

EQUIPMENT FINANCING AGREEMENT – CONTRACT No.

CREDITOR: Radiance Capital LLC	DEBTOR:
Address: 820 A Street, Suite 560	Address:
City/State/Zip: Tacoma, WA 98402	City/State/Zip:

- 1. SECURITY AGREEMENT:** Debtor hereby grants Creditor a security interest under the Uniform Commercial Code in the property (collectively the “Collateral” and individually in “Item” or “Item of Collateral”) described in Schedule A attached hereto and incorporated herein. Such security interest is granted to secure performance by Debtor of its obligations hereunder and under any other present or future agreement with Creditor. Debtor shall insure that such security interest is and shall remain a sole first lien security interest.
- 2. PAYMENTS:** Debtor shall repay Creditor the “Total Advance” shown in Schedule A together with interest in the number of periodic installments shown in Schedule A. The initial installment payment shall be deemed due as of the date indicated on Schedule A and subsequent installment payments shall be due on the same day of each month thereafter until paid, whether or not an invoice is rendered. Advance Payments, if any are shown in Schedule A, will be used for the first payment and any balance will be used for the last payments(s), provided that if there is a default, any payments under this Agreement may be applied to Debtor’s obligation to Creditor in such order as Creditor chooses.
- 3. NO AGENCY:** DEBTOR ACKNOWLEDGES THAT NO SUPPLIER OF ANY ITEM OR INTERMEDIARY NOR ANY AGENT OF EITHER THEREOF IS AN AGENT OF CREDITOR AND FURTHER THAT NONE OF SUCH PARTIES IS AUTHORIZED TO WAIVE OR ALTER ANY TERM OR CONDITION OF THIS AGREEMENT. NO REPRESENTATION AS TO ANY MATTER BY ANY SUCH PARTY SHALL BIND CREDITOR OR AFFECT DEBTOR’S DUTY TO PAY THE INSTALLMENT PAYMENTS AND PERFORM ITS OTHER OBLIGATIONS HEREUNDER.
- 4. NON-CANCELABLE AGREEMENT; REPAYMENT; NO OFFSET:** THIS AGREEMENT IS NON-CANCELABLE BY DEBTOR FOR ANY REASON WHATSOEVER; DEBTOR MAY REPAY THE INSTALLMENT PAYMENTS ONLY IN ACCORDANCE HERewith. ALL PAYMENTS HEREUNDER ARE TO BE MADE WITHOUT OFFSET.
- 5. FINANCING:** THIS AGREEMENT IS SOLELY A FINANCING AGREEMENT. CREDITOR HAS HAD NO INVOLVEMENT IN THE SELECTION OR PURCHASE OF AND HAS MADE AND HEREBY MAKES NO AGREEMENT, REPRESENTATION OR WARRANTY AS TO ANY ITEM OF COLLATERAL.
- 6. LOCATION; INSPECTION; USE:** Debtor shall keep, or as to an Item which is movable, permanently garage and not remove from the United States, as appropriate, each Item of Collateral in Debtor’s possession and control at the Collateral Location specified in Schedule A or at such other location to which such Item may have been moved with prior written consent of Creditor. Upon request, Creditor may inspect the Collateral during normal business hours and enter the premises where the Collateral may be located for such purposes. Each Item shall be used solely for commercial or business purposes and operated in a careful and proper manner in compliance with all applicable governmental requirements and all requirements of insurance policies carried hereunder and all manufactures’ instructions and warranty requirements.
- 7. ALTERATIONS; SECURITY INTEREST COVERAGE:** Without Creditor’s prior written consent, Debtor shall not make any alterations, additions or improvements to an Item of Collateral that detract from its economic value or functional utility. All additions and improvements made to an Item shall be deemed accessions thereto, and shall not be removed if removal would impair the Item’s economic value or functional utility. Creditor’s security interest shall cover all modifications, accessions, additions to and replacements and substitutions for the Collateral. Debtor will not make any replacements or substitutions without Creditor’s prior written consent.
- 8. MAINTENANCE:** Debtor shall maintain the Collateral in good repair, condition and working order. Debtor shall cause all repairs required to maintain the Collateral in such condition to be made promptly by qualified parties. Debtor will cause each Item of Collateral for which a service contract is generally available to be covered by such a contract that provides coverage typical as to property of the type involved and is issued by a competent servicing entity.
- 9. LOSS AND DAMAGE; CASUALTY VALUE:** Debtor will bear all risk of loss, theft, destruction or requisition of or damage to any Item. Debtor shall give Creditor prompt notice of a casualty occurrence and shall thereafter place the Item in good repair, condition and working order; provided however, that if such Item is determined by Creditor to be lost, stolen, destroyed or damaged beyond repair or is requisitioned or suffers a constructive total loss under an insurance policy carried hereunder, Debtor shall pay Creditor all remaining payments of such Item to satisfy the debt.
- 10. TITLING:** If requested by Creditor, Debtor shall cause an Item of Collateral subject to title registration laws to be titled as directed by Creditor. Debtor shall advise Creditor promptly as to any necessary retitling. Debtor shall cause all documents of title to be furnished to Creditor within sixty (60) days of the date on any titling done by Debtor.
