available. Various end-of-lease options will be offered, such as fair market and low fixed-price purchase and renewal options, as well as \$1 buyouts. The lease financing interest rates charged will vary with the option chosen; the lowest rates are typically provided by fair market end-of-lease option leases.

**Form: m-05**  
**Disk File Name: m-05.rtf**

**MORTGAGE—INDEMNITY**

**Form Purpose**

A form of mortgage used to secure the obligations of the guarantor of equipment lease agreement obligations.

*Executing Parties*

The equipment lease guarantor.

*See:*

Guaranty, Forms g-01 through g-03

**Indemnity Mortgage**

THIS INDEMNITY MORTGAGE, made this \_\_\_\_\_ day of \_\_\_\_\_, by and between \_\_\_\_\_, (the "Mortgager"), with a place of business at \_\_\_\_\_ and \_\_\_\_\_, (the "Mortgagee"), with a place of business at \_\_\_\_\_.

WITNESSETH:

WHEREAS, Mortgagor has requested Mortgagee, as Lessor, to enter into a Lease or Leases [the "Lease(s)"] with respect to certain specified equipment;

WHEREAS, pursuant to Mortgagor's request, Mortgagee has or will enter into the Leases with certain specified lessees;

WHEREAS, in order to induce Mortgagee to enter into the Leases, Mortgagor, by Guaranty dated \_\_\_\_\_, has agreed to guarantee Mortgagee from any loss it may sustain as a result of the Leases, and Mortgagor has agreed to secure the Guaranty by this Mortgage; and

WHEREAS, as a condition precedent to the making of the Leases, Mortgagee has required the execution of this Mortgage for purposes of securing the performance of the terms and conditions of the Indemnity of Mortgagor, and to secure Mortgagee from any loss it may sustain as a result of a Lessee default in any or all of the Leases (the "Mortgage Debt").

NOW, THEREFORE, in consideration of the premises and the sum of One Dollar (\$1.00) and other good and valuable considerations, receipt whereof is hereby acknowledged, Mortgagor grants, assigns, and conveys unto Mortgagee, its successors and assigns, all that lot(s) of ground situate in \_\_\_\_\_, State of \_\_\_\_\_, known as \_\_\_\_\_, said lot(s) being more particularly described on Schedule A attached hereto and made a part hereof.

TOGETHER with the building and improvements thereupon and all the rights, roads, alleys, ways, waters, privileges, easements, profits, and appurtenances thereunto belonging or in any wise appertaining, and including any right, title, interest, and estate hereafter acquired by Mortgagor in the Property (defined below) granted herein.

ALSO TOGETHER with and including as part of the buildings and improvements erected on the aforesaid lot of ground all building materials and other chattels on the premises intended to be incorporated in the improvements thereon, and all fixtures, equipment, accessories, and furniture which is attached to or affixed to the buildings and improvements, including kitchen cabinets, hot water heaters, gas and electric ranges, laundry equipment and tubs, medicine cabinets, lighting fixtures, heating plant, airconditioning equipment, piping, tubing, duct work, radiators, storm windows, storm doors, screens, screen doors, window shades and awnings, all of which fixtures, accessories, and equipment now on or hereafter placed upon the lot or lots of



ground are hereby declared to be by Mortgagor fixtures and permanent additions to the realty and intended to be included as part of the lot or lots of ground hereby mortgaged.

TO HAVE AND TO HOLD the said lot or lots of ground, improvements, and other property and rights described above (collectively, the "Property") unto Mortgagee, its successors and assigns, in fee simple.

PROVIDED, that if Mortgagor, their heirs, personal representatives, and assigns, shall cause to be paid the Mortgage Debt and interest thereon from the date hereof, and upon the termination, release, or other voidance of the Leases and payment to Mortgagee of all costs, charges, and expenses in connection therewith, without any loss or further liability on the part of Mortgagor, and shall perform all of the covenants and agreements herein on their part contained, then this Mortgage shall be void.

MORTGAGOR HEREBY COVENANTS:

A. To pay, when due, all ground rents, taxes, water rents, assessments, public and other dues and charges levied or assessed or which may be levied or assessed on the Property; and not to permit any lien or encumbrance on the Property except the lien of this Mortgage, any statutory lien of any kind except liens for taxes and benefit charges not then delinquent, or any lien and or encumbrance listed on Schedule B attached hereto.

B. To keep the Property in good order, condition, and repair and to permit Mortgagee to enter upon and inspect the same; to make all proper renewals, replacements, and additions of and to the Property; not to permit or suffer any waste thereof; and not to tear down the improvements or materially change them or permit them to be torn down or materially changed, without the written consent of Mortgagee.

C. To keep the Property insured against loss or damage by fire and such other hazards, casualties, and contingencies as may be required from time to time by Mortgagee, such insurance to be written through an agent or broker selected by Mortgagor in such form and in such companies as may be approved by Mortgagee, and in amounts satisfactory to Mortgagee; to cause a standard mortgagee clause satisfactory to Mortgagee to be attached to such policy or policies providing that all payments thereunder shall be made to the order of Mortgagee as its interest may appear, and, at the request of Mortgagee, to deliver such policy or policies and all renewals thereof to Mortgagee at its place of business, or at such other place as it may designate in writing. All sums payable under such policy or policies shall be paid to Mortgagee and all sums received by Mortgagor on account of such policy or policies shall be paid over promptly to Mortgagee and Mortgagee at its discretion, may apply such sums, in whole or in part, to the repair, restoration, and replacement of the damaged or destroyed Property or toward the payment of the mortgage indebtedness. In the event of foreclosure of this Mortgage or other transfer of title to the Property or any parcel thereof in extinguishment of the Mortgage Debt, Mortgagee is authorized to cancel any insurance policy then in force and the unearned premium shall be applied to the payment of any sums due mortgagee under the terms of this Mortgage.

D. To comply promptly with all laws, ordinances, and regulations affecting the Property or its use.

THE PARTIES HERETO FURTHER COVENANT AND AGREE:

1. Mortgagor warrant specially the Property hereby conveyed and will execute such further assurances thereof as may be requisite.

2. In the event of any default under the terms of this Mortgage or any letter of credit or other documents relating thereto, or in the event a receiver or trustee is appointed for the Property of Mortgagor, or any of them, either in bankruptcy or in equity, or in the event Mortgagor, or any of them, execute a deed of trust of their Property for the benefit of creditors, then the whole Mortgage Debt, at the option of Mortgagee, shall be and become due and payable.

3. It shall be deemed a default under this Mortgage, if, without the written consent of Mortgagee, (a) Mortgagor shall sell, cease to own, assign, transfer, or dispose of all or any part of the mortgaged Property, or (b) the mortgaged Property is abandoned.

4. In the event of any default in any of the covenants of this Mortgage, Mortgagor, in accordance with the general or local rules, regulations, or laws of the State of relating to mortgages, including any amend-

ments thereof or supplements or additions thereto which do not materially change or impair the remedy, do hereby (a) declare their assent to the passage of a decree for the sale of the Property and (b) authorize Mortgagee, its successors and assigns, to sell the Property. Any such sale, whether under the assent to a decree or power of sale, may be made by the person or persons authorized to sell either as an entirety or in such separate parcels and on such terms and at such places and in such manner as it, they, or he may deem advisable.

5. Upon any sale of the Property under this Mortgage, whether under the assent to a decree, the power of sale, or by equitable foreclosure, the proceeds of such sale shall be applied as follows: first, to the payment of all expenses incident to the sale, including a counsel fee of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for conducting the proceedings if without contest, but if legal services be rendered to the trustee appointed by such decree or to Mortgagee or to the party selling under the power of sale in connection with any contested matter in the proceedings, then such other counsel fees and expenses shall be allowed out of the proceeds of sale as the court may deem proper; and also a commission to the trustee in the amount of ( \_\_\_\_\_ %) percent of the gross sales and a commission of ( \_\_\_\_\_ %) percent of the gross sales to the auctioneer conducting the sale, and also any liens prior to the lien of this Mortgage unless the sale is made subject to such prior liens; second, to the payment of all claims of Mortgagee hereunder, whether they have matured or not, with interest thereon until final ratification of the auditor's report; and third, the balance, if any, to Mortgagor, or to any person or persons entitled thereto, upon the surrender of the Property to the purchaser, less any expenses incurred in obtaining possession.

6. Immediately upon the first insertion of the advertisement or notice of sale, there shall be and become due and owing by Mortgagor, and each of them, to the party inserting the advertisement or notice, all expenses incident to such advertisement or notice, all court costs, attorneys' fees, and all expenses incident to the foreclosure proceedings under this Mortgage and a commission to the trustee of ( \_\_\_\_\_ %) on the total amount of the mortgage indebtedness, principal and interest, then due, and such party shall not be required to receive the principal and interest only of the debt in satisfaction thereof, unless the same be accompanied by a tender of such expenses, costs, attorneys' fees, and commission.

7. If Mortgagee shall incur any expense or expend any sums, including reasonable attorneys' fees, whether in connection with any action or proceeding or not, to sustain the lien of this Mortgage or its priority, or to protect or enforce any of its rights hereunder, or to recover any indebtedness hereby secured, or for any title examination or title insurance policy relating to the title to the Property, all such sums on notice and demand shall be paid by Mortgagor, together with interest thereon at the rate of interest of ( \_\_\_\_\_ %) percent or the maximum interest rate permitted by law, and shall be a lien on the premises subordinate to the lien of this Mortgage, and in any action or proceeding to foreclose this Mortgage, or to recover or collect the debt secured hereby, the provisions of law respecting the recovery of costs, disbursements, and allowances shall prevail unaffected by this covenant.

8. Should Mortgagor fail or neglect to pay any ground rent, taxes, assessments, public or other dues or charges levied or assessed or which may be levied or assessed on the Property or on the Mortgage Debt and interest, when due or to keep the Property in proper repair, or to keep the Property insured as agreed herein, or shall permit any lien or encumbrance upon the Property except as aforesaid, Mortgagee may make such payments or repairs or insure the Property against such loss in such an amount as may be necessary to secure the Mortgage Debt, and any sum so paid shall be added to the principal of the Mortgage Debt and shall bear interest from such time at the rate of interest above stated in Paragraph 7.

9. Should all or any part of the Property be condemned or taken through eminent domain proceedings, all or such part of any award or proceeds thereof as Mortgagee in its sole discretion may determine, in writing, shall be paid to Mortgagee and applied to the payment of the Mortgage Debt and all such proceeds are hereby assigned to Mortgagee.

10. Mortgagee may at any time renew this Mortgage, extend the time for payment of the debt or any part thereof or interest thereon and waive any of the covenants or conditions of this Mortgage, in whole or in part, either at the request of Mortgagor or of any person having an interest in the Property, take or release other security, or any part of the Property, or such other security, grant extensions, renewals, or indulgences therein, or apply to the payment of principal of and interest on the Mortgage Debt any part or all of the proceeds obtained by sale, foreclosure, or receivership as herein provided, without resort or regard to other security, all without in any way releasing Mortgagor, or any of them, from any of the covenants or conditions of

this Mortgage, or releasing the unreleased part of the Property herein described from the lien of this Mortgage for the amount of the Mortgage Debt, and may release any party primarily or secondarily liable on the Mortgage Debt without releasing any other party liable thereon and without releasing the Property subject thereto.

11. Until default is made in any covenant or condition of this Mortgage, Mortgagor shall have possession of the Property. Upon default in any of the covenants or conditions of this Mortgage, Mortgagee shall be entitled without notice to Mortgagor, or any of them, to the immediate possession of the Property and to the appointment of a receiver of the Property to operate the same, without regard to the adequacy thereof as security for the Mortgage Debt, and Mortgagor shall pay all costs in connection therewith, and upon any default, whether or not a receiver be appointed, the rents and profits of the Property are hereby assigned to Mortgagee as additional security.

12. Upon default in any of the covenants or conditions of this Mortgage, any funds on deposit with Mortgagee in the names of Mortgagor or any of them, and all securities and Property of Mortgagor or any of them, in the possession of Mortgagee whether as collateral security or held in a mortgage expense account or otherwise, may be held by Mortgagee as additional security and may be applied to the payment of any sums due Mortgagee under the terms of this Mortgage.

13. The rights, powers, privileges, and discretions specifically granted to Mortgagee under this Mortgage are not in limitation of but in addition to those to which Mortgagee is entitled under any general or local law relating to mortgages in the State of \_\_\_\_\_, now or hereafter existing.

14. Before the full payment of the Mortgage Debt, Mortgagee, in its discretion, may make advances and readvances of funds to Mortgagor and renew, modify, or extend any letter of credit to the extent permitted by law and such sums shall be secured by this Mortgage.

15. The rights, powers, privileges, and discretions to which Mortgagee may be entitled herein shall inure to the benefit of its successors and assigns, are cumulative and not alternative, may be enforced successively or concurrently, and failure to exercise any of them shall not be deemed a waiver thereof and no waiver of any one shall be deemed to apply to any other nor shall it be effective unless in writing and signed by Mortgagee.

16. The covenants, agreements, conditions, and limitations of or imposed upon Mortgagor shall be binding upon their respective heirs, personal representatives, successors, and assigns.

17. The loan secured hereby was transacted solely for the purpose of carrying on or acquiring a business or commercial investment within the meaning of \_\_\_\_\_ (cite, if applicable, governing commercial law statute section) of the (cite, if applicable, the appropriate state law).

18. Whenever used herein, the singular shall include the plural, the plural the singular and the use of any gender shall be applicable to all genders.

WITNESS the signature and seal of Mortgagor, the day and year first above written.

\_\_\_\_\_, Mortgagor

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

(CORPORATE SEAL)

Title: \_\_\_\_\_

WITNESS:

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, to wit:

I HEREBY CERTIFY, That on this \_\_\_\_\_ day of \_\_\_\_\_, before me, the subscriber, a Notary Public of the State of \_\_\_\_\_, in and for the County of \_\_\_\_\_, personally appeared \_\_\_\_\_, who, being by me duly sworn, did dispose and say that deponent resides at \_\_\_\_\_; deponent is the \_\_\_\_\_ of the within named Mortgagor described in and which executed, the foregoing instrument; deponent knows the seal of said Mortgagor; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Mortgagor; and deponent signed deponent's name thereto by like order.

AS WITNESS my hand and notarial seal.

Notary Public

MY COMMISSION EXPIRES:

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, to wit:

I HEREBY CERTIFY, That on this \_\_\_\_\_ day of \_\_\_\_\_, before me, the subscriber, a Notary Public of the State of \_\_\_\_\_, in and for the County of \_\_\_\_\_, personally appeared \_\_\_\_\_, the subscribing witness to the foregoing instrument who, being by me duly sworn, did dispose and say that deponent resides at \_\_\_\_\_; deponent knows \_\_\_\_\_ to be the individual described in, and who executed, the foregoing instrument; that he/she, said subscribing witness, was present and saw him/her execute the same; and that he/she, said witness, at the same time subscribed his/her name as witness thereto.

AS WITNESS my hand and notarial seal.

Notary Public

MY COMMISSION EXPIRES:

State of \_\_\_\_\_

County of \_\_\_\_\_

RECORDED ON THE \_\_\_\_\_ day of \_\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_-m. in Liber

of Mortgages at page \_\_\_\_\_ and examined.

Clerk

Please record and return to:

(Insert name and address of Mortgagee)

**Schedule A**

(description of property)

**Schedule B**

(liens and/or encumbrances)

Form: o-01  
Disk File Name: o-01.rtf

**BANK REFERENCE WORKSHEET**

**Form Purpose**

An equipment leasing company lessee bank reference verification worksheet.

---

**Bank Reference Form**

FINAL APPROVAL AND CREDIT INFORMATION ON: \_\_\_\_\_

APPROVED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

CREDIT AGENCY RATING: \_\_\_\_\_ D & B : \_\_\_\_\_

[ ]: \_\_\_\_\_

[ ]: \_\_\_\_\_

YEARS IN BUSINESS: \_\_\_\_\_

TYPE OF BUSINESS: \_\_\_\_\_ NET WORTH (if known): \_\_\_\_\_

BANK INFORMATION	1ST BANK	2ND BANK
DATE CLEARED	_____	_____
NAME OF BANK	_____	_____
BANK OFFICER	_____	_____
CHECKING INFORMATION		
DATE OPENED	_____	_____
AVERAGE BALANCE	_____	_____
RATING	_____	_____
LOAN INFORMATION		
DATE OPENED	_____	_____
INDIV. HIGH AMOUNT	_____	_____
AVG. BALANCE	_____	_____
UNSECURED	_____	_____
SECURED	_____	_____
SECURITY	_____	_____
RATING	_____	_____
BANK COMMENTS	_____	_____

CREDIT APPROVAL

NOTES \_\_\_\_\_

**Form: o-02****Disk File Name: o-02.rtf****MASTER DOCUMENTATION WORKSHEET/CHECKLIST****Form Purpose**

An equipment leasing company master documentation worksheet/checklist.

**Master Documentation Worksheet/Checklist**

Lessee Name: \_\_\_\_\_ Lease Application # \_\_\_\_\_

CREDIT: Check Off Documents Required For Approval

Date: \_\_\_\_\_ Initials \_\_\_\_\_

SALES	Req'd	Rec'd		Req'd	Rec'd
Signed Lease	( )		Vendor Recourse	( )	( )
Advance Rental Check	(X)	( )	Purchase Order from Lessee	( )	( )
Signed Delivery Receipt	(X)	( )	Life Ins Policy or Assign	( )	( )
Vendor Invoice		( )	Tax Exemption Certificate	( )	( )
Personal Guarantee	( )	( )	Landlord Waiver *	( )	( )
Corporate Guarantee	( )	( )	Mortgage Waiver *	( )	( )
Corporate Resolution	( )	( )	* Req'd For Vendor Payment		
Credit Info Obtained at Signing	( )	( )			
(Specify) _____	( )	( )			
_____	( )	( )	Other _____	( )	( )

**SALES REVIEW**

Documents	Process	Complete
Advance Rental Check	Currently dated, payable to Lessor/Agent, Signed	( )
	Company name matches Lessee name	( )
	Amount matches Lease	( )
	Make two copies for file	( )
Signed Lease	No cross-outs, front and back	( )
Lease to Application	Signature name and title match	( )
	Rate and term match	( )
	Monthly rental computed properly	( )
	Lessee name and address match	( )
	Equipment description matches	( )
	Equipment location matches	( )

NOTE: If all documents are received except the Vendor Invoice, pass file to next step.

Performed By: \_\_\_\_\_ Date: \_\_\_\_\_

DOCUMENTATION CHECKS

<i>Documents</i>	<i>Process</i>	<i>Complete</i>
Master Documents	Required Documents as indicated above match	( )
	Application approval terms	( )
	Double-check all documents received and verify sales review	( )
Signed Lease	“Good signature”-Corp. Officer for Corp., Partner for Partnership, LLC Representative Proprietor for Proprietorship	( )
	All copies legible and complete	( )
Delivery Receipt	Signer is same on both documents	( )
Personal Guarantee	Signed without a title	( )
	Home telephone number in file	( )
Corporate Resolution	Signed by Corporate Secretary	( )
	Person authorized in resolution is lease signer	( )
Purchase Order	P.O. sent	( )
	Equipment location and description on P.O. matches signed lease	( )
Purchase Order from Lessee	Made out to Lessor	( )
	Lease term and payments spelled out	( )
	Equipment location and description matches signed lease	( )
Invoice to Signed Lease Application	Cost Matches	( )
	Equipment description matches	( )
	Equipment location matches	( )
Invoice	Billed (Sold) to Lessor, not Lessee	( )
	Equipment serial number included	( )
	Extensions and total correct (run tape)	( )
Telephone Verification of Equipment Delivery	Equipment installed and running properly	Date: _____
	Telephone Verification script in folder	( )
	Performed By: _____ Date: _____	
	Lease ready to be signed by credit manager.	

---

LESSEE \_\_\_\_\_

LEASE COST \_\_\_\_\_ LEASE TYPE \_\_\_\_\_ TERM \_\_\_\_\_ RESIDUAL: FMV \_\_\_\_\_

LEASE NUMBER \_\_\_\_\_ CUSTOMER NUMBER \_\_\_\_\_ SALES REP \_\_\_\_\_

COMMENCEMENT DATE \_\_\_\_\_ 2ND PAYMENT DUE DATE \_\_\_\_\_

---

BOOKING CHECKLIST

<i>Function</i>	<i>Date Completed</i>
Booked into lease register	_____
Thank-you letter sent	_____
Invoicing setup	_____
Invoice for 2nd payment sent	_____
Vendor paid	_____
UCC-1 filed	_____
UCC-1 filing copy received	_____
Insurance received	_____
Lease folder completed	_____



**Form: o-03****Disk File Name: o-03.rtf****NEW LESSEE WELCOME LETTER****Form Purpose**

An equipment leasing company lessee welcome/thank-you letter.

*Executing Parties*

The lessor.

---

[Letterhead of Leasing Company]

(Insert name and address of new lessee)

Re: Lease Number:

Equipment Description:

Dear \_\_\_\_\_ :

We would like to take this opportunity to thank you for calling upon us to handle your recent capital equipment lease. We are pleased to have been chosen.

Enclosed is your copy of the Lease Contract, as well as a request for insurance on the equipment. It is EXTREMELY IMPORTANT THAT THIS INSURANCE REQUEST BE FULFILLED IMMEDIATELY PURSUANT TO PARAGRAPH \_\_\_\_\_ OF THE LEASE.

All payments are due on or before the due date shown on your rent invoice. A percent ( \_\_\_\_\_ %) late charge, with a minimum of \$10.00, will be added to any late payments, to the extent allowed by law.

It is important that you understand paragraph \_\_\_\_\_ of your lease contract, which states that you as the lessee are responsible for reimbursing the lessor for all taxes, which includes the property tax related to your equipment, if applicable.

We appreciate this opportunity to serve you and trust that our business relationship will be mutually enjoyable. Please call us for further equipment that you wish to lease.

Very truly yours,

**Form: o-04**  
**Disk File Name: o-04.rtf**

**TAX NOTIFICATION—PERSONAL PROPERTY**

**Form Purpose**

An equipment leasing company lessee personal property tax notification and information memorandum.

*Executing Parties*  
The lessor.

**Tax Notification**

TAX NOTIFICATION

To: (Insert name and address of lessee)

From: (Insert name and address of leasing company)

RE: Personal Property Tax

In accordance with Section \_\_ of your equipment lease, you are responsible for all taxes related to your leased equipment.

Personal Property Tax is charged by your state once per year. We are responsible for collecting this tax from you and paying it to the State.

To expedite the collection of the Personal Property Tax, please fill in the information at the bottom of this tax notification memorandum. This will help us insure proper credit to your account and avoid delinquent taxes.

Thank you for your cooperation.

PLEASE RETURN COMPLETED FORM TO US WITH YOUR NEXT PAYMENT.

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

Lease Number: \_\_\_\_\_

County Where Equipment Is Located: \_\_\_\_\_

Zip Code Where Equipment Is Located: \_\_\_\_\_

**Form: o-05**  
**Disk File Name: o-05.rtf**

**TRADE REFERENCE WORKSHEET/REPORT**

**Form Purpose**

An equipment leasing company lessee trade reference worksheet.

---

**Trade Reference Worksheet/Report**

DATE \_\_\_\_\_

LESSEE \_\_\_\_\_

INVESTIGATOR \_\_\_\_\_

VENDOR/SUPPLIER NAME \_\_\_\_\_

PHONE NO. \_\_\_\_\_

CONTACT \_\_\_\_\_

PRINCIPAL PRODUCTS \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PRIME SUPPLIER OF \_\_\_\_\_

INVOICE TERMS \_\_\_\_\_

OPEN DATE \_\_\_\_\_

HIGHEST CREDIT \_\_\_\_\_

PAYMENT HISTORY \_\_\_\_\_

DISCOUNT \_\_\_\_\_

PROMPT \_\_\_\_\_

0-30 DAYS \_\_\_\_\_

30-60 DAYS \_\_\_\_\_

60-90 DAYS \_\_\_\_\_

OVER 90 DAYS \_\_\_\_\_

COMMENTS

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Form: o-06**  
**Disk File Name: o-06.rtf**

**TRANSACTION SUMMARY WORKSHEET**

**Form Purpose**

An equipment leasing company lease transaction summary worksheet.