- 11. TAXES:** Unless otherwise directed in writing by Creditor, Debtor shall pay when due and make filings with respect to all taxes, fees, including registrations, fines, penalties, and other governmental assessments with respect to the Collateral and shall pay all other governmental assessments (including gross receipt taxes but exclusive of Federal and State taxes based on Creditor’s net income) related to amounts due hereunder, the Collateral or otherwise related hereto.
- 12. LIMITED POWER OF ATTORNEY:** Debtor hereby irrevocably appoints Creditor as Debtor’s attorney-in-fact for the following limited purposes: (1) to sign and to file or record on Debtor’s behalf and in Debtor’s name any document Creditor deems necessary to perfect or protect Creditor’s interest in the Collateral or pursuant to the UCC, and (2) to sign, endorse and/or negotiate, on Debtor’s behalf and in Debtor’s name, for Creditor’s benefit, any instrument representing proceeds from any policy of insurance covering the Collateral.
- 13. INSURANCE:** Debtor shall maintain and provide Creditor evidence satisfactory to Creditor for the maintenance of all risk insurance against loss of or damage to the Collateral for not less than the full replacement value thereof naming Creditor as Loss Payee. Such insurance shall be in an amount and form and with companies approved by Creditor, shall provide at least thirty (30) days advance written notice to Creditor of material change or cancellation, shall provide full breach of warranty protection, if appropriate, and shall provide that coverage is “primary.” In the event of any assignment of this Agreement of which Debtor receives notice, Debtor shall cause such insurance to provide the same protection to the assignee as its interest may appear. The proceeds of such insurance, at the option of the Creditor, shall be applied toward (a) the repair or replacements of the appropriate Item or Items of Collateral, (b) payment of the remaining balance, or (c) payment of any other accrued obligations of Debtor hereunder. Any excess of such proceeds remaining shall belong to Debtor. Debtor shall maintain public liability and property damage coverage in such amounts and in such forms as Creditor shall reasonably require. If Debtor does not provide the insurance described in the section, Creditor may, but will not be required to, buy such insurance and add the cost, including any customary charges or fees associated with the placement, maintenance or service for such insurance, to the Installment Payment amount due from the Debtor.
- 14. CREDITOR’S PAYMENT:** If Debtor fails to perform any of its obligations hereunder, Creditor may perform such obligation, and Debtor shall (a) reimburse Creditor the cost of such performance and related expenses and (b) pay Creditor the late charge contemplated in Paragraph 21 on the cost and expenses of such performance.
- 15. INDEMNITY:** Debtor shall indemnify, defend and hold harmless Creditor against any claim, action, liability or expense, including attorney’s fees and court costs, incurred by Creditor related to this Agreement.
- 16. FAULT:** Any of the following constitutes an event of default hereunder: (a) Debtor’s failure to pay any amount hereunder, within ten (10) business days of when due; (b) Debtor’s default in performing any other obligation hereunder or under any other agreement between Debtor and Creditor; (c) Debtor changes its name, state of incorporation, chief executive officer and/or place of business without providing Creditor with thirty (30) days written notice of such change; (d) death or judicial declaration on incompetency of Debtor, if an individual or partner; (e) the filing by or against Debtor of a petition under the Bankruptcy Code or under any insolvency law or law providing for the relief of debtors, including without limitation, a petition for reorganization, agreement or extension; (f) the making of an assignment of a substantial portion of its assets by Debtor for the benefit of creditors, appointment of a receiver or trustee for Debtor or for any Debtor’s assets, institution by or against Debtor of any other type of insolvency proceeding or other proceeding contemplating settlement of claims against or winding up of the affairs of Debtor, Debtor’s cessation of active business affairs or the making by Debtor of a transfer of a material portion of Debtor’s assets or inventory not in the ordinary course of business; (g) the occurrence of an event described in (d), (e) or (f) as to a guarantor or other surety of Debtor’s obligations hereunder, (h) any misrepresentation of a material fact in connection herewith by or on behalf of Debtor, (i) Debtor’s default under a lease or agreement providing financial accommodations with a third party or (j) Creditor shall in good faith deem itself insecure as a result of a material adverse change in Debtor’s financial condition or otherwise.