---

**Lease Summary Worksheet**

[For Transactions of \$50,000 or More]

I Name: \_\_\_\_\_

Trade Name: \_\_\_\_\_

Address: \_\_\_\_\_

Business Type: \_\_\_\_\_

II Equipment Funding Dollar Amount: \_\_\_\_\_

III Term: \_\_\_\_\_ Months

IV Rental:

Number of Advance Payments: \_\_\_\_\_

Total Advance Payment Amount: \$ \_\_\_\_\_

Number of Periodic Rental Payments: \_\_\_\_\_

Periodic Rental Payment Amount: \$ \_\_\_\_\_

End-of-Lease Equipment Residual Dollar Amount: \$ \_\_\_\_\_

or as a percentage of Equipment Cost: \$ \_\_\_\_\_ %

V Equipment Description: \_\_\_\_\_

Manufacturer: \_\_\_\_\_

Model Number: \_\_\_\_\_

New or Used: \_\_\_\_\_

VI Principals/Owners of Lessee

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Home Addresses: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

Background, history:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Home Addresses: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

Background, history:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Home Addresses: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

Background, history:

VII Lessee Financial Overview:

VIII Guaranties:

IX References:

X Recommendation:

**Form: o-07**  
**Disk File Name: o-07.rtf**

**TRANSACTION WORKSHEET/CHECKLIST**

**Form Purpose**

An equipment leasing company small ticket transaction worksheet/checklist.

---

**Transaction Worksheet/Checklist**

LESSEE NAME: \_\_\_\_\_

LESSOR NAME: \_\_\_\_\_

APPROVED BY: \_\_\_\_\_

GUARANTORS: \_\_\_\_\_

CREDIT AGENCIES: \_\_\_\_\_

PERSONAL FINANCIALS \_\_\_\_\_

CORPORATE FINANCIALS \_\_\_\_\_

TAX RETURNS \_\_\_\_\_

OTHER \_\_\_\_\_

**SUPPLIERS/VENDORS TO BE PAID:**

Name

Amount

**DOCUMENTS & REQUIREMENTS**

NAME VERIFICATION: \_\_\_\_\_

LEASE AGREEMENT: \_\_\_\_\_

SCHEDULE: \_\_\_\_\_

D&A CERTIFICATE: \_\_\_\_\_

INVOICE: \_\_\_\_\_

ASSIGNMENT:      With Recourse \_\_\_\_\_      Without Recourse \_\_\_\_\_

GUARANTY:      Personal \_\_\_\_\_      Corporate \_\_\_\_\_

UCC FILING: \_\_\_\_\_

COMMENTS: \_\_\_\_\_

STATE: \_\_\_\_\_

COUNTY: \_\_\_\_\_

FIXTURE: \_\_\_\_\_

INSURANCE: \_\_\_\_\_

LIEN SEARCH: \_\_\_\_\_

LANDLORD WAIVER: \_\_\_\_\_

MORTGAGE WAIVER: \_\_\_\_\_

COLLATERAL PLEDGE AGREEMENT: \_\_\_\_\_

INDEMNITY MORTGAGE: \_\_\_\_\_

BILL OF SALE: \_\_\_\_\_

PHYSICAL AUDIT: \_\_\_\_\_

SUBORDINATION: \_\_\_\_\_

**Form: o-08**  
**Disk File Name: o-08.rtf**

**VERIFICATION AND AUDIT WORKSHEET**

**Form Purpose**

An equipment leasing company internal transaction verification worksheet.

---

**Verification and Audit Form**

DATE: \_\_\_\_\_

TIME: \_\_\_\_\_

LEASE NO.: \_\_\_\_\_

LESSEE: \_\_\_\_\_

GUARANTOR: \_\_\_\_\_

SIGNATORY: \_\_\_\_\_

TELEPHONE NUMBER CALLED: \_\_\_\_\_

NAME OF PERSON CALLED: \_\_\_\_\_

IS ALL THE EQUIPMENT DELIVERED? \_\_\_\_\_

IS ALL THE EQUIPMENT FUNCTIONING SATISFACTORILY? \_\_\_\_\_

IS THE VENDOR EXPECTED TO DO ANYTHING FURTHER? \_\_\_\_\_

IS ALL THE EQUIPMENT ACCEPTED? \_\_\_\_\_

WHERE WILL THE EQUIPMENT BE LOCATED? \_\_\_\_\_

IS SIGNATURE ON THE LEASE  
AND THE DELIVERY & ACCEPTANCE FORM CONFIRMED? \_\_\_\_\_

DO THEY KNOW THE LEASE IS NON-CANCELABLE? \_\_\_\_\_

VERIFIER'S NAME: \_\_\_\_\_



**Form: o-09****Disk File Name: o-09.rtf****EARLY TERMINATION RIGHT/OPTION****Form Purpose**

Early lease termination option Rider for short form, net finance master equipment lease agreement. This form is integrated with Lease Agreement, Form I-03.

*Executing Parties*

The equipment lessee.

The equipment lessor.

*See:*

Lease Agreement, Form I-03

\_\_\_\_\_, Lessor

Home Office Address: \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

RIDER \_\_\_\_\_ to Schedule No. \_\_\_\_\_, dated as of \_\_\_\_\_, to Master Agreement to Lease Equipment,

dated as of \_\_\_\_\_, between \_\_\_\_\_, Lessor, and

\_\_\_\_\_, Lessee.

**EARLY TERMINATION OPTION**

(a) Provided no Incipient Default or Event of Default has occurred and is continuing, Lessee shall have the right at its option at any time during the respective Lease Terms of the Units described below on not less than 90 days prior notice to Lessor to terminate this Lease with respect to one or more of such Units on the \_\_\_\_\_ Rent payment date of each such Unit, or on any Rent payment date thereafter ("Termination Date"), provided that Lessee shall have made a good faith determination that each such Unit with respect to which Lessee intends to exercise this option ("Termination Units") is obsolete or surplus to Lessee's requirements. During the period from the giving of such notice to the Termination Date, Lessee, as agent for Lessor, shall use its best efforts to obtain bids for the purchase of such Termination Units by a party or parties other than Lessee or an affiliate of Lessee. Lessee shall promptly certify in writing to Lessor the amount and terms of each bid received by Lessee and the name and address of the party submitting such bid. Subject to Lessor's right to retain such Termination Units as provided in paragraph (b), on the Termination Date Lessor shall sell such Termination Units for cash to the bidder or bidders ("Third Party Purchaser") who have submitted the highest bid for such Termination Units and shall transfer title to such Termination Units to such Third Party Purchaser without recourse or warranty, except that Lessor shall represent and warrant that it owns such Termination Units free and clear of any Lessor's Lien. The total sale price realized upon such sale shall be retained by Lessor and, in addition, on the Termination Date, Lessee shall pay to Lessor the amount, if any, by which the applicable Termination Value of such Termination Units as provided in paragraph (d), computed as of the Termination Date, exceeds the net proceeds of such sale, whereupon this Lease shall terminate as to such Termination Units except as herein otherwise expressly provided. If no sale shall have occurred on the Termination Date as to any Termination Unit, this Lease shall continue in full force and effect as to such Termination Unit.

(b) Notwithstanding the provisions of paragraph (a), Lessor shall have the right at any time up to and including 30 days prior to the Termination Date, within its sole discretion, to elect not to sell any one or more Termination Units to any Third Party Purchaser. In the event Lessor elects not to sell any such Termination Units to such Third Party Purchaser, Lessee shall return such Termination Units to Lessor in accordance with the

provisions of Section 8 of the Master Agreement to Lease Equipment designated above, and Lessor thereupon may retain such Termination Units for its own account without further obligation to Lessee under this Lease. In the event of the return of such Termination Units to Lessor pursuant to this paragraph (b), and provided no Incipient Default or Event of Default has occurred and is continuing, all obligations of Lessee with respect to such Termination Units, including the payment of Rent, for any period subsequent to their respective Termination Dates shall cease.

(c) Subject to Lessor's rights as provided in paragraph (b), if as to any Termination Unit the Termination Value exceeds the highest bid or in the event no bids are received by Lessee, Lessee may, at its option, upon notice given to Lessor not less than 15 days prior to the Termination Date, elect to rescind Lessee's notice of termination with respect to such Termination Unit, whereupon this Lease shall continue in full force and effect as though no notice of termination had been given by Lessee with respect to such Termination Unit.

(d) The Termination Value of any Unit shall be that percentage described on Annex A hereto of the Acquisition Cost of such Unit corresponding to the applicable Termination Date of such Unit, plus an amount of money equal to the Rent payment due on such Termination Date.

#### Unit Description

ABLE LEASING CORPORATION,

Lessor: \_\_\_\_\_

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

Title: \_\_\_\_\_

\_\_\_\_\_, Lessee

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

Title: \_\_\_\_\_

#### Annex A

TO RIDER \_\_\_\_ TO  
SCHEDULE NO. \_\_\_\_

#### TERMINATION VALUE TABLE

The Termination Value of any Unit shall be that percentage specified below of the Acquisition Cost of such Unit corresponding to the applicable Termination Date of such Unit, plus an amount of money equal to the Rent payment due on such Termination Date. [See table on next page.]

Termination Date	Percentage	Termination Date	Percentage	Termination Date	Percentage
0	_____				
1	_____	41	_____	81	_____
2	_____	42	_____	82	_____
3	_____	43	_____	83	_____
4	_____	44	_____	84	_____
5	_____	45	_____	85	_____
6	_____	46	_____	86	_____
7	_____	47	_____	87	_____
8	_____	48	_____	88	_____
9	_____	49	_____	89	_____
10	_____	50	_____	90	_____
11	_____	51	_____	91	_____
12	_____	52	_____	92	_____
13	_____	53	_____	93	_____
14	_____	54	_____	94	_____
15	_____	55	_____	95	_____
16	_____	56	_____	96	_____
17	_____	57	_____	97	_____
18	_____	58	_____	98	_____
19	_____	59	_____	99	_____
20	_____	60	_____	100	_____
21	_____	61	_____	101	_____
22	_____	62	_____	102	_____
23	_____	63	_____	103	_____
24	_____	64	_____	104	_____
25	_____	65	_____	105	_____
26	_____	66	_____	106	_____
27	_____	67	_____	107	_____
28	_____	68	_____	108	_____
29	_____	69	_____	109	_____
30	_____	70	_____	110	_____
31	_____	71	_____	111	_____
32	_____	72	_____	112	_____
33	_____	73	_____	113	_____
34	_____	74	_____	114	_____
35	_____	75	_____	115	_____
36	_____	76	_____	116	_____
37	_____	77	_____	117	_____
38	_____	78	_____	118	_____
39	_____	79	_____	119	_____
40	_____	80	_____	120	_____

Lessee acknowledges receipt of a copy hereof.

\_\_\_\_\_, Lessee

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

Title: \_\_\_\_\_

**Form: o-10**  
**Disk File Name: o-10.rtf**

**PURCHASE RIGHT/OPTION—FAIR MARKET VALUE/FIXED**

**Form Purpose**

A lessee equipment purchase option letter.

*Executing Parties*

The equipment lessee.

The equipment lessor.

**Lessee Purchase Option**

[Insert lessee name and address]

Re: Lease Agreement, dated \_\_\_\_\_,  
by and between (insert name of lessee)  
and (insert name of Lessor)  
Lease No.: \_\_\_\_\_

**TO WHOM THIS MAY CONCERN:**

With reference to the above mentioned Lease Agreement (hereinafter the "Lease"), you shall have the option to purchase the equipment described in said Lease, as-is, where-is and without any representation or warranty, at the end of the scheduled term thereof, provided, of course, that there is no default under the Lease and that you have performed all of the terms and conditions of the said Lease.

The purchase price at the expiration of the Lease term shall be (insert, as applicable, "fair market value," or "a fixed price equal to \$ \_\_\_\_\_ " or "a fixed equal to \_\_\_\_ % of equipment cost.") However, you are hereby informed and advised that this purchase option offer is made conditioned upon your signing and returning a copy of this document to our office at the above-mentioned address, together with the \_\_\_\_\_, no earlier than one hundred and twenty (120) days and no later than thirty (30) days from the end of the scheduled Lease term. You will also be responsible for any applicable sales tax and agree to sign documentation reasonably acceptable to us to reflect the sale.

Very Truly Yours,

[Insert lessor name]

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

Title: \_\_\_\_\_

Acknowledged and Agreed to:

[Insert lessee name]

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

Title: \_\_\_\_\_

**Form: o-11****Disk File Name: o-11.rtf****PURCHASE RIGHT/OPTION—FAIR MARKET VALUE****Form Purpose**

Fair market value purchase option Rider for short form, net finance master equipment lease agreement. This form is integrated with Lease Agreement, Form I-03.

*Executing Parties*

The equipment lessor.

The equipment lessee.

*See:*

Lease Agreement, Form I-03

\_\_\_\_\_, Lessor

Home Office Address: \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

RIDER \_\_\_\_\_ to Schedule No. \_\_\_\_\_, dated as of \_\_\_\_\_, to Master Agreement to Lease Equipment,

dated as of \_\_\_\_\_, between \_\_\_\_\_, Lessor, and

\_\_\_\_\_, Lessee.

**Fair Market Purchase Option**

Provided that this Lease has not been terminated earlier and no Incipient Default or Event of Default has occurred and is continuing, not earlier than \_\_\_\_\_ days and not later than \_\_\_\_\_ days before the end of the Lease Term, or in the event such Lease Term has been extended before the end of any period for which this Lease has been extended ("Renewal Term"), first to expire under this Lease of the Units described below, Lessee may as to all, but not less than all, such Units deliver to Lessor a written notice tentatively electing to purchase such Units at the end of the respective Lease Terms, or any Renewal Terms, as the case may be, for an amount equal to the Fair Market Value of each such Unit at the end of such periods. If no such notice is delivered by Lessee to Lessor within such period, Lessee shall be deemed to have waived any right to purchase such Units. Fair Market Value shall mean the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than a lessee currently in possession or a used equipment dealer) under no compulsion to buy, and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. Fair Market Value shall be determined by the mutual agreement of Lessor and Lessee in accordance with the preceding sentence. If Lessee and Lessor cannot agree within 30 days after Lessee's notice of tentative election, Fair Market Value shall be determined by a qualified independent equipment appraiser mutually satisfactory to Lessee and Lessor. If Lessee and Lessor fail to agree upon a satisfactory independent equipment appraiser within 10 days following the end of the 30-day period referred to above, Lessee and Lessor shall each within 5 days appoint a qualified independent equipment appraiser and such appraisers shall jointly determine the Fair Market Value of such Units. If, within 15 days after the appointment of the last of these two appraisers, the appraisers cannot agree upon the Fair Market Value of such Units, the two appraisers shall, within 10 days, appoint a third appraiser and the Fair Market Value of such Units shall be determined by the three appraisers, who shall make their appraisals within 15 days following the appointment of the third appraiser and the average of their three determinations so made shall be deemed to be the Fair Market Value of such Units and shall be conclusive and binding upon Lessor and Lessee. If either party shall have failed to appoint an appraiser, the determination of the Fair Market Value of such Units of the single appraiser appointed by the other party shall be final.

At any time within the 15-day period following the determination of the Fair Market Value of such Units, Lessee may deliver to Lessor a further notice finally electing to purchase such Units. If no such further notice is delivered by Lessee to Lessor within such period, Lessee shall be deemed to have waived any right to purchase such Units. At the end of the respective Lease Terms or Renewal Terms, as appropriate, if Lessee has finally elected to purchase such Units, Lessee shall purchase from Lessor, and Lessor shall sell to Lessee, each such Unit for a cash consideration equal to the Fair Market Value of such Unit, and Lessor shall transfer title to each such Unit to Lessee without recourse or warranty, except that Lessor shall represent and warrant that it owns such Unit free and clear of any Lessor's Lien. All appraisal fees and expenses shall be borne by Lessee.

Unit Description:

\_\_\_\_\_, Lessor

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

Title: \_\_\_\_\_

\_\_\_\_\_, Lessee

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

Title: \_\_\_\_\_

Form: o-12

Disk File Name: o-12.rtf

**PURCHASE RIGHT/OPTION—FIXED PRICE**

**Form Purpose**

Fixed price purchase option Rider for short form, net finance master equipment lease agreement. This form is integrated with Lease Agreement, Form I-03.

*Executing Parties*

The equipment lessor.

The equipment lessee.

*See:*

Lease Agreement, Form I-03

\_\_\_\_\_, Lessor

Home Office Address: \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

RIDER \_\_\_\_\_ to Schedule No. \_\_\_\_\_, dated as of \_\_\_\_\_, to Master Agreement to Lease Equipment, dated as of \_\_\_\_\_, between \_\_\_\_\_, Lessor, and \_\_\_\_\_, Lessee.

**Fixed Price Purchase Option**

Provided that this Lease has not been terminated earlier and no Incipient Default or Event of Default has occurred and is continuing, Lessee may, upon not less than that number of days' notice specified below before the end of the Lease Term first to expire under this Lease of the Units described below, purchase each but not less than all the Units described below at the end of their respective Lease Terms for cash in the amount specified below. Upon payment to Lessor in full for each Unit, Lessor shall transfer title to such Unit to Lessee without recourse or warranty, except that Lessor shall represent that it owns such Unit and has no knowledge of any Lessor's Lien relating to such Unit.

<i>Purchase Price</i>	<i>Unit Description</i>	<i>Purchase Price as a Percentage of Acquisition Cost</i>	<i>Purchase Price in Dollars</i>	<i>Number of Days' Notice</i>
-----------------------	-------------------------	---	----------------------------------	-------------------------------

[Insert information]

\_\_\_\_\_, Lessor

By:

Title:

\_\_\_\_\_, Lessee

By:

Title:

**Form: o-13**

**Disk File Name: o-13.rtf**

**RENEWAL RIGHT/OPTION—FAIR MARKET VALUE**

**Form Purpose**

Fair market lease term renewal option Rider for short form, net finance master equipment lease agreement. This form is integrated with Lease Agreement, Form I-03.

*Executing Parties*

The equipment lessor.

The equipment lessee.

*See:*

Lease Agreement, Form I-03

---

\_\_\_\_\_, Lessor

Home Office Address: \_\_\_\_\_

RIDER \_\_\_\_\_ to Schedule No. \_\_\_\_\_, dated as of \_\_\_\_\_, to Master Agreement to Lease

Equipment dated as of \_\_\_\_\_, between \_\_\_\_\_, Lessor, and

\_\_\_\_\_, Lessee.

**Fair Market Renewal Option**

Provided that this Lease has not been terminated earlier and no Incipient Default or Event of Default has occurred and is continuing, not earlier than \_\_\_\_\_ days and not later than \_\_\_\_\_ days before the end of the Lease Term, or in the event such Lease Term has been extended before the end of any period for which this Lease has been extended ("Renewal Term"), first to expire under the Lease of the Units described below, Lessee may as to all, but not less than all, such Units deliver to Lessor a written notice tentatively electing to extend the Lease as to such Units at the end of the respective Lease Terms, or any Renewal Terms, as the case may be, on the periodic basis described below (not to exceed the aggregate Renewal Term specified below) at the Fair Market Rental of each such Unit as of the end of such applicable periods. If no such written notice is delivered by Lessee to lessor within such period, Lessee shall be deemed to have waived any right to extend the Lease with respect to such Units, Fair Market Rental shall mean the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession or a used equipment dealer) under no compulsion to lease, and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. Fair Market Rental shall be determined by the mutual agreement of Lessor and Lessee in accordance with the preceding sentence. If Lessee and Lessor cannot agree within 30 days after Lessee's notice of tentative election, Fair Market Rental shall be determined by a qualified independent equipment appraiser mutually satisfactory to Lessee and Lessor. If Lessee and Lessor fail to agree upon a satisfactory independent equipment appraiser within 10 days following the end of the 30-day period referred to above, Lessee and Lessor shall each within 5 days appoint a qualified independent equipment appraiser and such appraisers shall jointly determine the Fair Market Rental of such Units. If, within 15 days after the appointment of the last of these two appraisers, the appraisers cannot agree upon the Fair Market Rental of such Units, the two appraisers shall, within 10 days, appoint a third appraiser and the Fair Market Rental of such Units shall be determined by the three appraisers, who shall make their appraisals within 15 days following the appointment of the third appraiser and the average of their three determinations so made shall be deemed to be the Fair Market Rental of such Units and shall be conclusive and binding upon Lessor and Lessee. If either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed by the other party shall be final.



At any time within the 15-day period following the determination of the Fair Market Rental of such Units, Lessee may deliver to Lessor a further notice finally electing to extend the Lease with respect to such Units. If no such further notice is delivered by Lessee to Lessor within this 15-day period, Lessee shall be deemed to have waived any right to extend the Lease with respect to such Units. All appraisal fees and expenses shall be borne by Lessee.

<i>Unit Description</i>	<i>Maximum Aggregate Renewal Term</i>	<i>Periodic Renewal Term Basis</i>
-------------------------	---------------------------------------	------------------------------------

[Insert information]

, Lessor

By:

Title:

, Lessee

By:

Title:

**Form: o-14**

**Disk File Name: o-14.rtf**

**RENEWAL RIGHT/OPTION—FIXED PRICE**

**Form Purpose**

Lessee fixed price lease term renewal option Rider for short form, net finance master equipment lease agreement. This form is integrated with Lease Agreement, Form I-03.

*Executing Parties*

The equipment lessor.

The equipment lessee.

*See:*

Lease Agreement, Form I-03

\_\_\_\_\_, Lessor

Home Office Address: \_\_\_\_\_

RIDER \_\_\_\_\_ to Schedule No. \_\_\_\_\_, dated as of \_\_\_\_\_, to Master Agreement to Lease

Equipment dated as of \_\_\_\_\_, between \_\_\_\_\_, Lessor, and

\_\_\_\_\_, Lessee.

**Fixed Price Lease Renewal Option**

Provided that this Lease has not been terminated earlier and no Incipient Default or Event of Default has occurred and is continuing, not earlier than \_\_\_\_\_ days and not later than \_\_\_\_\_ days before the end of the Lease Term, or in the event such Lease Term has been extended before the end of any period for which this Lease has been extended ("Renewal Term"), first to expire under the Lease of the Units described below, Lessee may as to all, but not less than all, such Units deliver to Lessor a written notice tentatively electing to extend the Lease as to such Units at the end of the respective Lease Terms, or any Renewal Terms, as the case may be, on the periodic basis described below (not to exceed the aggregate Renewal Term specified below) for a fixed price (as specified below) with respect to each such Unit as of the end of such applicable periods. If no such written notice is delivered by Lessee to lessor within such period, Lessee shall be deemed to have waived any right to extend the Lease with respect to such Units.

<i>Unit Description</i>	<i>Maximum Aggregate Renewal Term</i>	<i>Periodic Renewal Term Basis</i>	<i>Fixed Price Renewal Rate</i>
-----------------------------	---	--	-------------------------------------

[Insert information]

\_\_\_\_\_, Lessor \_\_\_\_\_, Lessee

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

Title: \_\_\_\_\_ Title: \_\_\_\_\_

**Form: o-15**

**Disk File Name: o-15.rtf**

**SUBLEASE RIGHT/OPTION**

**Form Purpose**

Lessee right to sublease Rider for short form, net finance master lease agreement. This form is integrated with Lease Agreement, Form I-03.

*Executing Parties*

The equipment lessor.

The equipment lessee.

*See:*

Lease Agreement, Form I-03

\_\_\_\_\_, Lessor

Home Office Address: \_\_\_\_\_

RIDER \_\_\_\_\_ to Schedule No. \_\_\_\_\_ dated as of \_\_\_\_\_, to Master

Agreement to Lease Equipment, dated as of \_\_\_\_\_, between \_\_\_\_\_, Lessor, and

\_\_\_\_\_, Lessee.

**Lessee Right to Sublease**

Provided that no Incipient Default or Event of Default has occurred and is continuing, Lessee shall be entitled without Lessor's consent, and upon 60 days' prior notice, to sublease any or all of the Units to any entity, including without limitation any subsidiary, affiliate, or parent corporation of Lessee, incorporated in the United States of America, but in all cases only upon and subject to all the terms and conditions of this Lease. No such sublease or other assignment of use by Lessee shall relieve Lessee of any of its obligations under this Lease.

Unit Description:

[Insert unit information]

\_\_\_\_\_, Lessor \_\_\_\_\_, Lessee

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

Title: \_\_\_\_\_ Title: \_\_\_\_\_

**Form: o-16**  
**Disk File Name: o-16.rtf**

**AUTOMATIC TRANSFER OF TITLE**

**Form Purpose**

Fair market value purchase option Rider for short-form, net finance master equipment lease agreement. This form is integrated with Lease Agreement, Form I-03.

*See:*  
Lease Agreement, Form I-03



\_\_\_\_\_, Lessor

Home Office Address: \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

RIDER \_\_\_\_\_ to Schedule No. \_\_\_\_\_, dated as of \_\_\_\_\_, to Master Agreement to Lease Equipment, dated as of \_\_\_\_\_, between \_\_\_\_\_, Lessor, and \_\_\_\_\_, Lessee.

**Automatic Transfer of Title**

Provided that this Lease has not been terminated earlier and no Incipient Default or Event of Default has occurred and is continuing, immediately upon the end of the applicable Lease Term title to each of the Units described below shall without any further action be automatically transferred to Lessee. Title to each Unit shall be transferred without recourse or warranty, except that Lessor shall, if so requested in writing by Lessee, represent that it owned such Unit immediately prior to the transfer and has no knowledge of any Lessor's Lien.

\_\_\_\_\_, Lessor

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

Title: \_\_\_\_\_

\_\_\_\_\_, Lessee

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

Title: \_\_\_\_\_

**Form: o-17**  
**Disk File Name: o-17.rtf**

**PUT**

**Form Purpose**

A lessor right to force a lessee to purchase equipment subject to lease at the end of the lease term Rider. This form is integrated with Lease Agreement, Form I-03. Care must be exercised in using a put option because it can cause the lease to fail to qualify as a "true" lease for income tax purposes.

*Executing Parties*

The equipment lessor.

The equipment lessee.

*See:*

Lease Agreement, Form I-03



\_\_\_\_\_, Lessor

Home Office Address: \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

RIDER \_\_\_\_\_ to Schedule No. \_\_\_\_\_, dated as of \_\_\_\_\_, to Master

Agreement to Lease Equipment, dated as of \_\_\_\_\_, between \_\_\_\_\_, Lessor, and

\_\_\_\_\_, Lessee.

**Lessor Sale Option**

Lessor may, upon not less than 60 days notice before the end of the Lease Term of each Unit described below, elect to sell to Lessee, and Lessee shall purchase, each such Unit at the end of such Unit's Lease Term in cash for the amount specified below. If Lessor shall make the election provided for in this Rider, the sale shall occur on the day next following the day the applicable Lease Term ends. Upon payment to Lessor in full of the purchase price indicated below, Lessor shall transfer title to each such Unit to Lessee without recourse or warranty, except that Lessor shall represent that it owns such Unit and has no knowledge of any Lessor's Lien. If Lessor exercises this option, it shall upset and prevail over any purchase, renewal, or early termination option Lessee may have under this Lease.

<i>Unit Description</i>	<i>Purchase Price as a Percentage of Acquisition Cost</i>	<i>Purchase Price in Dollars</i>
-------------------------	---	----------------------------------

\_\_\_\_\_, Lessor

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

Title: \_\_\_\_\_

\_\_\_\_\_, Lessee

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

Title: \_\_\_\_\_

**Form: p-01**  
**Disk File Name: p-01.rtf**

**PROMISSORY NOTE—GENERAL FORM**

**Form Purpose**

A promissory note.

*Executing Parties*

The borrower.

**Promissory Note**

\$ \_\_\_\_\_, \_\_\_\_\_, 20\_\_

FOR VALUE RECEIVED the undersigned, \_\_\_\_\_, a \_\_\_\_\_ corporation (the "Payor"), having its executive office and principal place of business at \_\_\_\_\_, hereby promises to pay to \_\_\_\_\_, a \_\_\_\_\_ corporation, having a principal place of business at \_\_\_\_\_ (the "Payee"), such payment to be made as provided for herein and to be sent to Payee at \_\_\_\_\_, or to such other place as the Payee shall hereafter specify in writing thirty (30) days in advance of such change of place, the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_), in such coin or currency of the United States of America as at the time shall be legal tender for the payment of public and private debts.

**1. Interest and Payment.**

1.1 The unpaid principal amount hereof shall bear simple interest from the date hereof at the rate of \_\_\_\_\_ (%) per annum.

1.2 This Note shall be payable in \_\_\_\_\_ (\_\_\_\_), consecutive, equal installments, including principal and interest, as follows:

(a) The first payment of principal and interest thereon shall be due on \_\_\_\_\_, and shall be in an amount equal to \$ \_\_\_\_\_, of which \$ \_\_\_\_\_ shall be applied toward the outstanding principal balance of the Note; and

(b) The remaining \_\_\_\_\_ (\_\_\_\_), monthly principal and interest payments shall be due on the \_\_\_\_ (Author's Note: for example, 1<sup>st</sup>) and the \_\_\_\_ (Author's Note: for example, 15<sup>th</sup>) of each month thereafter, beginning on \_\_\_\_\_, in the amounts set forth on the schedule attached as Annex A hereto and made a part hereof.

1.3 If any payment of principal and interest accrued thereon is not made on or before five (5) days after the time when such payment is due and payable, then interest shall accrue on such unpaid amount from the date of nonpayment to the date of payment at a simple interest rate equal to \_\_\_\_\_ (Author's Note: for example, EIGHTEEN PERCENT [18%]) per annum.

2. Prepayment. At the option of the Payor, this Note may be prepaid in whole or in part at any time or from time to time, without penalty or premium, provided, however, such prepayment may only be made on or after \_\_\_\_\_ (\_\_\_\_) months following the date of this Note stated above. Each prepayment of this Note shall first be applied to interest accrued through the date of prepayment and then to principal.

3. Modification. This Note may not be modified, or discharged unless paid in full, except by a writing duly executed by the Payor and the Payee.

4. Miscellaneous.

4.1 This Note is secured by \_\_\_\_\_ .

4.2 The headings of the various paragraphs of this Note are for convenience of reference only and shall in no way modify any of the terms or provisions of this Note, or the Agreement.

4.3 All notices required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the address of the intended recipient set forth in the preamble to this Note or at such other address as the intended recipient shall have hereafter given in writing, 30 days in advance, to the other party hereto pursuant to the provisions hereof.

4.4 This Note shall bind the Payor and its successors and assigns.

4.5 The laws of the State of \_\_\_\_\_ shall apply to this Note.

\_\_\_\_\_, Payor

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

Title: \_\_\_\_\_

**Annex A**

[Insert debt amortization schedule]

**Form: p-02**  
**Disk File Name: p-02.rtf**

**PROMISSORY NOTE—INTEGRATED**

**Form Purpose**

A promissory note. This form has been integrated with Loan and Security Agreement, Form I-05.

*Executing Parties*

The borrower.

*See:*

Loan and Security Agreement, Form I-05

**Exhibit B**  
**Promissory Note**

\$ \_\_\_\_\_

(Insert here City and State)

Dated: \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned, (insert name of borrower) (the "Borrower"), hereby promises to pay to the order of (insert name of Lender) (the "Lender ") at (insert address of Lender) the principal sum of \_\_\_\_\_ Dollars with interest on the unpaid balance thereof from the date hereof at the rate of (insert per annum Note interest rate) % per annum, computed on the basis of a 365-day year and a twelve 30-day month.

Past due principal and, to the extent legally enforceable, interest installments shall bear interest equal to \_\_\_\_\_ % per annum, until paid. Principal of and interest on this Note shall be payable in lawful money of the United States of America.

This Note is issued under and pursuant to a Loan and Security Agreement (Author's Note: See Form I-05 for integrated loan and security agreement form) dated \_\_\_\_\_, as amended on \_\_\_\_\_, between the Borrower and the Lender (the "Security Agreement"), to which agreement reference is made for a statement of the terms and provisions thereof.

A schedule of the installment payments to be made here under which consists of the expected amounts to be paid by the Lessee to the Lender is set forth in the amortization table attached as Schedule A hereto and incorporated by reference herein; such amounts which are paid by the Lessee to the Lender shall be applied first to the payment of accrued interest hereon and then to the payment of the unpaid principal hereof. In addition to the payments set forth on Schedule A, on \_\_\_\_\_, a payment of interest only on the Note from the date hereof, in the amount of \$ \_\_\_\_\_ shall be due and payable to the Lender.

The principal of this Note may be declared due and payable prior to the expressed maturity date thereof in the events, on the terms and in the manner provided for in the Security Agreement. In the event this Note is accelerated, the unpaid principal balance shall be determined from the schedule annexed hereto. Subject to the provisions of Section 5 of the Security Agreement, the liability of the Borrower is limited to the Units and the assigned income and proceeds from the Lease (as said terms are defined in the Security Agreement).



The provisions of this Note shall inure to the benefit of and be binding upon any successor to the Borrower and shall extend to any holder hereof.

\_\_\_\_\_, Borrower

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

Title: \_\_\_\_\_

**Schedule A**

Annexed to and made part of Promissory Note dated

in the principal amount of \$ \_\_\_\_\_ .

<i>PMT No.</i>	<i>Outstanding Principal</i>	<i>Debt Service</i>	<i>Interest Portion</i>	<i>Principal Portion</i>
--------------------	----------------------------------	-------------------------	-----------------------------	------------------------------

**Form: p-03**  
**Disk File Name: p-03.rtf**

**PROMISSORY NOTE—CONFESSED JUDGMENT**

**Form Purpose**

A promissory note with a confessed judgment provision.

*Executing Parties*  
 The borrower.

\$

COMMERCIAL NOTE—TIME

(Confessed Judgment)

Dated: \_\_\_\_\_, 20\_\_\_\_

The undersigned promises to pay to the order of \_\_\_\_\_ (“Payee”) the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) together with interest on the unpaid principal balance thereof computed at an annual rate (Author’s Note: Select [i] or [ii]): (i) which shall float and which is \_\_\_\_\_ percent ( \_\_\_ %) above the prime rate as published in the money rates section of the *Wall Street Journal*, adjusted as of the first day of each calendar quarter; or (ii) which shall be fixed at the rate of \_\_\_\_\_ percent ( \_\_\_ %) per annum.

Principal and interest shall be paid in (Author’s Note: Select: monthly, quarterly, or semiannually, as applicable) installments, (Author’s Note: Select “in advance” or “in arrears”) of \$ \_\_\_\_\_ beginning on the \_\_\_\_\_ day of \_\_\_\_\_, and each (Author’s Note: Select: monthly, quarterly, or semiannually, as applicable) period continuing on the (first) day of each [Author’s Note: Select: monthly, quarterly, or semiannually, as applicable] calendar period thereafter until the principal balance is paid in full. [Author’s Note: An alternative could be that payments shall continue “in accordance with the following schedule:]

(Insert desired payment schedule)

Interest shall be computed on the basis of a 360-day year of twelve 30-day months, and charged for actual days elapsed.

As used herein, “Obligations” means all indebtedness hereunder and any renewals, extensions, or modifications hereof together with any now or hereafter existing indebtedness of Undersigned to Payee whatsoever. “Obligor” means undersigned and all endorsers, guarantors and sureties of any Obligation. As security for the full and timely repayment of the Obligations (in addition to any other collateral), the undersigned hereby grants to Payee a security interest in all monies, deposits, accounts or credits held by Payee for or owed by Payee to the undersigned, and, in the event of default or demand hereunder or under any agreement between undersigned and Payee, such monies, deposits, accounts, or credits may be setoff and applied to payment of any Obligations.

[Author’s Note: Delete if not applicable] This Note and all Obligations are secured pursuant to and entitled to the benefits of the terms of a certain \_\_\_\_\_ dated \_\_\_\_\_.

The undersigned shall be in default hereunder on the occurrence of any of the following: (a) non-payment when due of any payment of principal or interest hereunder or of any Obligation; (b) any warranty, representation or statement made or furnished to Payee by or on behalf of the undersigned proving to have been materially incorrect when made or furnished; (c) the existence of any uncured event of default under the terms of any instrument or writing evidencing a debt of the undersigned to some one other than Payee; (d)

uninsured loss, theft, substantial damage, destruction, or transfer or encumbrance without fair value in return of any of the undersigned's assets; (e) the institution by or against any Obligor of any proceeding under any provision or chapter of any federal or state bankruptcy, insolvency or other debtor relief law whatsoever, or the appointment of any trustee or receiver for any Obligor or any of its assets; (f) judgment against, or attachment of, property of any Obligor; (g) payee deeming itself insecure; (h) dissolution, merger, consolidation, liquidation, or reorganization of any Obligor; or (i) death of any Obligor. Upon the occurrence of any event of default, Payee at its option may declare any or all Obligations immediately due and payable without notice, presentation, demand of payment, or protest, which are hereby expressly waived by every Obligor. Payee's rights and remedies hereunder are cumulative, and recourse to one shall not constitute a waiver of others. The undersigned shall be liable for all costs and expenses incurred by Payee in connection with collection of the Obligation, including court costs, costs of appeal, and attorney's fees.

In the event this Note or any Obligations are not paid when due or demanded, each Obligor hereby authorizes any attorney at law to appear for them before any court having jurisdiction within the United States or elsewhere and after one or more declarations filed, confess judgment against them, jointly and severally, for the unpaid balance of this Note, any Obligations and interest, court costs, costs of appeal and attorney's fees, such attorney's fees to be equal to twenty-five percent (25%) of the amount confessed, for collection and release of errors, and without stay of execution and inquisition and extension upon any levy on real estate, all of which are hereby waived and condemnation agreed to; and to the extent allowed by applicable law, the exemption of personal property from levy and sale is also hereby expressly waived and no benefit of exemption shall be claimed under any exemption law now in force or which may be hereafter adopted, and further authorizes any attorney at law to confess judgment against them pursuant to all of the terms set forth above for any deficiencies remaining after the collection, foreclosure, realization or sale of any collateral securing the Obligations. or any part thereof, together with interest, court costs and attorney's fees as set forth above.

If any part of this Note is declared invalid or unenforceable, such invalidity or unenforceability shall not affect the remainder of this Note, which shall continue in full force and effect. Any provision that is invalid or unenforceable in any application shall remain in full force and effect as to valid applications.

The undersigned warrants and represents that the purpose of this Note is \_\_\_\_\_ and that it is a commercial purpose Note.

This Note is executed under seal on the date first above written and shall be governed by the law of the State of \_\_\_\_\_, without regard to its conflict of law principles.

\_\_\_\_\_, Borrower

By: \_\_\_\_\_ (CORPORATE SEAL)

Title: \_\_\_\_\_

(Insert address of maker)

Witnessed:

By \_\_\_\_\_

(Insert name of witnessing party)

**Form: p-04**  
**Disk File Name: p-04.rtf**

**SINGLE INVESTOR (NONUNDERWRITTEN)**

**Form Purpose**

An equipment leasing company proposal letter format for a single investor, firm commitment (nonunderwritten) lease financing offer.

*Executing Parties*  
 The equipment lessor.

---

**Nonunderwriting Proposal Letter**

Date: 20\_\_

Secour Corporation  
 800 Second Avenue  
 New York, New York 10017

Attention: Mr. R. Babcox

President

Gentlemen:

Able Leasing Corporation ("ALC") offers to purchase and lease to Secour Corporation ("Secour") an item of newly manufactured computer equipment on the following terms and conditions:

1. Equipment Description: The equipment will consist of one (1) new computer, model no. EA-1, manufactured by IXT Computer Corp.
2. Equipment Cost: Approximately \$1 million.
3. Delivery and Payment: Delivery of the Equipment is anticipated on January 1, 20\_\_, but in no event shall be later than March 1, 20\_\_. ALC shall pay for the Equipment on delivery and acceptance.
4. Lease Term: Eight years, beginning on delivery and acceptance of the Equipment.
5. Rental Program: Secour shall remit 32 consecutive level, quarterly payments, in advance, each equal to 4.4000% of Equipment Cost.
6. Options: At the conclusion of the Lease Term, Secour may (with at least 120 days' prior written notice):
  - A. Buy the Equipment for an amount equal to its then fair market value.
  - B. Renew the lease with respect to the Equipment for its then fair rental value.
7. Tax Benefits: The rent is calculated based on the assumption that ALC will be entitled to:
  - A. Five-year MACRS depreciation on the full Equipment Cost, 200% declining-balance switching to straight-line, and
  - B. A corporate income tax rate equal to  %

8. Fixed Expenses: This is a net financial lease proposal and all fixed expenses such as insurance maintenance, and personal property taxes shall be for the account of Secour.

9. Conditions Precedent: This offer is subject to the approval of the Board of Directors of ALC and to the execution of lease documentation mutually acceptable to Secour and ALC.

If the foregoing is satisfactory to you, please indicate your acceptance of this offer by signing the duplicate copy of this letter in the space provided therefor and returning it directly to the undersigned.

This offer expires as of the close of business on \_\_\_\_\_, 20\_\_.

Very truly yours,

ABLE LEASING CORPORATION

By: \_\_\_\_\_  
Vice President

Accepted and Agreed to on this  
\_\_\_ day of \_\_\_\_\_, 20\_\_.

SECOUR CORPORATION

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

Its: \_\_\_\_\_

**Form: p-05**  
**Disk File Name: p-05.rtf**

**UNDERWRITTEN**

**Form Purpose**

An equipment leasing company proposal letter format for an underwritten, best efforts lease financing offer.

*Executing Parties*  
 The equipment lessor.

---

**Underwriting Proposal Letter**

Date: 20\_\_

White Airline Corporation  
 200 Park Avenue  
 New York, New York 10017

Attention: R. Rosset  
 Assistant Treasurer

Gentlemen:

Able Leasing Corporation ("ALC"), on behalf of its nominees, proposes to use its best efforts to arrange a lease for one new Martin RC-75 aircraft for use by White Airline Corporation under the following terms and conditions:

- Lessee:** The Lessee shall be White Airline Corporation.
- Lessor:** The Lessor will be a commercial bank or trust company acting as owner trustee ("Owner Trustee") pursuant to one or more owners' trusts (the "Trust") for the benefit of one or more commercial banks or other corporate investors (the "Owner Participant"). The Trust shall acquire the Equipment and lease it to the Lessee.
- Equipment:** One new Martin RC-75 aircraft.
- Cost:** For purposes of this proposal, a total cost of \$28 million, plus or minus 5% has been assumed.
- Delivery Date:** Delivery of the Equipment is anticipated as of November 1, 20\_\_, however, shall be no later than December 30, 20\_\_.
- Interim Lease Term:** The interim lease term shall extend from the Delivery Date until the Commencement Date. For the purposes of this proposal the Commencement Date is assumed to be January 1, 20\_\_.
- Interim Rent:** The Lessee shall pay interim rent equal to interest-only on the total cost of the Equipment at an interest rate equal to the Long-Term Debt Interest Rate.
- Primary Lease Term:** The primary lease term shall be 20 years from the Commencement Date.
- Primary Rent:** From the Commencement Date, the Lessee shall make 40 consecutive, level, semi-annual payments, in arrears, each equal to 4.400% of Cost.

**Debt Financing:** An investment banker acceptable to ALC and the Lessee shall arrange for the private placement of secured notes or similar instruments ("Indebtedness") to be issued by the Lessor for a principal amount equal to 80% of total Equipment cost to certain institutional investors ("Lenders") who may be represented by an indenture trustee or agent bank ("Agent"). This proposal assumes that the Indebtedness shall be amortized in semiannual payments of principal and interest at an 8% per annum interest rate ("Long-Term Debt Interest Rate"), payable in arrears over the term of the lease. In the event that the Long-Term Debt Interest Rate varies from that assumed, the rent shall be adjusted, upward or downward, so that the Owner Participant's after-tax yield and after-tax cash flows will be maintained. The Indebtedness shall be secured by an assignment of the lease and a security interest in the Equipment but otherwise shall be without recourse to the Owner Participant and the Lessor.

**Insurance:** The Lessee may self-insure the Equipment.

**Purchase & Renewal Options:** At the end of the Primary Lease Term, the Lessee may (with 180 days' written notice prior to the end of the term):

- A. Renew the lease on the Equipment for its then fair rental value for one five-year period.
- B. Buy the Equipment for an equivalent price and under similar conditions as rendered by a third party approached by the Lessor and agreed to by the Lessor prior to sale to that third party.

If the Lessee does not elect to exercise any of the above options, the Lessee shall return the Equipment to the Lessor at the end of the term at a mutually agreeable location.

**Termination Option:** At any time during the Primary Lease Term, on or after 10 years from the Commencement Date, the Lessee may (with 180 days' prior written notice) terminate the lease in the event the Equipment becomes obsolete or surplus to its needs, on paying a mutually agreed on termination value.

**Fixed Expenses:** This is a net financial lease proposal with all fixed expenses, such as maintenance, insurance, taxes (other than net income taxes) for the account of the Lessee.

**Transaction Expenses:** ALC shall pay all transaction expenses, including:

1. fees and disbursements of special counsel for the Agent and the Lenders;
2. acceptance and annual fees and expenses of the Agent;
3. fees and disbursements of special counsel for the Owner Trustee and the Trustor;
4. acceptance and annual fees and expenses of the Owner Trustee;
5. fees and disbursements in connection with obtaining a ruling from the Internal Revenue Service;
6. expenses of documentation, including printing and reproduction; and
7. fees and disbursements in connection with the private placement of the Indebtedness.

If the transaction is not consummated for any reason, the Lessee shall pay all of the above fees and expenses.

Nonutilization Fee: Once ALC has obtained equity investor commitments satisfactory to the Lessee, the Lessee shall be liable to ALC for a nonutilization fee equal to 0.5% of the Equipment cost in the event it does not lease the Equipment in accordance with intent of this proposal.

Commitment Fee: A commitment fee of 0.5% per annum shall be paid by the Lessee to the equity investors on the outstanding equity investor commitment. The fee shall accrue as of the date investor commitments satisfactory to White Airline Corporation have been obtained, shall run up to the Commencement Date, and shall be payable quarterly, in arrears.

Tax Assumptions: A. The Rent is calculated based on the assumptions that:
1. the organization created by the Trust will be treated as a partnership for Federal income tax purposes;
2. the Lessor will be entitled to seven-year MACRS depreciation on 100% of the Equipment Cost, 200% declining-balance switching to straight-line;
3. the Lessor will be entitled to deduct interest on the Indebtedness under Section 163 of the 1986 Internal Revenue Code, as amended;
4. the Lessor will be entitled to amortize the transaction expenses over the Interim and Primary Lease Terms using a straight-line method;
5. the effective Federal income tax rate of the Owner Participant is \_\_%; and
6. the Lessor will not recognize any income from the transaction other than from Lessee rental, termination value, stipulated loss value, and indemnity payments payable to the Lessor.

B. The Lessee shall provide necessary representation relating to the estimated economic life and residual value of the Equipment.

Tax Ruling: The Lessor plans to obtain a Internal Revenue Service ruling with respect to the tax assumptions stated above. The Lessee shall agree to indemnify for the tax assumptions above. Such indemnity shall remain in effect until a favorable ruling has been obtained.

If the foregoing proposal is satisfactory to you, please indicate your acceptance by signing the duplicate copy of this letter in the space provided therefor, and returning it directly to the undersigned.

This offer expires at the close of business on \_\_\_\_\_, and is subject to the approval of the Owner Participant's Board of Directors and mutually satisfactory lease documentation.

Very truly yours,

ABLE LEASING CORPORATION

By: \_\_\_\_\_
Vice President

Accepted and Agreed to on this
\_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

WHITE AIRLINE CORPORATION

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

Its: \_\_\_\_\_



**Form: p-06****Disk File Name: p-06.rtf****PURCHASE AGREEMENT ASSIGNMENT—INTEGRATED****Form Purpose**

Assignment of equipment purchase agreement rights to an equipment leasing company. This form is integrated with Lease Agreement, Form I-03.

*Executing Parties*

The equipment lessor.

The equipment lessee.

*See:*

Lease Agreement, Form I-03

\_\_\_\_\_, Lessor

Home Office Address: \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

**PURCHASE AGREEMENT ASSIGNMENT**

PURCHASE AGREEMENT ASSIGNMENT ("Assignment"), dated as of 20\_\_\_\_, between Lessor and \_\_\_\_\_, a \_\_\_\_\_ corporation ("Lessee").