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17. REMEDIES: Upon the occurrence of an event of default Creditor shall have the rights, options, duties and remedies of a secured party, and Debtor shall have the rights and duties of a Debtor, under the Uniform Commercial Code of Washington (regardless of whether such Code or law similar thereto has been enacted in a jurisdiction wherein the rights or remedies are asserted). Without limiting the generality of the foregoing, Creditor shall have the right to (a) at Creditor's option, declare immediately due and payable the entire amount of all of Debtor's obligations hereunder, without notice or demand to Debtor and without setoff; (b) take possession of any, if deemed appropriate, render unusable any or all Items of Collateral, without demand or notice wherever located, without any process of law and without liability for any damages occasioned by such taking of possession including damages to contents; (c) require Debtor to assemble any or all Items of Collateral at a location in reasonable proximity to their designated location hereunder; (d) upon notice to Debtor required by law, sell or otherwise dispose of any Items of Collateral, whether or not in Creditor's possession, in a commercially reasonable manner at public or private sale at any place designated in such notice and apply the net proceeds of such sale after deducting all costs of such sale, including, but not limited to, costs of transportation, repossession, storage, refurbishing, advertising and brokers fees, to the obligations of Debtor hereunder with Debtor remaining liable for any deficiency and with any excess being returned to Debtor or (e) utilize any other remedy available under the Uniform Commercial Code or otherwise to Creditor. All remedies are cumulative. Any sale may be adjourned by announcement at the time and place appointed for such sale without further published notice, and Creditor may if permitted by law bid and become the purchaser at any such sale.

18. LITIGATION EXPENSES: Debtor shall pay Creditor its costs and expenses, including repossession and attorney's fees and court costs, incurred by Creditor in enforcing this Agreement. This obligation includes the payment of such amounts whether an action is filed and whether an action that is filed is dismissed.

19. ASSIGNMENT: Without the prior written consent of Creditor, Debtor shall not sell, lease or create or allow any lien other than Creditor's security interest against an Item of Collateral or assign any of Debtor's obligations hereunder. Debtor's obligations are not assignable by operation of law. Consent to any of the foregoing applies only in the given instance. Creditor may assign, pledge or otherwise transfer any of its rights hereunder without notice to Debtor. If Debtor is given notice of any such assignment, Debtor shall acknowledge receipt thereof in writing and shall thereafter pay any amounts due hereunder as directed in the notice. The rights of an assignee to amounts due hereunder shall be free of any claim or defense Debtor may have against Creditor, and Debtor agrees not to assert against an assignee any claim or defense which Debtor may have against Creditor. Subject to the foregoing, this Agreement insures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors and assigns of the parties.

20. MARKINGS; PERSONAL PROPERTY: Debtor shall mark the Collateral or its location as requested by Creditor to indicate Creditor's security interest. Debtor will provide Creditor any real property waivers requested by Creditor as to the real property where an Item of Collateral is or is to be located.

21. LATE PAYMENT AND NSF FEES: In the event a payment is not made within ten (10) days when due hereunder, the Debtor promises to (a) pay a late charge to Creditor or its assigns not later than one month thereafter, of up to 10% of the payment, or twenty-five dollars (\$25.00), whichever is greater and (b) pay Creditor amounts paid to others in connection with collection of the amount. The late charge and/or the interest payments set forth in this Agreement shall apply only when permitted by law, and if not permitted by law, the late charge and/or interest payments shall be calculated at the maximum rate permissible by law. If a check or other instrument tendered for payment is dishonored, Debtor shall be liable for a fifty dollar (\$50.00) fee.

22. COMPLIANCE WITH LAW: Debtor and Creditor intend to comply with all applicable laws. If it is determined that payments under this Agreement result in an interest payment higher than that allowed by applicable law, then any excess interest collected will be applied to the repayment of principal and interest will be charged at the rate allowed by law.