WHEREAS, Lessee has entered into one or more purchase agreements identified in Exhibit A hereto (collectively "Purchase Agreement"), true and complete copies of which, as amended to the date hereof, have been initialed and delivered by Lessee to Lessor on or before the execution and delivery of this Assignment, with the manufacturers or vendors identified in Exhibit A (collectively "Vendor"), providing for the purchase by, and delivery to, Lessee of the items of equipment identified in Exhibit A (collectively "Units");

WHEREAS, Lessee desires to lease rather than purchase the Units and Lessor is willing to acquire Lessee's rights and interests under the Purchase Agreement relating to the Units and to purchase the Units, all on the terms and conditions set forth below; and

WHEREAS, Lessor will, subject to certain conditions, pay for each Unit in accordance with the terms of the Purchase Agreement upon delivery to and acceptance by Lessee of such Unit for lease pursuant to the terms and conditions of a Master Agreement to Lease Equipment between Lessor and Lessee, dated as of \_\_\_\_\_, 20\_\_\_\_, and the applicable Schedule identified on Exhibit A (collectively "Lease");

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Assignment. Lessee hereby assign and transfers to Lessor all of Lessee's rights and interests under the Purchase Agreement relating to the Units, including without limitation (a) the right to purchase the Units and to take title to the Units and to be named the purchaser in the bill or bills of sale to be delivered with respect to the Units, (b) all rights to enforce claims against Vendor for damages, losses, liabilities, and expenses arising directly or indirectly out of or in connection with the Purchase Agreement or the Units, including without limitation all guaranty, warranty and indemnity provisions contained in the Purchase Agreement as to the Units, and (c) all rights to compel performance of the terms of the Purchase Agreement. Notwithstanding the foregoing, provided that Lessor has not notified Vendor in writing that an Incipient Default or Event of Default under the Lease has occurred and is continuing, Lessor authorizes Lessee as to each Unit during the

Lease Term of such Unit to exercise in Lessee's name all rights and powers of the purchaser under the Purchase Agreement and to retain any recovery or benefit resulting from the enforcement of any Vendor guaranty, warranty or indemnity under the Purchase Agreement or otherwise; provided, however, that Lessee may not consent to any modification of the Purchase Agreement or any documentation relating thereto without the prior written consent of Lessor.

2. Continuing Liability of Lessee. It is expressly agreed that, anything contained herein to the contrary notwithstanding, (a) Lessee shall perform, and at all times remain liable to Vendor under the Purchase Agreement to perform, all duties and obligations of the purchaser thereunder to the same extent as if this Assignment had not been entered into, (b) the exercise by Lessor of any of the rights assigned hereunder shall not release Lessee from any of its duties or obligations to Vendor under the Purchase Agreement, and (c) the performance by Lessor of any duties or obligations of Lessee to Vendor under the Purchase Agreement shall not release Lessee from any of its duties or obligations to Lessor under this Assignment.

3. Purchase of Equipment; Limitation of Lessor's Liability. Lessor agrees with Lessee, subject to (a) the execution and delivery by Vendor to Lessor of a Consent and Agreement substantially in the form of Exhibit B hereto, (b) the terms and conditions of the Lease, and (c) delivery to and acceptance by Lessee of the Units in accordance with the terms of the Purchase Agreement and the Lease, to pay to Vendor the purchase cost to Lessee of each such Unit. Lessor does not assume and shall not at any time have any obligations or duties to Vendor under or by reason of this Assignment or the Purchase Agreement.

4. Further Assurance. Lessee agrees at any time and from time to time, at the request of Lessor, to promptly and duly execute and deliver any and all such further instruments and documents and take such further action as Lessor may request to obtain the full benefits of this Assignment and of the rights and powers herein granted.

5. Lessee Indemnity. Lessee agrees to indemnify and defend Lessor, its successors and assigns against any and all losses, claims, damages, liabilities and expenses (including without limitation reasonable legal fees) which arise directly or indirectly out of or in connection with this Assignment, the Purchase Agreement or the Units (including without limitation the manufacture, purchase, testing, operation, acceptance, rejection, ownership, shipment, transportation, use, delivery, installation, leasing, possession, storage, return or sale of any Unit); provided, however, that Lessee shall not be required to indemnify Lessor under this Section 5 as to any matter resulting solely from Lessor's willful misconduct.

6. Lessee Warranties and Covenants. Lessee warrants and covenants that (a) the Purchase Agreement is valid, in full force and effect, is not in default, and is and will remain enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization and similar laws affecting the enforcement of creditor and lessor rights generally, (b) the execution and delivery of this Assignment has been duly authorized, and this Assignment is and will remain the valid and binding obligation of Lessee enforceable against Lessee in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization and similar laws affecting the enforcement of creditor and lessor rights generally, and (c) Lessee has not made and will not make any other assignment of the Purchase Agreement or any part thereof or any of its rights thereunder, all of which are free and clear of any and all liens, encumbrances, rights or claims of third parties whatsoever.

7. Governing Law. This Assignment shall be governed in all respects by, and construed in accordance with, the laws of the State of \_\_\_\_\_, without regards to its conflict of law principles.

8. Assignment by Lessor. This Assignment and Lessor's rights, interests and obligations hereunder may be assigned in whole or in part by Lessor without the consent of Lessee. This Assignment shall be binding upon and inure to the benefit of the respective successors and assigns of Lessor and Lessee.

IN WITNESS WHEREOF, the parties hereto have duly executed this Assignment as of the date first above written.

\_\_\_\_\_, Lessor

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

Title: \_\_\_\_\_

\_\_\_\_\_, Lessee

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

Title: \_\_\_\_\_

**Exhibit A  
PURCHASE AGREEMENTS ASSIGNED**

<i>Vendor</i>	<i>Purchase Agreement Date</i>	<i>Schedule No.</i>	<i>Description of Units</i>
---------------	------------------------------------	-------------------------	---------------------------------

**Exhibit B  
PURCHASE AGREEMENT ASSIGNED**

CONSENT AND AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, a \_\_\_\_\_ corporation ("Vendor"), hereby acknowledges notice of and consents to all of the terms and conditions of the attached Purchase Agreement Assignment ("Assignment"), dated as of \_\_\_\_\_, between \_\_\_\_\_, Lessor, and \_\_\_\_\_, Lessee. The terms defined in the Assignment shall have the same meanings in this Consent and Agreement, Vendor hereby confirms to and agrees with Lessor that (i) all representations, warranties, indemnities and agreements of Vendor under the Purchase Agreement to the extent assigned in the Assignment with respect to the Units shall inure to the benefit of Lessor to the same extent as if Lessor had originally been named the purchaser in the Purchase Agreement, (ii) Lessor shall not be liable for any of the obligations or duties of Lessee under the Purchase Agreement, nor shall the Assignment give rise to any duties or obligations whatsoever on the part of Lessor to Vendor, and (iii) from and after the date of delivery of each Unit or any part thereof pursuant to the Purchase Agreement Vendor will not assert any lien or claim against such Unit or part thereof arising on or prior to the date of such delivery, including without limitation any lien or claim for any work or services performed on or prior to the date of such delivery.

Vendor hereby represents and warrants that (a) Vendor is a corporation duly organized and validly existing in good standing under the laws of the State of \_\_\_\_\_, (b) the making and performance of the Purchase Agreement and this Consent and Agreement have been duly authorized by all necessary corporate action on the part of Vendor, do not require any stockholder or other approval, and do not contravene any law binding on Vendor or contravene Vendor's articles of incorporation or by-laws or any indenture, credit agreement or other contract to which Vendor is a party or by which it or its properties are bound, (c) the Purchase Agreement constitutes a valid and binding obligation of Vendor enforceable against Vendor in accordance with its terms, and this Consent and Agreement is a valid and binding obligation of Vendor enforceable against Vendor in accordance with its terms, in each case except as limited by applicable bankruptcy, insolvency, reorganization and similar laws governing the enforcement of creditor and lessor rights generally, and (d) the Purchase Agreement is in full force and effect and no default exists thereunder.

IN WITNESS WHEREOF, Vendor has duly executed this Consent and Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, Vendor

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

Title: \_\_\_\_\_

**Form: p-07**  
**Disk File Name: p-07.rtf**

**PURCHASE ORDER—EQUIPMENT**

**Form Purpose**

An equipment leasing company equipment purchase order.

*Executing Parties*  
The equipment lessor.

**Purchase Order No.**

VENDOR: \_\_\_\_\_

SHIP TO: (Insert name and address of Lessee below)

Description of Equipment	Cost
--------------------------	------

Confirming Lessee's prior order. Do not duplicate.

**INSTRUCTIONS TO VENDOR**

Invoice should be mailed to \_\_\_\_\_ on date of shipment.

INVOICES CANNOT BE HONORED UNLESS THE FULL EQUIPMENT DESCRIPTION INCLUDING SERIAL NUMBERS APPEAR THEREON.

SHOW ON INVOICE:

- SOLD TO—
- SHIPPED TO (Name and address of Lessee)
- FULL DESCRIPTION OF EQUIPMENT, MODEL, AND SERIAL NUMBERS
- OUR PURCHASE ORDER NUMBER

This purchase order is subject to cancellation if the equipment covered by this order is not delivered to and accepted by the Lessee on a Delivery Receipt within 30 days of the date shown below.

THIS PURCHASE ORDER IS SUBJECT TO THE TERMS AND CONDITIONS ON REVERSE SIDE WHICH ARE A PART HEREOF.

DATE: \_\_\_\_\_

(Insert leasing company name)

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

Title: \_\_\_\_\_

[Author's Note: The following should be placed on the reverse side.]

#### TERMS AND CONDITIONS OF PURCHASE

1. **No Changes Authorized.** This purchase order must be accepted as written. Any increase in price, change in quantities or quality of merchandise ordered or any other change in terms or conditions of this order shall not be binding on the buyer unless such change is agreed to in writing. Delivery must be in accordance with the conditions hereof and unless otherwise specifically noted thereon. Vendor is to deliver the merchandise f.o.b. Lessee's address, destined as thereon indicated.
2. **No Charges Authorized.** No charges for crating, boxing, packing or drayage, or for unloading, assembling or installing any merchandise will be allowed or payable unless specified herein.
3. **Inspection, Acceptance or Rejection.** All merchandise shall be received subject to buyer's inspection and acceptance or rejection. The place and time of inspection shall be determined by buyer. Merchandise which is defective or not accepted by Lessee within a reasonable time or otherwise not in accordance with this purchase order may be returned for full credit and Vendor shall assume all transportation and handling charges in connection therewith. Rejected merchandise shall not be replaced except upon buyer's specific instructions in writing to that effect. Any deposit, prepayment or other payment made to Vendor by buyer shall either be refunded to buyer or buyer may, at buyer's option, apply the amount thereof to any other debt or obligation of buyer to Vendor.
4. **Risk of Loss.** Vendor shall bear all risk of loss of any merchandise covered by this purchase order until physically delivered, installed, inspected and accepted by Lessee at the designated place of delivery, and Vendor shall further bear the risk of loss at all times on rejected merchandise.
5. **Delivery to be Made to Lessee.** The person, firm or corporation to which the merchandise covered by this purchase order is to be delivered (as indicated herein) has leased said merchandise from the buyer pursuant to a Lease Agreement, and is herein referred to as "Lessee." Lessee is authorized on behalf of the buyer to receive delivery of such merchandise, to inspect, and to accept or reject same. Delivery is to be made promptly, and any delay in delivery requires buyer's prior written approval.
6. **Rejection by Lessee.** If Lessee shall reject or refuse to accept any merchandise pursuant to this purchase order, buyer shall be deemed relieved of any liability to Vendor under such purchase order as to such merchandise, and all obligations of buyer hereunder as to such merchandise shall upon such rejection or refusal be deemed those of Lessee, with the same force and effect as if Lessee, instead of buyer, had placed this purchase order as to such merchandise, and Vendor in such event, shall look only to Lessee with respect to any liability or obligation hereunder.
7. **Cancellation by Buyer.** This purchase order may be canceled by the buyer in the event the Lessee is not authorized to enter into the Lease, or the person signing the Lease on behalf of the Lessee is not authorized so to do, or, in the event that the Vendor or any of its agents make any representations to the Lessee inconsistent with the terms or conditions of the Lease, upon which the Lessee reasonably relies.
8. **No Assignment by Vendor.** Vendor shall not assign this purchase order without the prior written consent of buyer. In the absence of such consent, no such assignment shall be effective, and at buyer's option, shall effect a cancellation of all buyer's obligations hereunder.
9. **Patents.** Vendor agrees to and does by shipment thereof indemnify, protect, and hold harmless buyer, its successors or assigns and the Lessee and its successors and assigns against all claims, demands, damages, costs or expenses including attorneys' fees) for actual or alleged infringements of any patent covering any merchandise hereby ordered or the use thereof.
10. **Fair Labor Assurance.** Vendor warrants and represents that the goods ordered hereby have been produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, and with all legislation and regulations, including, without limitation, those governing Fair Employment practices and Equal Employment Opportunity.

11. Warranties by Vendor. Vendor warrants that immediately prior to buyer's purchase Vendor had legal title to the merchandise, title is transferred free from any liens and encumbrances, that the merchandise ordered hereunder will be fit and sufficient for the purpose intended, that it will conform to the specifications, drawings or samples, if any, furnished or adopted by the buyer and will be merchantable, of good quality, and free from defects in material, design or workmanship. No part or plans made according to buyer's design will be sold to any other person, firm or corporation. The foregoing is in addition to and not in lieu of any or all other warranties expressed or implied. All warranties shall run to, inure for the benefit of and be enforceable by both buyer and its lessee, jointly and separately.

12. Excusable Delays. Vendor will not be responsible for delays or defaults in delivery if occasioned by unforeseeable cause beyond the control and without the fault or negligence of the Vendor; and buyer shall not be responsible for failure to receive or take delivery if occasioned by any like cause or its or Lessee's part.

13. Freight. If the buyer has not indicated any preference for the method of shipment, then the merchandise shall be shipped in the least expensive way.

14. Purchase Price. All quantity, cash or other discounts granted by the Vendor as a direct or indirect result of the purchase herein ordered shall be paid to buyer. Vendor represents and warrants that no payments have been made to the Lessee nor has the Lessee received any other consideration as a direct or indirect result of the purchase herein ordered unless the amount of such payment or the value of Such consideration is deducted from the gross invoice price.

15. Title to merchandise shall pass to buyer only after physical delivery, installation, inspection, and acceptance as provided herein.

**Form: r-01****Disk File Name: r-01.rtf****RFQ—DEAL SHEET FORMAT****Form Purpose**

An informal lessee request for leasing company lease quotations, incorporating a deal sheet.

*Executing Parties*

The prospective equipment lessee.

**An Informal Deal Sheet Approach**

Author's Note: If your company leases a high volume of equipment each year, consider putting together a deal sheet format that can be filled out and attached to a simple lease request cover letter.

Here's a suggested format. If you decide to use a similar format, use the Lessee Proposal Stage Checklist included in this book to ensure you've covered all issues of importance in your deal.

BRIGHT TIME COMPANY  
34 Orchard Road  
White Plains, New York 10604  

---

 (914) 555-0800

May 2, 20\_\_

BY HAND

Ms. Mary Mari  
Marketing Vice President  
Rapid Leasing Corporation  
1425 Money Drive  
White Plains, New York 10604

Dear Mary:

We are planning to take delivery on the equipment specified on the attached term sheet during the last week of May. We would be interested in receiving a lease financing quote to determine if leasing is the best alternative for us. Please submit a written quote no later than May 5, 20\_\_.

If you have any thoughts about other structures or benefits that may be beneficial, please include them in your response. Incidentally, we will not accept a brokered transaction and are looking to you to be the actual lessor.

Our decision will be made by May 10, 20\_\_. The lease must be signed no later than May 15, 20\_\_. If you have any questions, my direct line is (914) 555-8795.

Sincerely,

Roger Rogueson  
Assistant Manager

## BRIGHT TIME COMPANY

## TERM SHEET

May 2, 20\_\_

Equipment:	Monitor Sentex Computer System, Model 3 with Excel Payroll Package.
Equipment Cost:	\$215,000 ±15%
Vendor:	Monitor Computer Company
Delivery Date:	May 29, 20__
Lease Term:	3 and 5 year
Rent Quote:	Monthly, in advance, and quarter, in arrears.
Purchase Option:	0% of Equipment Cost
Renewal Option:	Maximum 1st year 25% of primary rent, thereafter year-to-year fair market rental value.
Early Termination Right:	Anytime after first year of base lease term Attach schedule to proposal
Bid Due Date:	May 5, 20__
Award Date:	May 10, 20__

## Special Provisions:

1. Transaction to be single investor, non-brokered
2. Lease to qualify as operating lease for accounting purposes
3. Net finance lease
4. Our master lease to be used in the form enclosed. Please identify with proposal any provisions that are not acceptable.
5. A casualty value schedule must be sent with your quote.



**Form: r-02**  
**Disk File Name: r-02.rtf**

**RFQ—INFORMAL**

**Form Purpose**

An informal lessee request for leasing company lease quotations.

*Executing Parties*

The prospective equipment lessee.

**A Less Formal Request for Quotes**

Author's Note: In certain situations, as mentioned earlier, a less formal RFQ will do the necessary job. For example, in a \$100,000 lease financing, there are fewer issues and negotiating risks. The following letter, although still informal, tells the leasing company what is needed. It states the equipment specifics as well as the lease terms that it is looking for. And it tells when the bids are due and when the decision will be made. It also does not indicate that a lease is the only alternative. To keep your negotiating leverage highest you must leave the door open to a purchase possibility, at least as far as the leasing company is concerned.

**BRIGHT TIME COMPANY**  
**34 Orchard Road**  
**White Plains, New York 10604**

**(914) 555-0800**

May 2, 20\_\_

BY HAND

Ms. Mary Mari  
 Marketing Vice President  
 Rapid Leasing Corporation  
 1425 Money Lane  
 White Plains, New York 10604

Dear Mary:

We are planning to take delivery on a Monitor Computer System during the last week of May. We would be interested in having you submit a lease financing quote for our internal purchase/lease evaluation. Please submit the quote in writing no later than May 5, 20\_\_.

The equipment cost is anticipated to be \$215,000. We, however, need some leeway in your bid to cover a cost variance of 15%, up or down. The actual system configuration is a Model 3, Excel Payroll Processing System, sold by Monitor Computer Company. I've enclosed a copy of our vendor equipment purchase order confirmation detailing the equipment specifics. The vendor expects payment in full on the date we accept the equipment for lease.

We would like to see monthly, in advance, and quarterly, in arrears, quotes for three-year and five-year lease terms. We want a 10% purchase option and the right to renew the lease for successive one-year terms, the first term renewal rent not to exceed 25% of the original term rent and the remaining at a rent equal to the fair market rental value. We would also like the right to terminate the lease before the end of the basic term and ask that you submit a schedule of termination values beginning at the end of the first year. Incidentally, we also would like you to submit your casualty value schedule along with your quote.

If you have any thoughts about other structures or benefits that may be beneficial, please include them in your response. Incidentally, we will not accept a brokered transaction and are looking to you to be the actual lessor.

Our decision will be made by May 10, 20\_\_\_\_. The lease must be signed no later than May 15, 20\_\_\_\_. If you have any questions, my direct line is (914) 555-8795.

Sincerely,

Roger Rogueson  
Assistant to the President

**Form: r-03**  
**Disk File Name: r-03.rtf**

## **RFQ—LONG FORM**

### **Form Purpose**

A long form formal lessee request for leasing company lease quotations.

---

### **A Formal Request for Quotes Letter**

REQUEST FOR QUOTATIONS

TO

LEASE EQUIPMENT

April 12, 20\_\_

SunTime Corporation is issuing this REQUEST FOR QUOTATIONS (RFQ) to obtain equipment lease bids from perspective lessors. This RFQ is not an offer to contract. SunTime Corporation will not be obligated to lease the specified equipment until a mutually satisfactory written lease has been executed by all parties.

#### *A. Proposal Request—General*

In accordance with the terms and conditions specified below, SunTime Corporation wishes to receive proposals from equipment leasing companies (Lessors) to provide lease financing for certain data processing equipment.

In the evaluation of each proposal, SunTime Corporation will rely on all written and verbal representations made by each prospective Lessor and each representation will be incorporated into any and all formal agreements between the parties.

No Lessor receiving this RFQ is authorized to act for, or on behalf of, SunTime Corporation prior to the receipt of written acceptance by SunTime Corporation of a satisfactory lease proposal and then only in accordance with the specific terms, if any, of the acceptance.

#### *B. Proposal Guidelines*

1. Your proposal must be submitted in writing and follow the guidelines in this RFQ. If it does not, it will be rejected.
2. All RFQ requirements must be addressed. Specifically identify any requirements that cannot be satisfied.
3. If you can offer any additional benefits not requested in this RFQ, identify them as “Additional Benefits” and state them in a separate section at the end of your proposal.
4. You must notify SunTime Corporation no later than the Lessor Proposal Intent Notification date specified in the Time Table below if you intend to submit a proposal in response to this RFQ.
5. SunTime Corporation may, without liability and in its sole discretion, amend or rescind this RFQ prior to the lease award. In such event each Lessor offering to submit a proposal will be supplied, as the case may be, with an RFQ amendment or a notification of our intent not to proceed.
6. Your proposal will be considered confidential and none of the contents will be disclosed to a competing Lessor.

7. You shall be responsible for all costs incurred in connection with the preparation of your proposal and any contract(s) in response to this RFQ.
8. Your proposal must be signed by a duly authorized representative of your company.
9. Your proposal must be submitted in triplicate and remain in effect at least until the Lessor Proposal Commitment Cut-off date specified in the Time Table below.
10. Your proposal should be accompanied by (a) a copy of your most recent annual report or financial statements or appropriate bank references with account officer name and telephone number, (b) a description of any material litigation in which you are presently involved, and (c) a statement of any potential conflict of interest, and plan to avoid it, as a result of an award.
11. SunTime Corporation intends to announce its award decision no later than the Award Announcement date specified in the Time Table below.
12. Any questions concerning this RFQ, should sent in writing to:

SunTime Corporation  
1823 Third Avenue  
New York, New York 11020  
Attn. John Peterson  
Telephone Number: (212) 754-2367

Any questions and answers which we feel would be of assistance to all Lessors submitting proposals, will be promptly distributed to each.

13. SunTime Corporation may enter simultaneously in negotiations with more than one Lessor and make an award to one or more without prior notification to others we are negotiating with.
14. Any information supplied to you in this RFQ by SunTime Corporation or otherwise by any representative in connection with this RFQ is confidential and may not be disclosed or used except in connection with the preparation of your proposal. If you must release any such information to any person or entity for the purpose of preparing your proposal, you must obtain an agreement prior to releasing the information that it will be treated as confidential by such person or entity and will not be disclosed except in connection with the preparation of your proposal.
15. If you are a selected Lessor, prior to our making the award you will be supplied with a copy of our form lease document(s) for your review. Your response to the acceptability of the document provisions, with exceptions noted in writing, will be a condition precedent to any award.

### C. Equipment Lease Requirements

#### 1. EQUIPMENT DESCRIPTION, COST AND TRADE-IN

a. The equipment will consist of electronic data processing equipment (Equipment) acquired from the following designated vendor(s):

<i>Vendor</i>	<i>Equipment Description</i>	<i>Cost</i>
StarByte Computer Corp. Buffalo, NY	(1) Model 423 Computer	\$1,850,000
	(7) Model 3 Remote Ctrs.	350,000
Micro Tech, Inc. New York, NY	Material Tracking System	150,000
	Installation:	120,000
	TOTAL:	<u>\$2,470,000</u>

(i) The final cost of the Equipment may vary as much as + (10)% or - (20)%, and your financing offer must permit this leeway without penalty.

b. If you can provide more advantageous financing by supplying equipment you own, have access to, or can acquire through volume discount arrangements with a vendor, please provide the specifics in the Additional Benefits section. If you intend to offer to provide any used equipment, the serial number(s), current location(s) and owner(s) must be stated in your proposal.

(i) Any equipment you offer to supply must be delivered to SunTime Corporation at 937 Secour Drive, Buffalo, New York 11342 no later than the Anticipated Equipment Delivery Date specified in the time table in Section D below and ready for acceptance no later than the specified Anticipated Equipment Acceptance Date. You must provide a firm delivery date commitment with contractual assurances and remedies for failure to meet such date, which should be stated in your proposal.

c. The Equipment will replace equipment under an existing lease of computer equipment and SunTime Corporation would like you to propose an additional financing arrangement which would incorporate the buy-out of that lease. The specifics of the existing lease are as follows:

Lessor: AmerLease Corp.

Lease Term: 7 Years

Lease Start Date: March 1, 20\_\_

Lease Ending Date: February 28, 20\_\_

Monthly Rent: \$21,324, in advance

Lease Termination Amount as of August 31, 20\_\_: \$397,000

Equipment: StarByte XTRA Material Tracking Computer System

Original Equipment Cost: \$1,253,000

Right To Sublease: Yes

Purchase Option: Fair Market

Renewal Option: Year to Year, 90 Days Prior Notice, Fair Market

(i) If you can provide any other arrangement that would be beneficial, such as subleasing the existing equipment to another lessee, please so indicate.

## 2. ESTIMATED DELIVERY AND ACCEPTANCE DATE

It is anticipated that the Equipment will be delivered and accepted for lease no later than the anticipated delivery and acceptance date(s) specified in the time table below.

## 3. EQUIPMENT PAYMENT

The Equipment must be paid for by Lessor no later than thirty (30) days following acceptance for lease.

## 4. EQUIPMENT LOCATION

The Equipment will initially be accepted for lease at our manufacturing plant located at 937 Secour Drive, Buffalo, New York. We must have the right to move the equipment to any location in the United States without the prior consent of Lessor, but upon providing thirty (30) days prior written notice.

## 5. PRIMARY LEASE TERM

Your proposal must provide offers to lease the Equipment for Primary Lease Terms of five (5) and seven (7) years.

The Primary Lease Terms must run from the later of the Equipment acceptance for lease or payment by Lessor for the Equipment.

## 6. PRIMARY TERM RENTS

Rent payments must be quoted on a monthly, in advance, and quarterly, in arrears, basis.

The rent payments must be expressed as a percentage of Equipment Cost and be on a consecutive, level basis. The nominal lease interest rate must be provided for each rent quote.

SunTime Corporation shall not be obligated for payment of rent until the Equipment vendor has been paid in full.

## 7. INTERIM LEASE TERM

No Interim Lease Term will be permitted that Requires payment of interim rent.

## 8. INTERIM RENTS

No Interim Lease Term rent payments will acceptable.

## 9. OPTIONS

a. SunTime Corporation must have the option to renew the term of the lease year to year for a total of three (3) years, on a fair market value basis. Offers providing for a fixed-price renewal will also be considered. Any fixed price offers should be included in an "Additional Benefits" section at the end of the Lessor's proposal.

b. Lessee must have the right to purchase the Equipment at the end of the Primary Lease Term and each Renewal Term for its then fair market value. Offers providing for the right to purchase for a fixed percentage of Equipment Cost will be given favorable consideration and should be included in an "Additional Benefits" section at the end of the Lessor's offer.

c. SunTime Corporation must have the right, beginning as of the end of the first year of the Primary Lease Term, to terminate the Lease prior to the end of the Primary Lease Term, or any Renewal Term, in the event the Equipment becomes obsolete or surplus to SunTime Corporation's needs.

(i) In the event of an early termination, SunTime Corporation shall have the right to arrange for the sale or re-lease of the Equipment. Any proceeds from the sale, or anticipated proceeds from the lease, of the Equipment shall reduce any termination penalty payment required.

(ii) A schedule of early termination values must be included with your proposal.

d. SunTime Corporation must have the right to upgrade the Equipment, by adding equipment or replacing components, at any time during the term of the lease and Lessor must provide financing for such upgrade for a term coterminous with the term remaining during the upgrade period at a financing rate which will not exceed Lessor's transaction nominal after-tax yield.

## 10. INSURANCE

The Equipment shall be self-insured.

## 11. CASUALTY VALUE SCHEDULE

A schedule of casualty values, expressed as a percentage of Equipment Cost, for both the Primary Lease Term and any Renewal Term(s) must be submitted with your proposal.

## 12. TRANSACTION FEES

Lessee will not pay financing commitment or nonutilization fees.

### 13. ACCOUNTING CLASSIFICATION

Preference will be given to a Lease which qualifies as an operating lease under the applicable accounting guidelines.

### 14. SINGLE SOURCE PREFERENCE

Preference will be given to Lessors who intend to provide 100% of the funds necessary to purchase the Equipment over those who intend to leverage the purchase with third-party debt. Your proposal must disclose your intent.

(a) In the event you determine it would be advantageous to propose a leveraged lease financing structure, it should be submitted assuming a long-term debt interest rate of 6.75% per annum. In addition, the following terms will apply:

(i) Our investment banker, Chicago First Corporation, will be responsible for securing the third-party leveraged lease debt at a rate satisfactory to SunTime Corporation, within our sole discretion.

(ii) You must provide assurance that the lease will qualify as a true lease for Federal income tax purposes under the current tax rules and guidelines.

(iii) You must state whether your proposal is on a best efforts or firm basis; preference will be given to those on a firm basis.

(iv) At the time of submission of your proposal you must be prepared to identify all lease participants (with contact name and telephone number), including each identified equity and debt participant, so they may be called immediately for verification in the event you are the successful bidder.

### 15. BROKER DISCLOSURE

We will give a preference to lease offers from principal funding sources who do not intend to re-sell or broker the transaction. In the event that you do not intend to act as a principal and purchase the equipment for your own account, you must disclose that in your proposal.

### 16. EXPENSES

Lessor shall be responsible for payment of all fees and expenses of the transaction, other than Lessee's own direct legal fees in connection with documenting the lease transaction, including fees and expenses incurred in connection with the arranging, or documentation, of the Equipment Lease.

#### D. Time Table

SunTime Corporation will adhere to the following time schedule in connection with evaluating submitted proposals, making the award decision and negotiating the equipment lease document(s):

<i>Action</i>	<i>Date</i>
Lessor Proposal Intent Notification Due	
Lessor Proposals Due	
Lessor Proposal Commitment Cut-Off	
Lessor Notification of Initial Qualification	
Form Lease Document(s) Sent to Qualified Lessor(s)	
Lessor Response to Form Lease Document(s)	
Lessor(s) Selection	
Award Announcement	
Lease Negotiations—Start	
Lease Signing	
Anticipated Equipment Delivery	
Anticipated Equipment Acceptance For Lease	

**Form: r-04**  
**Disk File Name: r-04.rtf**

**RFQ—SHORT FORM**

**Form Purpose**

A short form formal lessee request for leasing company lease quotations.

---

**Request for Lease Quotation**

THE MIDEASTERN RAILWAY CORPORATION

Lessee:	The Mideastern Railway Corporation.
Equipment:	Model 6 RD-10, 23,000 hp. diesel locomotives (est. unit cost—\$525,000), manufactured by Arcane Locomotive Corp.
Estimated Total Cost:	\$3,150,000
Equipment Delivery:	February, 20__—Two units March, 20__—Two units April, 20__—Two units
Equity Contribution & Commitment:	Not less than 20% of cost. The equity investor(s) must agree to buy equipment with a maximum equipment cost up to \$3.5 million.
Interest Rate Assumptions:	7 3/4%, 8%, 8 1/4%.
Agent for Debt Placement:	Samon & Smith Co.
Attorney for Long-Term Lenders:	Carr, Swift & Moore, subject to agreement of the long-term lenders.
Structuring of the Transaction:	15-year net finance leveraged lease with semiannual, in arrears, level payments. Any other proposal format will be considered provided a bid as requested has been submitted.  The lessee must have three two-year fair market rental renewal options. A fair market purchase option at the end of the initial term and each renewal term should also be provided. The lessee will give a letter stating that, in its opinion, the locomotives will have a useful life exceeding 18 years and a residual value equal to 20% of the original cost at the end of 15 years.
Delivery Cutoff Date:	The cutoff date for the equipment deliveries will be July 1, 20__. All equipment not delivered before this date will be excluded from the transaction unless the lessor and the lessee agree to extend such date.
Expenses:	All expenses of the transaction, including rating fees and the investment banking fees, will be borne by the lessor.
Security:	The lessee's lease obligations will be unconditionally guaranteed by The Eastern Railway Company. The Mideastern Railway Company is a wholly owned subsidiary of The Eastern Railway Company.



The long-term debt will be secured by an assignment of the lease. An agent bank will be selected by The Eastern Railway Company and Samon & Smith Co. after the long-term debt is placed. The long-term debt will be noncallable except for casualty occurrences.

- Indemnification: Preference will be given to bids with minimum indemnification. All indemnification requirements must be precisely stated in the proposal.
- Interim Rentals: All quotations must assume not more than three equity closing dates and provide interim rents from such dates to July 1, 20, the beginning of the primary lease term. Interim rentals will be equal to the daily equivalent of the long-term debt interest rate.
- Casualty Values: All bidders must provide a schedule of casualty values, expressed as a percentage of original cost, both for the primary lease term and any extensions thereafter. The method of calculating the casualty values must also be supplied.
- Insurance: The equipment will be self-insured.

Please mail us your proposal in writing postmarked no later than \_\_\_\_\_. Your proposal must be on a "firm" basis and at the time of submission you must be prepared to identify the investor source(s) so that they may be contacted immediately by telephone for verification in the event you are the successful bidder.

**Form: s-01**  
**Disk File Name: s-01.rtf**

**LESSEE CREDITOR**

**Form Purpose**

A subordination agreement for use by a leasing company in obtaining a lessee creditor waiver of any potential claims against the leased equipment.

*Executing Parties*  
A lessee creditor.

---

**Subordination Agreement**

The undersigned hereby waives any interest in the below described equipment currently owned by  
(Lessor).

[Equipment description]

[Insert creditor's name]

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Form: t-01****Disk File Name: t-01.rtf****TIME TABLE—DEAL SCHEDULE****Form Purpose**

A lessee-prepared deal time table to keep an equipment lease deal on track from lease proposal to document closing.

**Time Table**

(Insert name of lessee) will adhere to the following time schedule in connection with evaluating submitted proposals, making the award decision, and negotiating the equipment lease document(s):

<i>Action</i>	<i>Date</i>
Lessor Proposal Intent Notification Due	
Lessor Proposals Due	
Lessor Proposal Commitment Cut-Off	
Lessor Notification of Initial Qualification	
Form Lease Document(s) Sent to Qualified Lessor(s)	
Lessor Response to Form Lease Document(s)	
Lessor(s) Selection	
Award Announcement	
Lease Negotiations— Start	
Lease Signing	
Anticipated Equipment Delivery	
Anticipated Equipment Acceptance for Lease	

**Time Table Action Category Explanation****Lessor Proposal Intent Notification Due**

The date when each leasing company receiving the RFQ must indicate its willingness to submit a lease offer. Typically, I set a date one week following the delivery of the RFQ to prospective bidders.

**Lessor Proposals Due**

The date when all lessor proposals are due. Use a date which will provide adequate lead time to have the transaction re-bid, get the equipment delivered and operationally accepted, and cover any unforeseen delays.

**Lessor Proposal Commitment Cut-Off**

The date through which the lessor must keep its proposal available for acceptance by the lessee. I set a date which will provide adequate time to review all proposals, with a margin for comfort.

**Lessor Notification of Initial Qualification**

The date when the lessee will make the preliminary lease award, subject to acceptance of the lessee's form lease documents. Set a date you're comfortable with.

**Form Lease Document(s) Sent to Qualified Lessor(s)**

The date when the lessee's form lease documents will be sent to the preliminary selected lessor(s) for review and comments. The date is typically one shortly following the Lessor Notification of Initial Qualification Date.

**Lessor Response to Form Lease Document(s)**

The date when the initially selected lessor(s) must submit comments to the lessee's form lease documents. Typically, I like to give a lessor two weeks to review the form lease agreement and respond.

**Lessor(s) Selection**

The date on which you will make the final winning lessor(s) selection. Set a date which will give you adequate time to review with your lawyers the lessors' form lease agreement responses.

In certain situations, it may be a good negotiation approach to select three lessors—specifying a first place, second place, and third place award and simultaneously telling all three that if negotiations break down with the first place lessor, you will immediately begin negotiations with the second place lessor and similarly, if necessary, with the third place lessor.

**Award Announcement**

The date when all lessors will be notified of your lessor selection decision. Typically, I set a date one to two business days after the Lessor(s) Selection Date.

**Lease Negotiations—Start**

The date when negotiation will begin with the winning lessor. I usually set a date three to five business days following the Award Announcement date.

**Lease Signing**

The date when you expect all lease negotiations to be concluded and the lease documents to be signed by all parties. The date you set will depend on the complexity of the lease financing. A simple transaction can be documented in one week, while a complex leveraged lease transaction may take three months. Seek the advice of experienced legal counsel in setting this date.

**Anticipated Equipment Delivery**

The date when the equipment is anticipated to arrive on the lessee's premises.

**Anticipated Equipment Acceptance for Lease**

The date when the lessee expects to accept the equipment for lease. This date should allow sufficient time to ensure that the delivered equipment is operationally acceptable.

**Form: v-01****Disk File Name: v-01.rtf****PROGRAM AGREEMENT****Form Purpose**

A vendor program agreement providing for an arrangement in which a leasing company will purchase equipment leases entered into from time to time by a equipment vendor with its customers.

*Executing Parties*

The equipment lessor.

The equipment vendor.

**Dealer Program Agreement**

## DEALER PROGRAM AGREEMENT

THIS AGREEMENT is made as of the \_\_\_\_ day of \_\_\_\_\_, by and between Able Leasing Company, a \_\_\_\_\_ corporation having a place of business at \_\_\_\_\_ ("ALC"), and \_\_\_\_\_ ("Dealer"), a \_\_\_\_ corporation, having a place of business at \_\_\_\_\_.

WHEREAS, ALC and Dealer contemplate engaging in a program ("Program") in which Dealer will, in the ordinary course of its business, lease personal property to retail Lessees (singularly, "Lessee"), which leases will be upon such terms and conditions as are acceptable to ALC; and

WHEREAS, the Program contemplates the sale and assignment from time to time by Dealer to ALC of such leases and all of Dealer's right, title and interest in and to such personal property, without recourse, except with regard to Dealer's (i) representations, warranties and covenants, and (ii) repurchase obligations, all as provided in this Agreement.

NOW THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

**1. OFFER OF LEASES**

(a) Submission of APSs. Dealer may from time to time, offer lease application packages ("APS") to ALC for approval and, upon acceptance by ALC, the related Leases and property for purchase by ALC. The APS Dealer submits to ALC shall be in such form and contain such information and be evidenced by such documents as ALC may supply or otherwise require.

(b) Terms. The APS submitted to ALC shall provide for such rentals, rental periods, charges and residual values, if any, as are acceptable to ALC in its sole discretion from time to time.

(c) Approval or Rejection. ALC shall not be required to approve any APS submitted by Dealer. ALC may condition approval as to any APS on the Lease containing various specified and required terms. ALC shall advise Dealer within a reasonable period of time as to whether the APS has been accepted or rejected and, if accepted, upon what conditions.

(d) Documents, Records and Reports. ALC shall have access to all records of Dealer for any Lease which ALC shall have purchased from Dealer.

(e) The Terms, Leases and Property. As used in this Agreement, "Lease" means the lease agreement and other related documentation which evidences the obligation of a lessee ("Lessee") to pay to Dealer the monthly rentals and other sums due for the leasing of the property, and may include the obligation, if any, of another person or persons to pay to Dealer the residual value of such property upon termination or expiration of a

Lease. The term "property" shall be deemed to include all equipment, accessories, and accessions in any way attached to or pertaining to the use or operation of the leased property.

## 2. ASSIGNMENT AND DEALER'S RESTATEMENT OF WARRANTIES, REPRESENTATIONS, AND COVENANTS.

(a) Assignment. Dealer hereby agrees to sell, assign, transfer and set over to ALC all of its right, title, and interest in and to each Lease and the property covered thereby. ALC hereby agrees to purchase each such lease and the property covered thereby as are acceptable to ALC and conform by signing and delivering an approved Lease to ALC, shall thereupon be deemed to restate to ALC with regard to that Lease all of Dealer's representations, warranties and covenants as are provided in this Agreement.

(b) Breach of Warranties. All Leases purchased from Dealer by ALC will reflect Leases made in the ordinary course of Dealer's business. Dealer represents that it has no knowledge of any breach by Dealer or by the manufacturer of the property covered by such Leases of any warranties or representations made to the Lessees, or of any breach by any of the Lessees of any warranties, representations, covenants, promises or obligations of any of the Lessees to the Dealer as provided in the Lease. In addition, if a Lessee asserts against ALC a claim or defense which the Lessee may have against the Dealer which arises out of the ownership, use, possession, operation, control, maintenance or repair of the property covered by the Lease, Dealer shall indemnify and defend ALC for the entire amount of ALC's loss, cost and expense. The liability shall be in addition to any liability Dealer may have under Paragraph 3 below.

## 3. DEALER'S FURTHER WARRANTIES, REPRESENTATIONS, AND COVENANTS

To induce ALC to acquire Leases, Dealer warrants, represents and covenants and, so long as any Leases purchased by ALC hereunder remain unpaid in whole or in part, continues to warrant, represent and covenant that, at the time of assignment of any Lease to ALC as to all acts and conditions required to be completed by or to exist at such time and, as to all acts required to be performed and conditions required to exist thereafter, with respect to that and each Lease acquired by ALC pursuant to this Agreement: (1) (a) the Lease and related documents are valid, (b) they represent the obligation of a bona fide Lessee, and (c) the documents supporting the transaction and the signatures thereon are genuine; (2) all amounts stated in the Lease are true and correct; (3) the description of the property and related accessories, equipment and accessions is complete and correct; (4) other than the Lease, no agreement has been or will be entered into between the Lessee and Dealer or any other person with respect to the financing or leasing of the property; (5) Dealer shall have full responsibility to assure ALC receives full and complete title; (6) if the transaction involves the leasing of new or used property for which title is evidenced by a Certificate or Document to Title and with regard to which a security interest is or may be perfected pursuant to a title encumbering law, Dealer shall have obtained, or caused an APS to be filed for such Title Certificate or Document with ALC ownership or security interest, as applicable, duly noted thereon and/or, if appropriate, the applicable financing statement(s) or security agreements have been duly filed with the appropriate filing office(s); (7) the form, terms and execution of the Lease and all related documentation and Dealer's activities in originating the Lease and documents supporting the Lease and the actual leasing of the property giving rise to the transaction each comply with all applicable federal, state and local laws; (8) to the best of Dealer's knowledge, all of the information contained in the Lessee's APS submitted to ALC is true and correct; (9) ALC has been named as a loss-payee and/or second beneficiary on a policy or policies of insurance covering all such risks and with such amounts of coverage and such insurers as are reasonably acceptable to ALC, and such insurance coverage shall be in force at or prior to the delivery of the property to the Lessee; and (10) Dealer and its affiliates currently hold and at all material times shall hold in good standing, any and all federal, state and local licenses and other regulatory approvals required to enable Dealer lawfully to originate and assign the Leases contemplated hereby.

## 4. COMPENSATION

ALC shall pay to Dealer a purchase price ("Purchase Price") for each Lease purchased by and sold and assigned to ALC, as specified in ALC's approval of an APS, or otherwise as agreed upon by the parties.

## 5. COLLECTION

ALC or its assignee shall collect payments on all Leases purchased from Dealer, unless the parties to this Agreement mutually agree otherwise. ALC may request Dealer to make reasonable efforts to arrange for the release or disposition of repossessed property. Dealer will not, without ALC's written consent: (1) grant any extension of time or payment; (2) compromise or settle any Lease for less than the full amount owing; (3) release, in any manner and Lessee or guarantor; or (4) sell, release or dispose of the property or any other collateral for the Lease for less than the unpaid balance due under the Lease (including, if applicable, the residual value of the property as provided in the Lease).

Unless with ALC's prior approval, all payments on Leases which may be received by Dealer shall be received in trust and immediately paid to ALC in the form received, except for necessary endorsement(s), without intermingling them with the Dealer's funds. Dealer appoints ALC and each of its officers as the Dealer's attorney-in-fact, without any right of revocation and with full power of substitution, to endorse the Dealer's name upon any notes, checks, drafts or other instruments for the payment of money received by ALC which are payable to Dealer with respect to Leases. Repossessed Property and other collateral held by Dealer will be in trust for ALC and kept apart time, by notice to Dealer, required that any such property or collateral be surrendered directly to ALC.

## 6. NONRECOURSE ASSIGNMENT DURING LEASE TERM; REPURCHASE OBLIGATION

Dealer's sale and assignment of any Lease to ALC shall be without recourse during the entire term of the Lease, except the Dealer shall remain personally obligated: (i) to repurchase the Lease and the property covered thereby on demand of ALC if, in ALC, reasonable judgment, any of Dealer's representations, warranties and covenants as to such Lease shall have been breached, and to pay to ALC all sums then due under the terms of the Lease as if the Lease were actually paid in full by a Lessee in default, and (ii) at the end of the Lease term, to repurchase the Lease and the property from ALC for the residual value as provided in the applicable APS for the Lease. ALC shall, upon any such repurchase by Dealer, provided such endorsement and cooperate with Dealer in effecting such transfers of title or security as Dealer may reasonably request or require.

Notwithstanding anything contained in the immediately preceding paragraph to the contrary. Dealer may elect not to purchase a Lease and the property covered thereby from ALC at the end of the Lease term and will be absolved of and from any personal obligation therefore if Dealer, within 10 days after the end of the Lease term, advises ALC of such election and pays to ALC the sum of \$\_\_\_\_\_ .

## 7. ADDITIONAL LIABILITIES AND INDEMNITIES

Dealer shall promptly fulfill and perform all obligations on its part and agrees to enforce, assert and exercise, and cooperate with ALC in so doing any right, power or remedy conferred on it by any Lease or related document or under this Agreement. The purchase by ALC of any Lease shall not be deemed an assumption by ALC or an imposition on ALC, of any Dealer obligation under the Lease or any other Dealer agreement with the Lessee, which lease shall be and remain enforceable by the Lessee solely against Dealer. Dealer agrees to indemnify and hold ALC harmless from and against any and all loss, damage and expense, including attorney's fees reasonable in amount, which ALC may suffer, incur, be put to, pay or layout by reason of Dealer's actions or omissions to act, except where specifically attributable solely to directions from ALC given in writing. ALC similarly shall indemnify and hold Dealer harmless against such loss, damage, and expense which Dealer may suffer, incur, be put to, pay or lay out by reason of any action taken by Dealer on behalf of ALC for collection, repossession, release or resale where Dealer relied upon incorrect information from ALC and Dealer was not negligent under the circumstances.

## 8. RELATIONSHIP

This agreement shall not create an employer-employee relationship, it being the contemplation of the parties that all acts performed by Dealer in carrying out the provisions of this Agreement shall be those of an independent contractor. Except for acts performed by Dealer at ALC's express direction, ALC shall not be responsible for the acts of Dealer, its officers, agents or employees.

9. TERMINATION

(a) Dates. This Agreement shall become effective as of the date first written above, and shall remain in effect until terminated by either party on giving ninety (90) days written notice to the other of its intention to terminate at its respective address above, or to any address which such party shall have specified on the ninetieth (90th) day after the day on which such notice is mailed by Certified Mail, Return Receipt Requested; provided however, that if any event occurs which materially affects the ability of Dealer to lawfully honor its obligation to ALC under this Agreement, ALC may terminate this Agreement effective immediately.

(b) Rights on Termination. Upon the effective date of any termination except with regard to Dealer’s warranties, representations and covenants, or any indemnification and/or repurchase liability of Dealer incident thereto or otherwise contained under the provisions hereof or the Lease, all of which shall survive this Agreement, Dealer shall have no further obligation to ALC under this Agreement except to cooperate with ALC in any action in which ALC becomes a party or if ALC requests collection assistance on delinquent Leases.

10. FORMS

ALC will in no way be responsible for the validity, legality or sufficiency of any form of Lease or other documents which the exception of forms provided by ALC.