23. ADDITIONAL DOCUMENTS: Debtor shall provide to Creditor such financing statements and similar documents as Creditor shall request. Debtor authorizes Creditor where permitted by law to make filings of such documents without Debtor's signature. Debtor further shall furnish Creditor (a) a fiscal year-end financial statement including balance sheet and profit and loss statement within one hundred twenty (120) days of the close of each fiscal year and (b) such other information and documents not specifically mentioned herein relative to this Agreement as Creditor may request. Debtor shall reimburse Creditor for all search and filing fees incurred by Creditor related hereto.

24. CROSS COLLATERAL/CROSS DEFAULT: All Collateral shall secure the payment and performance for all of Debtor's liabilities and obligations to Creditor hereunder, under any other agreement between Debtor and Creditor, and under any of the loan documents relating hereto, including but not limited to all Equipment Finance Agreements, Lease Agreements, Interim Funding Agreements and all other documents (referred to herein collectively as the "Documents"). Creditor's security interest in the Collateral shall not be terminated until and unless all of Debtor's obligations to Creditor under any of the Documents are fully paid and performed. The occurrence of an event of default under any other of the Documents shall be deemed to be an Event of Default hereunder and an Event of Default hereunder shall be deemed to be an Event of Default under the Documents.

25. NOTICES: Notices shall be in writing and sufficient if mailed to the party involved, United States mail first class postage prepaid, at its respective address set forth above or at such other address as such party may provide on notice in accordance herewith. Notice so given shall be effective when mailed. Debtor shall promptly notify Creditor of any change in Debtor's address.

26. CHOICE OF LAW; WAIVER OF JURY TRIAL: THIS AGREEMENT SHALL BE DEEMED FULLY EXECUTED AND PERFORMED IN THE STATE OF WASHINGTON AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS THEREOF WITHOUT REGARD TO THE CONFLICTS OF LAWS RULES OF SUCH STATE. DEBTOR AGREES TO SUBMIT TO THE JURISDICTION OF THE STATE OF WASHINGTON IN KING COUNTY. EACH CREDITOR AND DEBTOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION INVOLVING THIS AGREEMENT.

27. GENERAL: This agreement constitutes the entire agreement of the parties as to the subject matter and shall not be amended, altered or changed except by a written agreement signed by the parties. Any waiver by Creditor must be in writing, and forbearance shall not constitute a waiver. Whenever the context of this Agreement requires, the neuter includes the masculine or feminine and the singular includes the plural. If there is more than one Debtor named in this Agreement, the liability of each shall be joint and several. The titles to the paragraphs of this Agreement are solely for the convenience of the parties and are not in aid in the interpretation. Any provision declared invalid shall be deemed severable from the remaining provisions that shall remain in full force and effect. Time is of the essence of this Agreement. The obligations of Debtor shall survive the release of security interest in the Collateral.

28. DEBTOR'S WARRANTIES; DEBTOR CERTIFIES AND WARRANTS: (a) THE FINANCIAL AND OTHER INFORMATION WHICH DEBTOR HAS SUBMITTED, OR WILL SUBMIT, TO CREDITOR IN CONNECTION WITH THIS AGREEMENT IS, OR SHALL BE AT TIME OF SUBMISSION, TRUE AND COMPLETE; (b) THE DEBTOR'S EXACT LEGAL NAME, STATE OF INCORPORATION, LOCATION OF ITS CHIEF EXECUTIVE OFFICE AND/OR ITS PLACE OF RESIDENCE AS APPLICABLE, HAVE BEEN CORRECTLY IDENTIFIED TO CREDITOR; (c) THIS AGREEMENT HAS BEEN DULY AUTHORIZED BY DEBTOR AND UPON EXECUTION BY DEBTOR SHALL CONSTITUTE THE LEGAL, VALID AND BINDING OBLIGATION, CONTRACT AND AGREEMENT OF DEBTOR ENFORCEABLE AGAINST DEBTOR IN ACCORDANCE WITH ITS TERMS; AND (d) EACH SHOWING PROVIDED BY DEBTOR IN CONNECTION HERewith MAY BE FULLY RELIED UPON BY CREDITOR NOTWITHSTANDING ANY TECHNICAL DEFICIENCY IN ATTESTATION OR OTHERWISE. THE PERSON EXECUTING THIS AGREEMENT ON BEHALF OF THE DEBTOR WARRANTS THAT PERSON'S DUE AUTHORITY TO DO SO. DEBTOR FURTHER WARRANTS THAT EACH ITEM OF COLLATERAL SHALL AT THE TIME CREDITOR FUNDS THE TOTAL ADVANCE BE OWNED BY DEBTOR FREE AND CLEAR OF LIENS AND ENCUMBRANCES AND BE IN GOOD CONDITION AND WORKING ORDER.