11. MODIFICATION, BINDING EFFECT, AND GOVERNING LAW

No modification, rescission, waiver, release, or amendment of any provision of this Agreement shall be made except by written agreement signed by duly authorized officers of the parties hereto. This Agreement is binding upon and shall inure to the benefit of the successors and assigns of the parties hereto. However, Dealer may not assign this Agreement without the prior written consent of ALC. This Agreement shall be construed under the laws of the State of \_\_\_\_\_, as amended from time to time.

12. In the event of an early payout or default by Lessee, any unearned commissions, as determined by the rule of 78 payoff method, shall be refunded to ALC within 30 days of written request by ALC.

13. All commissions over \_\_\_\_% shall be shared equally with ALC at the time of funding.

DEALER

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

Its: \_\_\_\_\_

ABLE LEASING COMPANY

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

Its: \_\_\_\_\_



**Form: v-02**  
**Disk File Name: v-02.rtf**

## REMARKETING AGREEMENT

### Form Purpose

A vendor program agreement providing for an arrangement in which a leasing company will purchase equipment leases entered into from time to time by a equipment vendor with its customers. In this case the equipment vendor has a captive leasing company (the "initial lessor") that initiates the leases which will be sold off to a third-party equipment leasing company ("Credit Funding Corporation").

#### *Executing Parties*

The equipment lessor.

The equipment vendor.

The equipment vendor's captive leasing company.

*See:*

Assignment of Lease Forms

### Vendor Remarketing Agreement and Reserve Agreement

THIS AGREEMENT entered into and made effective this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ , among (insert name of vendor), a \_\_\_\_\_ corporation, with its principal office at \_\_\_\_\_ ("Vendor"), (insert name of initial lessor) a \_\_\_\_\_ corporation, with its principal office at \_\_\_\_\_ ("Lessor") and CREDIT FUNDING CORPORATION, a \_\_\_\_\_ Corporation, with its principal place of business at \_\_\_\_\_ ("Credit Funding").

#### WITNESSETH:

WHEREAS, Vendor is engaged in and provides equipment and support services to Merchants (as defined hereinafter) with respect to electronic bank card processing; and,

WHEREAS, Lessor is engaged from time to time in the business of leasing Vendor's electronic credit card authorization and related equipment to customers of Vendor; and,

WHEREAS, Credit Funding is in the business of financing equipment leases and the underlying equipment by taking an assignment of all right, title and interest in such leases, their non-cancelable lease payments and the equipment subject to such leases; and,

WHEREAS, (i) Vendor and Lessor desire to establish a program with Credit Funding in which Lessor will assemble and remit Leases to Credit Funding executed by Vendor's customers, providing for the lease of equipment for use solely by Customers (as defined hereinafter), and (ii) Credit Funding will review such leases and accept assignment and fund those leases which, in the sole discretion of Credit Funding, meet the reasonable independent credit standards of Credit Funding.

NOW, THEREFORE, in consideration of the foregoing, and of the representations, warranties, covenants and agreements hereinafter contained, and to induce Credit Funding to accept assignment and fund Leases with Customers, the parties hereto agree as follows:

#### ARTICLE 1—DEFINITIONS

Section 1.1. Definitions. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the term defined):

1.1. ASSIGNMENT DOCUMENTATION shall mean a duly executed assignment of lease agreement from Lessor acceptable to Credit Funding in its sole discretion, financing statements sufficient under the Uniform Commercial Code in form satisfactory for filing in the appropriate a jurisdiction when requested by Credit Funding, and any other documents, instruments and ably required by Credit Funding.

1.2. COLLATERAL shall mean (i) all of Vendor's and Lessor's right, title and interest in and to all accounts, deposit accounts, money market accounts, money, and deposits which are now or hereafter held by, assigned, pledged to or otherwise restricted on behalf of Credit Funding, its successors or assigns, (ii) any Reserve Account and the funds represented by any Reserve Requirement, all rights to payment and connection therewith, all sums or property now or at any time hereafter on deposit therein, together with all earnings of every kind and description which may now or hereafter accrue thereon, (iii) any Commitment Reserve Account and the funds, leases and equipment related thereto and, (iv) any Security Leases, and the rights and funds related thereto or arising therefrom; and (iv) all proceeds, and interest thereon, of the foregoing.

1.3. COMMITMENT RESERVE ACCOUNT shall be as defined in Section 4.3 hereof.

1.4. CUSTOMER shall mean a Merchant and any lessee, debtor, guarantor, borrower or other person, partnership, corporation or other entity which executes or becomes obligated to Lessor pursuant to a Qualifying Lease (or any part thereof).

1.5. CUSTOMER DEFAULT shall mean any breach by a Customer of any obligation, covenant, duty, condition, or agreement with respect to any Qualifying Lease including, without limitation, failure to timely pay rent or other sums when due, failure to return the equipment, or failure to keep the equipment properly insured, which breach shall occur and continue for a period of sixty (60) days following notice in writing from Credit Funding to Customer specifying the default and requesting that it be cured or fully corrected within such time.

1.6. DEFAULTED LEASE shall mean any Qualifying Lease with respect to which any one or more of the following shall have occurred: (i) a Customer Default shall occur, or (ii) Credit Funding is unable to timely recover, or reasonably believes it will be unable to recover, its Unamortized Net Investment with respect to a particular Qualifying lease.

1.7. DEFAULT PERIOD shall be as defined in Section 5.1 (a) hereof.

1.8. EQUIPMENT shall mean all equipment or machinery and other personal property which is the subject of a Qualifying lease including, without limitation, credit card authorization and processing equipment.

1.9. LEASE shall mean a lease of Equipment by Lessor to a Customer and all other documents and instruments relating thereto or executed in connection therewith (other than Vendor's Merchant Processing Agreement), including, without limitation, any personal guarantee, corporate guarantee, certificate of acceptance (or other instrument whereby customer acknowledges acceptance of the equipment), corporate resolution or financing statement.

1.10. MERCHANT shall mean any seller of goods, services, or both, who is a customer of Vendor.

1.11. OBLIGATIONS shall mean (i) all sums, payments, monies, rents and other amounts due or to become due from Vendor and Lessor to Credit Funding, now existing or hereafter arising, and (ii) all agreements, warranties, duties, obligations and covenants of Vendor and Lessor to Credit Funding pursuant to this Agreement or otherwise.

1.12. PRESENT VALUE shall mean the total sum of all future rent payments, due and unpaid discounted to present value using a ten percent (10%) per annum interest rate, or such other per annum interest rate as shall be mutually agreeable to the parties.

1.13. PURCHASE PRICE with respect to a Qualifying Lease shall mean the Present Value of the regular monthly non-cancelable rent payments due and unpaid.

1.14. **QUALIFYING LEASE** shall mean a Lease with a Customer which has been approved by Credit Funding for financing in its sole discretion, and which has been sold and assigned to Credit Funding pursuant to the provisions of this Agreement.

1.15. **RESERVE ACCOUNT** shall be as defined in Section 4.1 hereof.

1.16. **RESERVE REQUIREMENT** shall be as defined in Section 4.1 hereof.

1.17. **SECURITY LEASES** shall be as defined in Section 4.3 hereof.

1.18. **SUBSTITUTE LEASE** shall mean a Lease or sublease with a Customer which replaces a Defaulted Lease upon approval by Credit Funding in its sole discretion as a Qualifying Lease.

1.19. **UNAMORTIZED NET INVESTMENT** shall mean the sum of all accrued and unpaid rent payments discounted to present value at an interest rate equal to the simple interest lease rate on the Qualifying Lease, calculated monthly in arrears, plus all rents accrued and not yet paid, and all other sums due Credit Funding or its equipment lease lender with respect to a Qualifying Lease or a Defaulted Lease, including accrued interest on unpaid rent payments.

## ARTICLE II—ASSIGNMENT OF LEASES

Section 2.1. **Sale of Equipment to Credit Funding.** Lessor agrees to sell and does hereby sell, assign and transfer to Credit Funding the equipment described in each Qualifying Lease. Vendor and Lessor warrant to Credit Funding with respect to each sale of equipment (whether or not separately documented) that Lessor has good and marketable title to the equipment free and clear of all liens, claims and encumbrances; that Lessor has the right to sell, transfer and assign the equipment to Credit Funding; and that Credit Funding is obtaining good and marketable title to the Equipment free and clear of all liens, claims and encumbrances, except those arising through or from Credit Funding.

### Section 2.2. Assignment of Lease Rights and Obligations.

(a) Lessor agrees to use its best efforts to present or cause to be presented Leases with Customers to Credit Funding from time to time in accordance with this Agreement which will qualify as Qualifying Leases whose aggregate monthly Purchase Price shall equal \_\_\_\_\_ dollars (\$ \_\_\_\_\_ ) provided, however, Lessor will supply Credit Funding over the initial first year term of this Agreement Qualifying Leases whose aggregate Purchase Price equals at least \_\_\_\_\_ dollars (\$ \_\_\_\_\_ ), together with such credit information, credit reports and other documentation as Credit Funding shall reasonably request. Upon receipt of all such information, Credit Funding shall promptly approve or disapprove each Lease for funding. Credit Funding shall have the right to approve or disapprove each Lease in its sole discretion in accordance with independent credit standards acceptable to Credit Funding. Upon proper completion and delivery to Credit Funding of Assignment Documentation for each Qualifying Lease, and other relevant documentation, Credit Funding shall pay to Lessor the Purchase Price less the Reserve Requirement and less any other sums due Credit Funding from Vendor or Lessor under this Agreement. Credit Funding does not by this Agreement or otherwise assume any of the obligations of Vendor or Lessor or any other party under the leases, and Credit Funding shall not be responsible in any way for the performance by Vendor or Lessor or any other party of the terms and conditions of the Qualifying Leases.

(b) In the event Credit Funding determines that any Qualifying Lease with respect to which the Purchase Price has been paid is not as represented by the credit or documentation information supplied by Vendor or Lessor at any time prior to and including two (2) months following payment of the Purchase Price (the "Review Period"), Credit Funding shall so notify Vendor and Lessor in writing at which time Lessor shall within five (5) business days after the receipt of such notice pay Credit Funding, or its designee, less any rent payments received by Credit Funding, or its designee, an amount equal to the Purchase Price, plus in the event of a material misrepresentation a fee equal to seventy-five dollars (\$75.00) per lease.

Section 2.3. **Assignment Documentation.** With respect to each Qualifying Lease, Lessor agrees to execute or cause to be executed and delivered to Credit Funding, the originals of the Qualifying Leases and all Assignment Documentation prior to payment of the Purchase Price by Credit Funding. The terms and conditions of the Assignment Documentation shall supplement the terms and conditions of this Agreement. Credit Fund-

ing shall have the right, if applicable, to stamp or mark each Qualifying Lease and all Assignment Documentation to clearly and conspicuously state that it is subject to the security interest of Credit Funding, in such form and with such language as Credit Funding may desire. The originals of such Qualifying Lease and all Assignment Documentation shall be maintained in the possession of Credit Funding.

**Section 2.4. Security Interest.** As security for (i) the payment, and performance, of the obligations and all other present and future indebtedness, liabilities and obligations of Vendor and Lessor to Credit Funding, whether arising hereunder, or under the Assignment Documentation, or under any other document or instrument executed in connection with the transactions contemplated hereunder or otherwise, including indebtedness of every kind and description, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and (ii) Vendor's and Lessor's obligations and liabilities arising out of its covenants, warranties and representations contained herein, or in any other document or instrument executed in connection with the transactions contemplated hereunder, Lessor hereby pledges, assigns and grants to Credit Funding a priority security interest in the Collateral free and clear of all liens, claims and encumbrances except those arising through or from Credit Funding. If any deposit or account constituting Collateral is evidenced by a certificate of deposit or is otherwise subject to Article 9 of the Uniform Commercial Code, the foregoing security interest shall be construed as a grant of a security interest subject, to the extent applicable, to the Uniform Commercial Code as enacted in the State of \_\_\_\_\_ .

**Section 2.5. Payment of Rent Directly to Credit Funding.** Lessor shall cause all rental and other payments assigned to Credit Funding pursuant to Qualifying Leases to be made by electronic funds transfer directly to Credit Funding when received, and, to that end, to have caused each Customer to sign an authorization giving Lessor or its designees and assigns the right and power to authorize such transfers to be made. If any Customer has not signed such an authorization, the lease to such Customer shall not constitute a Qualifying Lease under any circumstances and Credit Funding shall have no obligation to consider funding such lease. All electronic transfers of payments shall be made to an account designated by Credit Funding. Lessor hereby irrevocably designates Credit Funding as attorney-in-fact to direct the electronic funds transfer as to each Qualifying Lease and Lessor shall cause each Lessee to be notified of the assignment of rent payments to Credit Funding.

**Section 2.6. Financing Statements.** Upon written request by Credit Funding Lessor agrees to execute and provide Credit Funding with commercially standard UCC financing statements covering the Collateral, which Credit Funding is authorized to file upon receipt. Lessor agrees that it will, at its expense, execute such additional financial statements, endorsements, continuation statements and other documents in connection therewith and do such other acts and provide such further assurances as Credit Funding may from time to time reasonably request to establish and maintain a first lien priority security interest in the Collateral free and clear of all liens, claims and encumbrances, except those arising through or arising from Credit Funding, and preserve and protect Credit Funding's interests acquired herein. At the option of Credit Funding and upon notice to Lessor, Credit Funding may sign any financing statements on behalf of Lessor (directly in the name of Lessor or in the name of Credit Funding on behalf of Lessor) and file the same, and Lessor hereby irrevocably designates Credit Funding, its agents, representatives and designees, as agents and attorneys-in-fact for Lessor for this purpose. In the event that any re-recording or re-filing thereof (or the filing of any statement of continuation or assignment of any financing statement) is required to protect and preserve such lien or security interest, Lessor shall, at Credit Funding's written request, and at its sole cost and expense, cause the same to be re-recorded or re-filed at the time and in the manner requested by Credit Funding

**Section 2.7. Quarterly Accounting.** Lessor agrees to provide, or cause to be provided, Credit Funding with a quarterly (or monthly, if requested by Credit Funding), accounting of all Qualifying Leases within thirty (30) days following the last day of the immediately preceding calendar quarter (or month, if applicable), commencing on \_\_\_\_\_ , 20\_\_\_\_ .

**Section 2.8. Taxes and Reporting.** Lessor agrees to report, file, and pay promptly when due as required by statute or regulation to the appropriate taxing authority, indemnify, defend, and hold Credit Funding, and any of its assignees, harmless from any and all taxes (including sales, use, property, transaction, and gross receipts), assessments, license fees and governmental charges of any kind or nature, together with any penalties, interest or fines relating thereto that pertains to a Qualifying Lease, the equipment, its lease or rent or other sums due thereunder. On all such reports or returns required hereunder, Lessor shall show the ownership of the equipment by Credit Funding or, if requested, its designee. Upon written request by Credit

Funding, Lessor agrees to remit such taxes to Credit Funding and First Street shall remit such taxes so collected by Credit Funding to the appropriate taxing authority.

Section 2.9. Licenses, Permits, Consents and Approvals. Vendor and Lessor have or will obtain all licenses, permits, consents, approvals, authorizations, qualifications and orders of governmental authorities required to enable them to continue to conduct their business as presently conducted and will be duly qualified to conduct business in each and every state in which they enter into a lease transaction. Vendor and Lessor have duly filed and shall continue to timely file with the appropriate federal, state, local and other governmental agencies, all tax returns, information returns and reports required to be filed by them and their subsidiaries, have and will continue to pay or cause to be paid, in full or make adequate provision for the payment of all taxes (including taxes withheld from employees' salaries and other withholding taxes and obligations), interest, penalties, assessments or deficiencies shown on such returns or reports to be due to any taxing authority, including but not limited to all sales, use, transaction, property taxes which may be due or become due for all equipment subject to a Qualifying Lease, whether assessed against Lessor or Credit Funding. All claims for taxes due and payable by Lessor have either been paid or are being contested in good faith by appropriate proceedings. Vendor and Lessor warrant that neither is a party to, nor are they aware of, any pending or threatened action or proceeding, assessment or collection of taxes by any government authority. Credit Funding reserves the right at any time to enter the business premises of Vendor and Lessor and to inspect and audit the appropriate books and records of Vendor and Lessor to verify and assure compliance with all applicable regulations and the provisions of this Agreement, including, but not limited to, sales, use and property tax regulations.

Section 2.10. Advances by Credit Funding. At its sole option, and without any obligation to do so, Credit Funding may discharge or pay any taxes, liens, security interests (other than the lien or the security interest of Credit Funding contemplated in this Agreement or liens arising from acts or omissions of Credit Funding), or other encumbrances at any time levied or placed on or against the Collateral or Vendor or Lessor in breach of this Agreement, and may pay for insurance on the Collateral, and may pay for its maintenance and preservation. Vendor and Lessor agree to reimburse Credit Funding on demand for any such payment made, or expense incurred, pursuant to the foregoing authorizations, and such advances shall be deemed additional obligations secured by the Collateral.

Section 2.11. Commitment Paid to Credit Funding. Vendor shall pay to Credit Funding upon the execution by Vendor of this Agreement a non-refundable commitment fee equal to \_\_\_\_\_ dollars (\$\_\_\_\_\_). Neither Vendor nor Lessor shall be obligated to pay any other fees, including attorney's fees, or expenses in connection with this Agreement unless otherwise expressly stated herein.

#### ARTICLE III—TERM

Section 3.1. Term. The initial term of this Agreement shall be one (1) year from the date hereof. Unless either Vendor or Lessor notifies Credit Funding or Credit Funding notifies Vendor or Lessor not later than one hundred twenty calendar (120) days prior to the expiration of the initial or any renewal term that it does not wish to renew this Agreement for a subsequent term, this Agreement shall automatically renew for additional terms of one (1) year upon the same terms and conditions. The foregoing notwithstanding, all rights and obligations of the parties herein to each with respect to Qualifying Leases assigned to and funded by Credit Funding during the time this Agreement is in force, and all representations, warranties and covenants of Vendor and Lessor, shall survive any expiration or earlier termination of this Agreement. Notwithstanding the foregoing, Credit Funding may terminate this Agreement, in whole or in part, at any time in the exercise of its rights and remedies upon an Event of Default hereunder.

#### ARTICLE IV—RESERVE ACCOUNT

Section 4.1. The Reserve Account. Credit Funding agrees to deposit into and maintain in a restricted Reserve Account in the name of Lessor an amount equal to ten percent (10%) on Qualifying Leases calculated on the Purchase Price of each Qualifying Lease (such sum hereinafter is referred to as the "Reserve Requirement"). Credit Funding may hold back and deduct the Reserve Requirement from the proceeds due Lessor from Credit Funding for each Qualifying Lease. Credit Funding and Lessor agree that they will not withdraw or attempt to withdraw funds from, terminate, deplete, pledge, hypothecate, assign, grant a security interest or permit a lien to attach to the Reserve Account, except those permitted pursuant to this Agreement

Section 4.2. Distribution from Excess Funds. Credit Funding and Lessor recognize that as Customers make lease payments, the Unamortized Net Investment in its portfolio of Qualifying Leases may decline. Provided Credit Funding has a favorable loss experience as set forth below with respect to Qualifying Leases, the amount of funds on deposit in the Reserve Account may exceed the Reserve Requirement. Credit Funding will review the Reserve Account and its loss experience quarterly, and provided that each and every one of the following conditions has occurred and is continuing, Credit Funding shall distribute to Lessor the funds in the Reserve Requirement:

(a) Credit Funding actual cumulative Customer default experience (without regard to recovery) has been less than the Reserve Requirement (for purposes of determining Credit Funding default experience, Substitute leases will be excluded); and

(b) No event of default has occurred on the part of Vendor or Lessor and continued uncured for a period of sixty (60) days following notice in writing from Credit Funding specifying the default and requesting that it be cured and fully corrected within such time.

Section 4.3. The Commitment Reserve Account. Lessor and Vendor agree as a condition precedent to the purchase by Credit Funding of any Qualifying Leases to assign all right, title and interest to Qualifying Leases, and related equipment and proceeds, with a total Purchase Price of not less than four hundred thousand dollars (\$400,000.00) to Credit Funding or its designee (the "Security Leases") as security for the reasonable performance by Vendor and Lessor under this Agreement. The Security Leases shall be re-assigned to Lessor at the end of one (1) year from the date of assignment to Credit Funding, or its designee, if Vendor and Lessor have reasonably complied with their obligations under this Agreement.

#### ARTICLE V—DEFAULTED LEASES

Section 5.1. Substitution Procedure. With respect to any Defaulted Lease, upon written request of Credit Funding, Lessor, at its sole expense, agrees promptly to perform the following:

(a) Upon notice from Credit Funding or actual knowledge on the part of Lessor that a lease constitutes a Defaulted Lease, whichever shall first occur, Lessor shall (i) take immediate steps to replace the Defaulted Lease with a Substitute Lease of equal or greater present value than the Unamortized Net Investment of the Defaulted Lease and (ii) pay to Credit Funding within ten (10) days following the receipt of such notice seventy-five dollars (\$75.00). Lessor shall not be obligated to replace a Defaulted lease with a Substituted Lease if a Qualifying Lease becomes a Defaulted Lease as a result of events occurring following two hundred and forty (240) days following the date of payment by Credit Funding of the Purchase Price (the "Default Period"). If the Present Value of the Substitute Lease exceeds the Unamortized Net Investment of the Defaulted Lease, Credit Funding will refund the excess present value to Lessor after first deducting all fees, costs and interest due with respect to the Defaulted Lease due on the Substitute Lease. Lessor shall take all steps necessary to assign the Substitute Lease and underlying equipment to Credit Funding within sixty (60) days from such notice or actual knowledge. Upon approval by Credit Funding in its sole discretion, the Substitute Lease shall thereafter constitute a Qualifying Lease hereunder. Lessor shall only be permitted under this Agreement to make one lease substitution in the case of a Defaulted Lease.

(b) A Substitute Lease may be for the same equipment originally leased under the Defaulted Lease or for like equipment of at least equal value as the equipment under the Defaulted Lease.

(c) Lessor's obligation to substitute such Defaulted Lease hereunder shall not be subject to or diminished by any defense, counterclaim, or set-off which it may have or claim to have against Credit Funding and shall also not be conditioned on Credit Funding first having obtained a judgment against the Customer or otherwise proceeding against the Customer. Credit Funding may, but shall not be obligated to proceed in any manner against the Customer or the applicable leased equipment.

(d) Upon approval and assignment of a Substitute Lease by Credit Funding, Credit Funding shall return to Lessor the originals of each lease corresponding thereto which constitute a Defaulted Lease, and all Assignment Documentation associated therewith.

(e) Should Lessor fail to substitute a Qualifying Lease or if the applicable Substitute Lease becomes a Defaulted Lease, Credit Funding may debit the Reserve Account for the Unamortized Net Investment in the

Defaulted Lease. If the Reserve Account contains insufficient funds to satisfy the Unamortized Net Investment in the Defaulted Lease, Credit Funding may collect from the Collateral described in Section 1.2. hereof upon sixty (60) days written notice to Lessor of its intention to do so, and Lessor's failure to sufficiently replenish the Reserve Account within said sixty (60) days.

(f) In the event the Collateral described in Section 1.2 is insufficient to Satisfy the any Defaulted Lease, then upon written demand by Credit Funding, Lessor shall pay to Credit Funding such amounts within ten (10) days, as the Purchase Price of said Defaulted Lease.

(g) In the event Lessor fails to pay Credit Funding in accordance with Section 5. 1.(f) above and upon written notice to Vendor, Vendor shall pay the amount specified by Section 5. 1.(f) within ten (10) days after receipt of written notice from Credit Funding.

#### ARTICLE VI—VENDOR'S AND LESSOR'S REPRESENTATIONS AND WARRANTIES

Section 6.1. Warranties and Representations. Vendor and Lessor hereby represent, warrant and covenant the following to Credit Funding:

(a) With respect to each lease sold hereunder during the term of the lease, Credit Funding or its assignee, is and shall remain (except for acts or omissions of Credit Funding) the sole owner of the lease and equipment leased thereunder, which are and will remain free and clear of any lien, security interest, mortgage, charge, or encumbrance (except for a security interest granted by Credit Funding, its successors and assigns and the Lessee's leasehold rights in the equipment).

(b) This Agreement, the sales and assignments of Qualifying Leases and underlying equipment to Credit Funding (and any sales and assignment of the Qualifying Leases from Vendor to Lessor), the Qualifying Leases and all other documents now or hereafter executed by Vendor and Lessor pursuant to the terms hereof, are and shall be enforceable in accordance with their respective terms, except as they may be limited by bankruptcy, insolvency or other similar laws affecting enforcement of creditors' rights in general.

(c) At the time of the sale or assignment of any lease and underlying equipment to Credit Funding, the equipment thereunder shall have been delivered to and accepted by the respective Lessee under the lease. The equipment shall not be or suffered to be wasted, misused, abused or to deteriorate, except for ordinary wear and tear, and will not be used in violation of any law, ordinance or regulation of any governmental authority insofar as it adversely affects the value of the respective lease, equipment or the security interests granted hereunder. Vendor and Lessor will during the Default Period (or will cause the Lessees to) maintain, preserve, protect and keep the equipment under each Qualifying Lease in good repair, working order and condition and from time to time, will make all repairs, renewals, replacements, additions, betterment and improvements to the equipment as are needed and proper, at Vendor's and Lessor's sole cost and expense.

(d) Neither Lessor, Vendor nor any Lessee are in default under the leases as of the date of payment of the applicable Purchase Price. The Lessees under the Qualifying Leases have no claims, defenses, set-offs or counterclaims against Lessor or Vendor under such leases. Vendor and Lessor shall indemnify, defend and save the Credit Funding harmless of and from all costs, expenses, losses, claims, damages, attorney's fees and expenses, suits and liabilities arising out of or incurred by Credit Funding as a result of any claims, defenses, set-offs or counterclaims raised or asserted by any Lessee under any lease arising by, through or under Lessor's or Vendor's acts or omissions.

(e) With the exception of a lease which constitutes a Defaulted Lease, neither Vendor nor Lessor will repossess or consent to the return of any equipment prior to the scheduled expiration of the lease term without the prior written consent of Credit Funding.

(f) Neither Vendor nor Lessor will cause the Collateral to be sold, transferred, assigned, encumbered, pledged, hypothecated, or disposed of, without the prior written consent of Credit Funding. Credit Funding recognizes that certain Customers may sell or transfer their business and the new owner may sublease the equipment from the Customer. Credit Funding shall allow such subleases, subject to satisfactory credit review.

(g) Each lease delivered by Lessor to Credit Funding shall be the original counterpart of such lease and shall be the sole counterpart deemed chattel paper under the Uniform Commercial Code as enacted in the State of \_\_\_\_\_, and effective to transfer Lessor's rights as Lessor to be assigned herein and therein.

(h) Vendor will punctually perform and observe all of its obligations and agreements contained in any servicing or processing agreements made with respect to the Qualifying Leases. Vendor, Lessor and Credit Funding will immediately notify the other of any default by any party under the Qualifying Leases of which it becomes aware.

(i) Lessor will not declare a default under or exercise any remedies under the Qualifying Leases or enter into or permit any cancellation, termination, amendment, supplement or modification of or waiver with respect to such leases or give any consent or approval as to any matter arising out of such leases, and any such attempted declaration, exercise, cancellation, termination, amendment, supplement, modification, waiver, consent or approval shall be void and of no effect unless the Lessor shall have received the express prior written consent thereto from Credit Funding.

(j) Vendor and Lessor are corporations duly organized, validly existing and in good standing under the laws of the State of \_\_\_\_\_. Vendor and Lessor shall do all things necessary to maintain and preserve their corporate existence.

(k) Each lease to be assigned to the Credit Funding shall be a valid and genuine lease, and in all respects what it purports to be.

(l) There are and shall not be any agreements, undertakings or other documents relating to the leases hereinafter assigned to the Credit Funding which are not contained in such leases.

(m) Vendor and Lessor will keep true books of records and account in which full and correct entries will be made of all its business transactions, and which reflects in such financial statements adequate accruals and appropriations to reserves, all in accordance with generally accepted accounting principals.

## ARTICLE VII—TERMINATION

Section 7.1. Default by Vendor and Lessor. Vendor and Lessor shall be in default hereunder upon the occurrence of one or more of the following ("Event of Default"):

(a) Vendor or Lessor fail to pay any amount when due hereunder to Credit Funding or its assigns;

(b) Vendor or Lessor shall fail to pay or perform any of its obligations or any other obligations hereunder or shall breach or default in the due observance or performance of any other term, covenant, warranty or representation contained herein, in the assignments of the leases to Credit Funding, or in any other document or instrument executed in connection herewith;

(c) a receiver, liquidator or trustee is appointed for Vendor or Lessor or any of their assets or properties;

(d) any proceeding under any state or federal bankruptcy or insolvency laws is instituted against Vendor or Lessor, and such proceeding is not dismissed, vacated or fully stayed within sixty (60) calendar days;

(e) any property of Vendor or Lessor is attached, levied upon, or seized under any judicial process which could materially and adversely interfere with the operation of Vendor's or Lessor's business;

(f) Vendor or Lessor shall file a petition for relief under the bankruptcy laws including, without limitation, a petition seeking for itself any reorganization, readjustment, liquidation, dissolution or similar arrangement under any present or future bankruptcy statute, law or regulation, or a petition to take advantage of any insolvency laws, or make an assignment for the benefit of creditors, or admit in writing its inability to pay its debts as they become due;

(g) Vendor or Lessor shall sell, transfer, assign, pledge, encumber, hypothecate, grant a security interest, or dispose of the Collateral, without the prior written consent of Credit Funding;



(h) any warranty, representation, financial statement, covenant or agreement made or furnished to Credit Funding by or on behalf of Vendor or Lessor is false or misleading in any material respect when made or furnished;

(i) Vendor or Lessor default under or otherwise has accelerated any material obligation including, but not limited to, credit agreements, loan agreements, conditional sales contracts, lease indentures or debentures, or Vendor defaults under any agreement now existing or hereafter made with Credit Funding or its assignees;

(j) the breach or repudiation by Vendor or Lessor or any party to any subordination, waiver, or other agreement running in favor of Credit Funding obtained in connection with this Agreement or a Qualifying Lease;

(k) if the validity or effectiveness of any Qualifying Lease of its assignment by Lessor or to Credit Funding shall be impaired.

Section 7.2. Default by Credit Funding. Credit Funding shall be in default hereunder upon the occurrence of one or more of the following ("Event of Default"):

(a) Credit Funding falls to pay any amount when due hereunder to Vendor or Lessor; or

(b) Credit Funding shall fail to pay or perform any of its obligations to Vendor or Lessor hereunder, or shall breach or default in the due observance or performance of any other term, covenant, warranty or representation contained herein, in the assignment of the leases to the Credit Funding, or in any other document or instrument executed in connection herewith.

Section 7.3. Notice and Right to Cure. In the event an Event of Default occurs and continues for a period of thirty (30) days following notice in writing to the other party or parties, as the case may be, specifying the default and requesting it be cured or fully corrected within such time, this Agreement may be terminated, without further notice or action of any kind.

Section 7.4. Rights Upon Default. Upon the occurrence of an Event of Default under this Agreement which is not cured in accordance with the terms herein, Vendor and Lessor or Credit Funding, as the case may be, against whom the default has occurred, may recover any amounts owing to it pursuant to this Agreement and may:

(a) terminate this Agreement without further notice or demand of any kind;

(b) seize, appropriate, apply and set-off (as such term is defined in the Uniform Commercial Code of the State of \_\_\_\_\_) any and all items of Collateral against any amounts owing to Credit Funding by Vendor or Lessor;

(c) institute legal proceedings against the other party or parties at law or in equity; or

(d) exercise any and all rights and remedies available to it under this Agreement, the assignments of the leases and all other documents and instruments executed in connection herewith.

Section 7.5. Remedies not Exclusive. No remedy referred to in this Agreement is intended to be exclusive, but each shall be cumulative, and shall be in addition to any other remedy referred to above or otherwise available by statute, at law or in equity, and may be exercised from time to time and any number of times. In addition, Vendor and Lessor agree that they shall be liable for any and all unpaid obligations or additional sums due hereunder, before, after or during the exercise of any of the foregoing remedies. If Credit Funding or its assignee employs counsel to represent Credit Funding, or its assignee, in any litigation, dispute, suit or proceeding in any way relating to the leases assigned to Credit Funding (excluding enforcement and collection with respect to the Qualifying Leases), or conflicting claims of third parties to all or any portion of the Collateral, or the sums advanced or paid to Vendor or Lessor hereunder, or any provision of this Agreement or of the Assignment Documentation, or other documents arising out of the transactions contemplated herein or to enforce any term of this Agreement, the Assignment Documentation, or documents arising out of the transactions contemplated herein, then Vendor and Lessor shall pay on demand all of Credit Funding's reasonable attorney's fees arising from such services and all expenses, costs, court costs and charges relating thereto.

## ARTICLE VIII—GENERAL PROVISIONS

Section 8.1. Notification. Each party shall promptly notify the others of any suit or threat of suit of which that party becomes aware (except with respect to a threat of suit one party might institute against the other) which may give rise to a right of indemnification. The indemnifying party shall be entitled to participate in the settlement or defense thereof and, if the indemnifying party elects (and demonstrates to the satisfaction of the indemnified party the financial ability to promptly honor its obligation to indemnify), to take over and control the settlement or defense thereof with counsel satisfactory to the indemnified party. In any case, the indemnifying party and the indemnified party shall cooperate (at no cost to the indemnified party) in the settlement or defense of any such claim, demand, suit or proceeding.

Section 8.2. Indemnification. In addition to such obligations of indemnification as may be provided elsewhere in this Agreement, Vendor and Lessor as a unit and Credit Funding hereby also agree to indemnify, save and keep harmless each other and their successors and assigns from and against any and all losses, damages, penalties, injuries, actions and suits, including litigation costs and attorney's fees of whatsoever kind and nature directly and indirectly arising by reason of breach or default of any term, condition, representation, warranty or agreement set forth in this Agreement or by reason of any improper act or omission to act in relation to the subject matter of this Agreement. The foregoing indemnity shall continue in full force and effect notwithstanding the expiration or earlier termination of this Agreement.

Section 8.3. Disclosure. Each party shall promptly notify the others of any action, suit or proceeding, facts or circumstances, or the prospect or threat of the same, which might materially adversely affect that party's ability to perform this Agreement. Each party represents and warrants to the others that there are no suits, actions, or legal, administrative, arbitration, or other claims or proceedings or government investigations which are pending or which have been made against that party or its parents or affiliates, or its officers, directors or employees or, to the knowledge of that party, threatened against Vendor, Lessor or Credit Funding, as the case may be, or its parent or affiliates, or its officers, directors or employees, which might materially adversely affect the financial condition of Vendor, Lessor or Credit Funding, or its ability to observe or perform its obligations under this Agreement.

Section 8.4. Compliance with Laws. Each party hereby represents and warrants to the others that it is familiar with the requirements of all applicable laws and regulations and covenants and agrees that it will comply with all such laws and regulations, as well as all other applicable laws and regulations in the performance of this Agreement. The parties each agree to comply with all applicable statutes, rules, regulations, orders and restrictions of the United States of America, foreign countries, states and municipalities, and of any governmental department, commission, board, regulatory authority, bureau, agency, and instrumentality of the foregoing, and of any court, arbitrator or grand jury, in respect of the conduct of its business and the ownership of its properties, except such as are being contested in good faith.

Section 8.5. Relationship of the Parties. The parties acknowledge and agree that in performing their responsibilities pursuant to this Agreement they are in the position of independent contractors. This Agreement is not intended to create, nor does it create and nor shall it be construed to create, a relationship of partner or joint venture or any association for profit by and between Vendor or Lessor and Credit Funding. Neither Vendor nor Lessor are agents of Credit Funding, and Credit Funding is not an agent of Vendor.

Section 8.6. Further Assurances. Within five (5) business days following written notice by Vendor or Lessor or Credit Funding, as the case may be, each party shall produce and make available for inspection by the others, or its officers and agents, at the business premises of the other, such books and records of Vendor and Lessor or Credit Funding, as the case may be, shall deem reasonably necessary to be adequately informed of the business and financial condition of Vendor and Lessor or Credit Funding, or its ability to observe or perform its obligations hereunder. Vendor agrees to execute and deliver such other or additional documents as may be requested by Credit Funding from time to time hereafter which are necessary or desirable to effectuate the intent of this Agreement.

Section 8.7. Assignment, Benefit and Binding Effect. This Agreement may not be assigned or transferred by Vendor. Credit Funding may freely assign or transfer its rights and privileges hereunder. This Agreement shall be binding upon Vendor, Lessor and Credit Funding, and shall inure to the benefit of and be enforceable by the Credit Funding successor and assigns (hereinafter "Assignee"). Any Assignee of Credit Funding may reassign its rights and interests hereunder.

Section 8.8. Continuation of Corporate Condition. Vendor and Lessor represent and warrant that neither shall, where Credit Funding's rights and interests are diminished or impaired: (i) merge into, consolidate with or be acquired by an unrelated entity, or sell or otherwise dispose of all or substantially all of its assets or any of its assets except in the ordinary course of its business; (ii) make any material change in capital structure or operations which might in any way adversely affect the ability of Vendor or Lessor, as the case may be, to make payment or perform its obligations to Credit Funding hereunder; or (iii) knowingly enter into or continue to be a party to any transaction, which materially or adversely affect its business, operations, assets or conditions (financial or otherwise) or Vendor's or Lessor's ability to make payment or perform its obligations to Credit Funding hereunder. Vendor's and Lessor's principal place of business and chief executive office is at \_\_\_\_\_ . Vendor and Lessor will notify Credit Funding promptly should the location of such principal place of business and chief executive office change.

Section 8.9. Notices. All notices, requests, demand and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered or mailed by certified mail or confirmed facsimile transmission;

if to VENDOR:

with a copy to:

if to LESSOR:

with a copy to:

if to Credit Funding:

with a copy to:

Section 8.10. Waiver. None of the parties shall be deemed to have waived any of its rights, powers or remedies hereunder unless such waiver is approved in writing by the waiving party and signed by a duly authorized officer of the waiving party. No course of dealing between the parties hereto any failure or delay on the part of Credit Funding or Vendor or Lessor in exercising any rights or remedies hereunder shall operate as a waiver of any rights or remedies of Credit Funding or Vendor or Lessor, and no single or partial exercise of any rights or remedies hereunder shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder. No modification or waiver of any provision of this Agreement and no consent by Credit Funding or Vendor or Lessor to any departure therefrom by Credit Funding or Vendor or Lessor shall be effective unless such modification or waiver shall be in writing and signed by duly authorized officers of all parties, and the same shall then be effective only for the period and on the conditions and for the specific instances and purposes specified in writing. No notice to or demand on Credit Funding or Vendor or Lessor in any case shall entitle Credit Funding or Vendor or Lessor to any other or further notice or demand in similar or other circumstances.

Section 8.11. Amendments. This is the only Agreement between the parties. The terms and conditions of this Agreement may be altered, modified, or waived only by a written agreement, signed by all of the parties to this Agreement.

Section 8.12. Construction. The captions contained in this Agreement are for the convenience of the parties only and shall not be construed or interpreted to limit or otherwise define the scope of this Agreement. This Agreement shall not be deemed to have originated with any particular party hereto.

Section 8.13. Counterparts. This Agreement may be executed and delivered by the parties hereto in any number of counterparts, and by different parties on separate counterparts, each of which counterpart shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same instrument.

Section 8.14. Time is of the Essence. The parties agree that the time is of the essence as to all rights, obligations and duties under this Agreement.

Section 8.15. Additional Documents. Subsequent to the execution of this Agreement, the parties agree to execute and deliver such further documents, instruments, certificates or notices as any other party shall reasonably request which are necessary or desirable to effect complete consummation of this Agreement.

Section 8.16. Non-Exclusivity. The parties hereto acknowledge that this Agreement is not exclusive and any party may market or fund leases and leasing programs separate from this Agreement with other persons.

Section 8.17. Severability. In the event that any part of this Agreement is ruled by any court or administrative or regulatory agency to be invalid or unenforceable, then this Agreement shall be automatically modified to eliminate that part which is affected thereby. The remainder of this Agreement shall remain in full force and effect.

Section 8.18. Survival. All representations and warranties shall survive the execution and termination of this Agreement. Each representation, warranty and covenant of Vendor and Lessor contained in this Agreement or Assignment Documentation shall be deemed remade by Vendor and Lessor as of the time of acceptance by Credit Funding of each Qualifying Lease and payment of the Purchase Price by Credit Funding and shall be deemed remade by Vendor and Lessor as to each Qualifying Lease.

Section 8.19. Governing Law and Jurisdiction. This Agreement shall be interpreted and construed in accordance with the laws of the State of \_\_\_\_\_. The parties expressly agree that any suit between the parties in connection with this Agreement shall be filed and venued in the County of \_\_\_\_\_ located in the State of \_\_\_\_\_ with respect to any dispute, proceeding or action arising from this Agreement.

Section 8.20. Legal Authority. Each of the parties represents and warrants to the others that all consents and approvals necessary to the validity of this Agreement have been duly obtained, and that this Agreement does not conflict with any provision or any document or agreement binding that party or its property or affairs. Each party hereto further specifically represents and warrants to the other party hereto that: (i) the making of this Agreement is duly authorized on the part of such party and that upon its due execution by the other party hereto, it shall constitute a valid obligation binding upon, and enforceable and against such party in accordance with its terms; (ii) neither the making of this Agreement nor the due performance hereof by such party shall result in any breach of, or constitute a default under, or violation of, such party's certificate of incorporation, bylaws or any agreement to which such party is a party of by which such party is bound; and (iii) such party is duly incorporated and in good standing in its state of incorporation and is in good standing in any jurisdiction in which it owns properties or is carrying on business (except Credit Funding shall not be deemed to be carrying on business in any jurisdiction by virtue of its purchase of Qualifying Leases from Vendor).

Section 8.21. Entire Agreement. This Agreement represents the entire understanding among Vendor, Lessor and Credit Funding with respect to the matters contained herein.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed on its behalf by its proper officer thereunder duly authorized, as of the date first written above.

(Insert name of Vendor)

("Vendor")

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

Its: \_\_\_\_\_

(Insert name of initial lessor)

("Lessor")

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

Its: \_\_\_\_\_

CREDIT FUNDING CORPORATION

("Credit Funding")

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

Its: \_\_\_\_\_

**Addendum**

Parties agree and understand that insurance obligations referenced in Paragraphs 1.4 and 2.10 may be imposed. Credit Funding shall exercise its best efforts to avoid the imposition of insurance costs. In the event insurance is deemed necessary by Credit Funding, and Credit Funding intends to enforce its right under a Qualifying Lease to require the lessee to purchase insurance as specified in the Qualifying Lease, then in the event the lessee does not purchase such insurance the failure to do so will not be deemed a Customer Default if (i) Vendor or Lessor provides on behalf of the lessee the applicable insurance at its own cost, or (ii) Credit Funding provides the applicable insurance and Vendor or Lessor reimburse Credit Funding in full for the cost of providing such insurance, provided, however, in no event shall Vendor or Lessor be required to pay in excess of \_\_\_ dollars (\$\_\_\_) per Qualifying Lease per year during the term of such lease for such insurance cost.

(Insert name of Vendor)

("Vendor")

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

Its: \_\_\_\_\_

(Insert name of initial lessor)

("Lessor")

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

Its: \_\_\_\_\_

CREDIT FUNDING CORPORATION

("Credit Funding")

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

Its: \_\_\_\_\_

**Form: w-01****Disk File Name: w-01.rtf****WORKSHEET—LEASE PROPOSAL EVALUATION****Form Purpose**

A lease proposal summary response sheet to enable a lessee to easily evaluate lessor offers. Typically, leasing company offers have different formats. Digging through each can take work. To simplify your job, you can include with your RFQ a Summary Response Sheet for the lessor to complete and return with its proposal. The sheet should list, in an orderly and clear fashion, every key review item so a quick look will tell you whether the proposal is in the ball park.

This summary response form must be tailored to your company. You can use the Lessee Proposal Stage Checklist, Form c-01, to identify what should be included for your particular needs.

*See:*

Request for Lease Quotations, Forms r-01 through r-04  
Lessee Proposal Stage Checklist, Form c-01

---

**Proposal Summary Response Sheet**

Leasing Company Information:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Deal Contact: \_\_\_\_\_

Telephone No.: (    ) \_\_\_\_\_

Equipment Cost ( $\pm$  15%): \_\_\_\_\_

Lease Term: Lease Rate Factor  
(As a % of Cost)

Payment Mode  
(Monthly, In Arrears, Etc.)

Interest Rate  
(Nominal)

3 Years

\_\_\_\_\_

\_\_\_\_\_

5 Years

\_\_\_\_\_

\_\_\_\_\_

Purchase Option (Check One)

FMV

Fixed Price ( \_\_\_% of Equipment Cost)

Renewal Option (Check One)

FRV, For \_\_\_ Years, Every \_\_\_ Year(s)

Fixed Price, ( \_\_\_% of Primary Rent, Every \_\_\_ Year(s))

Early Termination Option (Schedule of Values attached \_\_\_ Yes, \_\_\_ No)

\_\_\_ Not Available

\_\_\_ Available, Beginning the \_\_\_ Year of the Lease Term

Upgrade Financing Option (\_\_\_ Yes, \_\_\_ No)

State Future Lease Rate Determination Basis if Upgrade Financing Not Fixed at Award (Adjustment so Lessor Can Maintain Nominal After Tax Yield, Pre-Tax Yield, etc.) \_\_\_\_\_

Casualty Schedule Attached (\_\_\_ Yes, \_\_\_ No)

Transaction Structure (Check One)

Single Investor \_\_\_

Leveraged Lease \_\_\_

Lessor Offer: (Check One)

Brokered \_\_\_ (\_\_\_ Best Efforts, \_\_\_ Firm)

Principal Lessor \_\_\_

Lessor Financial Statement Attached (\_\_\_ Yes, \_\_\_ No)

# Subject Index

*Note: Italicized page numbers indicate illustrations.*

- abandonment rights, 70, 129
- Accelerated Cost Recovery System, (ACRS), 96
- acceptance supplement, 47
- accident reports, 51–52
- accounting, for leases, 165
  - lessee checklist, 171–72
  - lessee classifications, 165–66
  - lessee requirements, 167
  - lessor checklist, 172–73
  - lessor classifications, 167–69
  - lessor requirements, 169–71
- adjusted current earnings (ACE), 110–11
- adjusted net book income, 110
- ADR. *See* Class Life Asset Depreciation Range System
- ADS. *See* alternative depreciation system
- after-tax cash flows, 159
- alterations, 53
- alternative depreciation system (ADS), 100–2
- alternative minimum tax (AMT), 1, 105
  - adjustments, 108–10, 113–14
  - and lessor, 116
  - and the lessee, 115–16
  - corporate, 105–6
  - credits, 112
  - exemptions, 112, 114
  - FTC, 112, 114
  - individual, 112–14
  - leasing considerations, 114–16
  - liability, 107
  - NOL, 111
  - rate, 112
  - TMT, 106, 112
- alternative minimum taxable income (AMTI), 106
- amortization, 167
- AMT. *See* alternative minimum tax
- AMTI. *See* alternative minimum taxable income
- antiabuse rules, 102
- antichurning rules, 102
- applicable financial statement, 110
- assignment rights, 68
- authorization documents, 86
- automobile depreciation rules, 102–3
- averaging conventions, 100
- bad debt reserves, 108
- bankruptcy, 217
- banks, as lessors, 7–8
- basis, for ITC purposes, 97
- best efforts offer, 23–25
- best efforts underwriting, 136–37
- bid letters, 19–20
- bill of sale, 88
- boiler plate, portion of master lease, 44, 178
- bonus depreciation, 104
- book income adjustment, 110–11
- call, 71
- capital leases, 166, 174
- captive leasing companies, 7
- carrying amount, 169
- cash flow, 149–50
  - comparison, 152–53
  - report, 159, 162–63
- casualty loss, 32, 144–45
- casualty occurrences, 182
- casualty value, 59
- charitable contributions, 107
- checklists
  - closing documents, 90–93
  - lease agreement, 75–80
  - lessee accounting classifications, 171–72
  - for lessees approaching lessors, 17–18
  - lessor accounting classifications, 172–73
  - leveraged lease investors, 146–47
  - proposal, for lessee, 36–39
  - proposal, for lessor, 39–42
  - true lease, 133–34
- Class Life Asset Depreciation Range System (ADR), 97
- closing documents, 81
  - checklist, 90–93
- collateral documents, 81
- commitment fees, 30, 47, 184
- committed equity, 137–38
- computer software, depreciation, 99–100
- conditional sale, 43, 132
- conflicting agreements, 55
- conformity reports, 52
- country risk, 196