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29. NO WARRANTIES BY CREDITOR CREDITOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED AS TO ANY MATTER WHATSOEVER, INCLUDING, BUT NOT LIMITED TO: THE CONDITION, DESIGN, OR QUALITY OF THE EQUIPMENT; THE FITNESS OF THE EQUIPMENT FOR USE OR FOR A PARTICULAR PURPOSE; THE MERCHANTABILITY OF THE EQUIPMENT; COMPLIANCE OF THE EQUIPMENT WITH THE REQUIREMENTS OF ANY LAWS, RULES, SPECIFICATIONS OR CONTRACTS PERTAINING THERETO; PATENT INFRINGEMENT; OR LATENT DEFECTS; THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE EQUIPMENT OR THE CONFORMITY OF THE EQUIPMENT TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE ORDER RELATING THERETO; THE OPERATION, USE OR PERFORMANCE OF THE EQUIPMENT OR ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, WITH RESPECT TO THE EQUIPMENT. NO DEFECT OR UNFITNESS OF THE EQUIPMENT SHALL RELIEVE DEBTOR OF THE OBLIGATION TO PAY RENT OR OF ANY OTHER OBLIGATION UNDER THIS AGREEMENT. THE DEBTOR ALSO ACKNOWLEDGES THAT THE CREDITOR HAS MADE NO REPRESENTATION OR WARRANTY OF ANY KIND, NATURE OR DESCRIPTION, EXPRESSED OR IMPLIED, WITH RESPECT TO THE OPERATION, USE OR PERFORMANCE OF THE EQUIPMENT. CREDITOR SHALL HAVE NO LIABILITY TO DEBTOR OR ANY PERSON WHOMSOEVER FOR ANY CLAIM, LOSS, DAMAGE, OR EXPENSE (INCLUDING ATTORNEY FEES) OF ANY KIND OR NATURE, WHETHER SPECIAL, CONSEQUENTIAL, ECONOMIC OR OTHERWISE, CAUSED OR ALLEGED TO BE CAUSED DIRECTLY, INDIRECTLY, INCIDENTALLY, OR CONSEQUENTIALLY BY THE EQUIPMENT OR ANY PART THEREOF OR PRODUCTS THEREFROM, BY ANY INADEQUACY OF THE EQUIPMENT OR DEFECT OR DEFICIENCY THEREIN, BY ANY INCIDENT WHATSOEVER ARISING IN STRICT LIABILITY OR OTHERWISE, FROM CREDITOR'S OR DEBTOR'S NEGLIGENCE OR OTHERWISE, BY THE USE OR MAINTENANCE THEREOF, OR FOR REPAIR, SERVICING OR ADJUSTMENT THERETO, OR FOR ANY INTERRUPTION OF SERVICE OR LOSS OF USE OF THE EQUIPMENT, OR FOR ANY LOSS OF BUSINESS OR DAMAGE WHATSOEVER AND HOWSOEVER CAUSED, OR ARISING OUT OF THIS AGREEMENT. DEBTOR SHALL INDEMNIFY AND HOLD CREDITOR HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS COSTS EXPENSES, DAMAGES, LOSSES, LIABILITIES INCURRED OR SUFFERED BY THE CREDITOR, DEBTOR, OR ANY OTHER PARTY IN CONNECTION WITH THE DELIVERY, OPERATION, USE OR PERFORMANCE OF THE EQUIPMENT, OR AS A RESULT OF ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT.)FURTHER, DEBTOR UNDERSTANDS AND AGREES T HAT THERE SHALL BE NO ABATEMENT OF RENT DURING ANY PERIOD OF BREAKSOWN OR NONUSE OF THE EQUIPMENT.

This Agreement is effective only upon execution by an authorized officer of Creditor following Debtor's execution hereof. Debtor hereby authorizes Creditor to disburse the Total Advance as reflected on the Pay Proceeds Direction attached to each Schedule A.

CREDITOR: Radiance Capital LLC

DEBTOR: _____

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____