- deal rewrites, 184
- debt arrangement, 28–29
- debt interest rates, 26
- debt participants, 6, 139
- debtor-in-possession (DIP), 219
- default, 63–65
  - lessor's remedies, 65–67
- Deficit Reduction Act (1984), Section 467, 130
- delivery time frame, 29–30
- depreciation methods, 99
- direct financing leases, 168, 174
  - accounting requirements, 169–70
- discounted cash flow, 150
  
- early buyout option, 31
- early termination option, 31–32
- Economic Recovery Tax Act, 98
- equipment
  - alterations, 53
  - bill of sale, 88
  - control, 16
  - depreciation, 96. *See also* Modified Accelerated Cost Recovery System
  - disposition, 66
  - location reports, 52
  - maintenance, 53
  - marking, 54
  - purchase agreements, 87–88
  - recovery classes, 98–99
  - redelivery, 65
  - return, 62
  - storage, 65–66
  - warranty disclaimers, 213
- equity placement fees, 183
- ERTA. *See* Economic Recovery Tax Act
- excess use charges, 183
- Export-Import Bank (Eximbank), 196
  
- factual summary, 46
- fair market value, 71
- fair rental value, 71–72
- FAS No. 13, 165
- finance leases, 5, 212–13
- finance leasing companies, 5
- Financial Accounting Standards Board (FASB), 165
- financial lease analysis, 149
- financial leases, 8, 9–10
- financial reports, 51, 84–86
- financing alternatives, 153, 155
- financing operations, and vendors, 189–92
- firm commitment underwriting, 137–38
- firm offer, 23–25
- fixed price purchase option, 71
- fixed price renewal option, 72
- flexible financing, 14
- forced lease renewal, 70
- forced sales, 69–70, 128–29
- Foreign Credit Insurance Association (FICA), 196
- foreign tax credits (FTC), 106, 112
  - Frank Lyon Company v. United States*, 119
  - FTC. *See* foreign tax credits
  - future delivered equipment, 46–48
  
  - general usage prohibitions, 54
  - glossary, 225–35
  - good working order, 53
  - gross investment, 169
  - grouping requirements, 48
  - guarantees, 86
  - guarantor, lawyer's opinion, 83–84
  - Guidelines*, 119–20, 121–22
    - compliance with, 120–21
    - forced sale denial, 128–29
    - leasing transactions, 122
    - lessee cannot be lender, 127
    - lessee purchase options, 127–28
    - limited use property, 131
    - minimum investment, 122–24
    - no lessee investment, 126–27
    - profit, 124–26
    - Section 6659, 132
    - uneven rent payments, 129–30
    - unusable guarantees, 127
  
  - half-year convention, 100
  - "hell or high water" provision, 10
    - and lease negotiations, 50, 51
  - Helvering v. F. & R. Lazarus Co.*, 119
  - high-low rent, 129
  
  - IDC. *See* intangible drilling costs
  - indemnifications, 32
  - indenture trustee, 140
  - independent leasing companies, 5–6
  - individual AMT, 112–14
  - individual lessors, 4–5
  - initial direct costs, 169, 170
  - initial period test, 130
  - insurance, proof of, 87
  - insurance cost markups, 182
  - intangible drilling costs (IDC), 107–8
  - interest, as profit, 179–80
  - interest penalty, for late payments, 74
  - interim rent, 181
  - international leasing, 193
    - documentation, 197–99
    - foreign lessee, 194
    - lessor advantages, 194–95
    - local laws, 197
    - risks, 195–97
    - uniform rules, 199–206
  - investment tax credit (ITC), 1, 95–96, 106
  - investors, 138
  - IRS, ADR, 97
  - ITC. *See* investment tax credit
  
  - jurisdiction, for lease, 73

- late payment charges, 184
- lead time, 23, 24
- lease agreement, checklist, 75–80
- lease brokers, 6–7
- lease structuring, 3–4
- lease syndicators. *See* lease brokers
- lease underwriters. *See* lease brokers
- lease
  - central purpose of, 43
  - characteristics of, 9
  - default, 63–65
  - disqualifying factors, 209–10
  - financial, 5, 8, 9–10
  - forms, 43–44
  - leveraged, 10–11
  - maintenance provision, 53
  - operating, 10
  - service, 11
  - termination, 65, 69
  - terms of, 27, 48
  - true, 119–20
  - types of, 8–11
- leasing
  - advantages, 11–14
  - as a business, 175
  - considerations for, 16–18
  - disadvantages, 15–16
  - profits, 178–85
- leasing alternatives, 151–52
- leasing operation, establishing, 185–88
- legal opinions, 81–84
- lender's trust agreement, 90
- lessee, 4
  - accounting classifications, 165–66
  - and AMT, 115–16
  - checklist for approaching lessors, 17–18
  - financial lease analysis, 149–53
  - lawyer's opinion, 82
  - lease classification, 174
  - in leveraged leases, 138–39, 140–41
  - options, 70–73
  - proposal stage checklist, 36–39
  - tax consequences, 3
  - tax responsibility, 59–60
- lessor
  - accounting classifications, 167–69
  - and AMT, 116
  - banks, 7–8
  - captive leasing companies, 7
  - default remedies, 65–67
  - financial lease analysis, 153–63
  - independent leasing companies, 5–6
  - individuals, 4–5
  - international leasing, 194–95
  - lawyer's opinion, 83
  - lease brokers, 6–7
  - lease classifications, 174
  - proposal stage checklist, 39–42
  - tax benefits, 2–3, 60–62
- leveraged leases, 6, 10–11, 168, 174
  - accounting requirements, 170–71
  - concept of, 135–38
  - disadvantages for prospective lessors, 141–46
  - format, 140
  - investor checklist, 146–47
  - lessee advantages, 140–41
  - participants, 138
- limited use needs, 12
- limited use property, 131
- liquidated damages, 66–67
- listed property depreciation, 102
- loan default, 55
- loss date, 62
- low-high rent, 129
- MACRS. *See* Modified Accelerated Cost Recovery System
- maintenance charges, 183
- master leases, 44
- material misrepresentation, 64–65
- mid-quarter convention, 100
- minimum investment, 122–24
- Modified Accelerated Cost Recovery System (MACRS)
  - ADS, 100–2
  - antiabuse rules, 102
  - averaging conventions, 100
  - deduction computations, 97–100
  - effective dates, 103–4
  - eligible property, 96–97
  - lessor tax benefits, 2–3
  - recovery classes, 97–99
- mortgage transaction, 43
- multiple investment sinking fund (MISF), 158
- National Conference of Commissioners on Uniform State Laws, 207
- net investment, 169, 170
- net lease, 9
- net operating losses (NOL), 106, 111
- no adverse proceedings, 56
- NOL. *See* net operating losses
- nominal purchase, 127–28
- nonleveraged leases, 11, 153, 155, 158
- nonpayment of rent, 63–64
- nonrecourse debt, 11, 51
- nonrecourse loans, 10
- nonseverable improvements, 126
- nonutilization fees, 47, 184
- obsolescence risk, 9, 11–12
- "off balance sheet" benefit, 14
- operating leases, 8, 10
  - accounting for, 166, 169, 170, 174
- options, 70–73
- ordinary maintenance and repairs, 127
- outright sale, 43
- overvaluation penalties, 132–33

- owner's trust agreement, 89
- owner's trustee, 140
- ownership protection, 54
- owning entity, 28
  
- participation agreements, 89
- partnerships, 90
- passive loss rules, 4
- percentage depletion, 107
- precommencement rent, 181
- prepayment penalties, 181–82
- present value, 150
- present value comparison, 153, 154, 169
- private letter ruling, 33, 120
- product warranties, 58–59
- property classes, 96
- property depreciation, 97
- proposal letters, 20
- Public Utility Regulatory Policies Act (1978), 104
- purchase agreements, 87–88
- purchase alternatives, 152
- purchase options, 30
- puts, 31, 69–70, 128
  
- rate of return, 171
- recapture, 103
- recourse debt, 51
- recovery classes, MACRS, 97–99. *See also* property classes
- redelivery, of equipment, 65
- redelivery charges, 185
- regulatory approvals, 56
- remarketing fees, 184
- renewal options, 30
- renewal terms, 48
- rent, nonpayment of, 63–64
- rental adjustment clauses, 26
- rental amount, and lease negotiations, 49
- repair charges, 183
- repeat customers, 177–78
- reports, and lease negotiation, 51–53
- request-for-bid letters, 19–20
- residual earnings, 181
- residual revenues, 176–77
- residual upside, 15
- residual value, 144, 169, 170
- Revenue Procedures
  - 7-28, 123
  - 75-21, 119, 121
  - 75-28, 119, 121, 125, 131
  - 76-30, 119, 121
  - 79-48, 119, 121, 126, 131
  - 87-57, 98, 99
- Revenue Ruling 55-540, 120, 122, 132
- right of first refusal, 31, 72–73
- ruling requests, 131
- safe harbor provisions, 214
- sale-leaseback transactions, 171
- sales price, 169
- sales-type leases, 168, 174
  - accounting requirements, 169
- satisfactory documentation, 21
- schedule portion, of master lease, 44, 178
- secured financing, 211
- security interest filings, 89
- service leases, 11
- service leasing companies, 5–6
- severability clause, 73–74
- severable improvements, 126
- signature block, on lease, 74
- single transaction leases, 43–44
- step rentals, 129
- stipulated loss values, 59, 145
- storage, equipment, 65–66
- straight lease. *See* nonleveraged lease
- stub period rent, 181
- sublease rights, 69
- substance over form rule, 119
  
- “take or pay” contracts, 27
- tax benefits, 32
- Tax Reform Act (TRA) (1986), 1, 95
  - AMT, 105
  - Section 167, 96
  - Section 168, 96
  - Section 280F, 102
- taxes
  - change implications, 33
  - deferral effect, 115
  - general, 2
  - guidelines. *See Guidelines* and lease negotiation, 50
  - lease structuring, 3–4
  - lessee consequences, 3
  - lessee responsibility, 59–60
  - lessor benefits, 2–3, 60–62
  - loss payment formula, 61–62
  - private letter ruling, 33
- tax-exempt interest, 107
- ten percent variation test, 129–30
- tentative minimum tax (TMT), 106, 112
- termination, of lease, 65
- termination value, 72, 144
- third-party claim reports, 52
- third-party loan, 135
- time value, of money, 149
- TMT. *See* tentative minimum tax
- total equipment cost, 25
- TRA. *See* Tax Reform Act
- TRAC leases, 210
- transaction expenses, 33–35
- transactional authority, 57
- transfers, unauthorized, 64
- transition rules, 103–4
- true lease, 4, 119–20
  - checklist, 133–34
- trustee, 140

- UCC. *See* Uniform Commercial Code
- underwriter's fee, 90
- underwriting, and leveraged leasing, 136–38, 139
- unearned income, 169, 170
- Uniform Commercial Code (UCC), 54, 207
  - Article 2, Sales, 208
  - Article 9, Secured Transactions, 208
  - concepts, 208
  - equipment leasing under Article 2A, 208–15
  - filings, 54
  - financing statement filing, 89
  - lease disqualifying factors, 209–10
- unleveraged lease. *See* nonleveraged lease
- upgrade financing, 32, 73, 182–83
- vendor leasing, 189–92
- windfall profits, 176–77
- “yield and after-tax cash flow,” 50

**This Page Intentionally Left Blank**

# Forms Index

*Note: Form file names appear in brackets; access CD files by adding the extension .rtf.*

- acceptance certificate, 320 [l-02b], 337–38 [l-03b]
  - form for, 356 [l-06d]
- acknowledgment, of receipt of certificate of deposit, 239 [a-01]
- agreement, remarketing, 456–69 [v-02]
- amendment, to lease agreement, 265 [a-14]
- “as is, where is” bill of sale, 267 [b-02]
- assignment
  - amendment of equipment loan, 256–57 [a-09]
  - of certificate of deposit, 240–42 [a-02]
  - of equipment purchase contract, 258–60 [a-10]
  - of lease, acknowledgment and consent to, 383–85 [l-07c]
  - of lease sale (limited recourse), 250–51 [a-06]
  - of lease sale (with recourse), 254–55 [a-08]
  - of lease to lender (multiple takedown), 247–49 [a-05]
  - of lease to lender (single takedown), 244–46 [a-04]
  - of master lease sale, integrated (without recourse), 252–53 [a-07]
  - of purchase contract, notification to vendor, 261 [a-11]
  - of savings account/stock certificate, 243 [a-03]
- assignment of rights
  - of purchase agreement, integrated, 432–34 [p-06]
  - under purchase agreement, 347 [l-04a]
- assumption agreement, 262–63 [a-12]
- guarantor’s consent, 264 [a-13]
- audit, and verification, worksheet, 407 [o-08]
- automatic transfer of title, 419 [o-16]
- bank reference worksheet, 396 [o-01]
- bill of sale
  - “as is, where is,” 267 [b-02]
  - form for, 356 [l-06c]
  - warranty, 266 [b-01]
- by-laws, certified corporate resolutions, 279–80 [c-13]
- casualty value schedule, 321 [l-02c]
- casualty value table, 339–40 [l-03c]
- certificate of acceptance, 320 [l-02b], 337–38 [l-03b]
  - form for, 356 [l-06d]
- certificate of deposit
  - acknowledgment of receipt, 239 [a-01]
  - assignment of, 240–42 [a-02]
- certificate, of cost, form for, 357 [l-06e]
- certification, 279–80 [c-13]
  - corporate guaranty of, 288 [g-02]
  - of incumbency, 283 [c-16]
  - integrated guaranty of, 286–87 [g-01]
  - negotiation and drafting checklist, 268 [c-02]
  - personal guaranty of, 289 [g-03]
  - proposal evaluation worksheet, 469–70 [w-01]
- certified corporate resolutions
  - integrated with net finance master lease agreement, 282 [c-15]
  - short form, 281 [c-14]
  - with charter, by-laws, and incumbency certification, for lease, 279–80 [c-13]
  - with incumbency certification, for lease (alternate form), 278 [c-12]
  - with incumbency certification, for loan, 276–77 [c-11]
  - with incumbency certification, for loan/lease, 274–75 [c-10]
- certified resolutions, 324 [l-02f]
- charters, certified corporate resolutions, 279–80 [c-13]
- checklists
  - lease negotiation and drafting, 268 [c-02]
  - lessee proposal stage, 268 [c-01]
  - lessor proposal stage, 268 [c-03]
  - master documentation, 397–99 [o-02]
  - small ticket transaction, 405–6 [o-07]
  - supplemental lease document closing, 268 [c-04]
- closing documents, supplemental, checklist for, 268 [c-04]
- collection notification
  - follow-up, lessee nonpayment, 270 [c-06]
  - initial, lessee nonpayment, 269 [c-05]
  - lawsuit, 271 [c-07]
  - repossession, 272 [c-08]

- corporate resolutions
  - certificate for incorporating for guarantor, 273 [c-09]
  - certified. *See* certified corporate resolutions
- cost, certificate of, form for, 357 [l-06e]
- counsel's opinion, 325–26 [l-02g]
  - for guarantor, 345–46 [l-03f]
  - for lessee, 343–44 [l-03e]
- credit application, 387 [m-01]
- credit guidelines, for small ticket, 388 [m-02]
  
- deal schedule, time table for, 450–51 [t-01]
- deficiency agreement, 284–85 [d-01]
- documentation, master worksheet/checklist, 397–99 [o-02]
  
- early termination right/option, 408–10 [o-09]
- equipment, purchase order for, 435–37 [p-07]
- equipment loan, assignment amendment, 256–57 [a-09]
- equipment purchase contract, assignment of, 258–60 [a-10]
- equipment schedule, 306–19 [l-02a]
  
- fair market value
  - purchase right/option, 412–13 [o-11]
  - purchase right/option, fixed, 411 [o-10]
  - renewal right/option, 415–16 [o-13]
- financing instructions, small ticket, 389 [m-03]
- financing lease rate sheet, small ticket, 390 [m-04]
  
- guarantor
  - certificate incorporating corporate resolutions for, 273 [c-09]
  - consent to assumption agreement, 264 [a-13]
  - counsel's opinion for, 343–44 [l-03e]
- guaranty
  - for individual or corporation, 290–93 [g-04]
  - for vendor, 294–97 [g-05]
  - form for, 356 [l-06b]
- guaranty of lease
  - corporate, 288 [g-02]
  - individual, 289 [g-03]
  - integrated, 286–87 [g-01]
  
- high tech/general equipment, master lease agreement for, 303–15 [l-02]
  
- incumbency certification, 283 [c-16], 323 [l-02e]
  - alternate form, certified corporate resolutions, for lease, 278 [c-12]
  - certified corporate resolutions, 279–80 [c-13]
  - certified corporate resolutions, for loan/lease, 274–75 [c-10]
  - certified corporate resolutions, for loan, 276–77 [c-11]
- indemnity mortgage, 391–95 [m-05]
  
- insurance, integrated requirement notice, 300–1 [i-03]
- insurance request letter
  - to insurance company for lessee, 299 [i-02]
  - to lessee, 298 [i-01]
  
- landlord waiver, 302 [l-01]
- lawsuit, letter of intent to file for payment default, 271 [c-07]
  
- lease
  - assignment of sale (limited recourse), 250–51 [a-06]
  - assignment of sale (with recourse), 254–55 [a-08]
  - assignment to lender (multiple takedown), 247–49 [a-05]
  - assignment to lender (single takedown), 244–46 [a-04]
  - certified corporate resolutions, 278 [c-12]
  - certified corporate resolutions, with charter, by-laws, and incumbency certification, 279–80 [c-13]
- lease agreement
  - amendment to, 265 [a-14]
  - master, for high tech/general equipment, 303–15 [l-02]
  - short form, 328–34 [l-03]
- legal opinion, form for
  - general, 357 [l-06f]
  - special counsel, 357 [l-06g]
- lender, assignment of lease to
  - multiple takedown, 247–49 [a-05]
  - single takedown, 244–46 [a-04]
- lessee creditor, subordination agreement in obtaining waiver claims, 449 [s-01]
- lessee
  - counsel's opinion for, 343–44 [l-03e]
  - credit application, 387 [m-01]
  - follow-up collection notification for nonpayment, 270 [c-06]
  - initial collection notification for nonpayment, 269 [c-05]
  - insurance request letter to, 298 [i-01]
  - proposal stage checklist, 268 [c-01]
  - purchase option, 411 [o-10]
  - request letter to insurance company from, 299 [i-02]
  - welcome/thank-you letter, 400 [o-03]
- lessor, proposal stage checklist, 268 [c-03]
- leveraged lease
  - aircraft/general, 347 [l-04]
  - assignment of rights under purchase agreement, 347 [l-04a]
  - participation agreement, 348 [l-04b]
  - tax indemnity agreement, 349 [l-04e]
  - trust agreement, 349 [l-04d]
  - trust indenture and security agreement, 348 [l-04c]

- loan and security agreement
  - bill of sale, 356 [l-06c]
  - certificate of acceptance, 356 [l-06d]
  - certificate of cost, 357 [l-06e]
  - guaranty, 356 [l-06b]
  - legal opinion, general, 357 [l-06f]
  - legal opinion, special counsel, 357 [l-06g]
  - long form, 355 [l-06]
  - promissory note, 355 [l-06a]
  - short form, 350–54 [l-05]
- loan and security agreement, master format, 358–76 [l-07]
  - acknowledgment and consent to assignment of lease, 383–85 [l-07c]
  - loan supplement, 377–80 [l-07a]
  - promissory note, 381–82 [l-07b]
  - supplement, 386 [l-07d]
- loan, certified corporate resolutions, 276–77 [c-11]
- master documentation worksheet/checklist, 397–99 [o-02]
- master lease
  - agreement, for high tech/general equipment, 303–15 [l-02]
  - assignment of sale, integrated (without recourse), 252–53 [a-07]
- mortgage, indemnity, 391–95 [m-05]
- net finance master lease agreement
  - schedule for, short form, 335–36 [l-03a]
  - certified corporate resolutions integrated with, 282 [c-15]
- nonunderwritten commitment, single investor
  - proposal letter, 427–28 [p-04]
- notification to vendor, of purchase contract assignment, 261 [a-11]
- opinion of counsel. *See* counsel's opinion
- participation agreement, for leveraged lease, 348 [l-04b]
- personal property, tax notification, 401 [o-04]
- program agreement, 452–55 [v-01]
- prohibited lender assignee schedule, 327 [l-02h]
- promissory note, 355 [l-06a], 381–82 [l-07b]
  - confessed judgment, 425–26 [p-03]
  - general form, 421–22 [p-01]
  - integrated, 423–24 [p-02]
- proposal letter
  - for single investor nonunderwritten commitment, 427–28 [p-04]
  - for underwritten financing offer, 429–31 [p-05]
- purchase agreement, assignment of rights under, 347 [l-04a], 432–34 [p-06]
- purchase contract, notification to vendor of assignment, 261 [a-11]
- purchase order, equipment, 435–37 [p-07]
- purchase right/option
  - fair market value, 412–13 [o-11]
  - fair market value fixed, 411 [o-10]
  - fixed price, 414 [o-12]
- put, 420 [o-17]
- remarketing agreement, 456–69 [v-02]
- renewal right/option
  - fair market value, 415–16 [o-13]
  - fixed price, 417 [o-14]
- report, trade reference, 402 [o-05]
- repossession, collection notification, 272 [c-08]
- representation, 341–42 [l-03d]
- request for quote
  - deal sheet format, 438–39 [r-01]
  - informal, 440–41 [r-02]
  - long form, 442–46 [r-03]
  - short form, 447–48 [r-04]
- resolutions, certificate for incorporating for corporate guarantor, 273 [c-09]
- savings account, assignment of, 243 [a-03]
- schedule
  - casualty value, 321 [l-02c]
  - equipment, 306–19 [l-02a]
  - for net finance master equipment lease agreement, short form, 335–36 [l-03a]
  - prohibited lender assignee, 327 [l-02h]
  - termination value, 322 [l-02d]
- security agreement, 248 [l-04c]
  - long form, 355 [l-06]
  - short form, 350–54 [l-05]
- single investor, proposal letter for nonunderwritten commitment, 427–28 [p-04]
- small ticket
  - credit guidelines, 388 [m-02]
  - financing instructions, 389 [m-03]
  - financing lease rate sheet, 390 [m-04]
  - transaction summary worksheet, 405–6 [o-07]
- stock certificate, assignment of, 243 [a-03]
- sublease right/option, 418 [o-15]
- subordination agreement, for obtaining lessee creditor waive claims, 449 [s-01]
- tax indemnity agreement, for leveraged lease, 349 [l-04e]
- tax notification, personal property, 401 [o-04]
- termination, early, option for, 408–10 [o-09]
- termination value schedule, 322 [l-02d]
- thank-you letter, to lessee, 400 [o-03]
- time table, deal schedule, 450–51 [t-01]
- title, automatic transfer of, 419 [o-16]
- trade reference worksheet/report, 402 [o-05]
- transaction summary worksheet, 403–4 [o-06]
  - for small ticket, 405–6 [o-07]
- trust agreement, for leveraged lease, 349 [l-04d]



- trust indenture and security agreement, for
  - leveraged lease, 348 [l-04c]
- underwritten financing offer, proposal letter for, 429–31 [p-05]
- vendor
  - guaranty for, 294–97 [g-05]
  - program agreement, 452–55 [v-01]
- verification and audit worksheet, 407 [o-08]
- waiver, by landlord, 302 [l-01]
- warranties, 341–42 [l-03d]
- warranty, bill of sale, 26 [b-01]
- welcome/thank-you letter, to lessee, 400 [o-03]
- worksheet
  - bank reference, 396 [o-01]
  - lease proposal evaluation, 469–70 [w-01]
  - master documentation, 397–99 [o-02]
  - trade reference, 402 [o-05]
  - transaction summary, 403–4 [o-06]
  - verification and audit form, 407 [o-08]