

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

In re	)	
	)	
MANAGEMENT BY INNOVATION, INC.,	)	Case No. 6:04-bk-4986-KSJ
	)	Chapter 11
Debtor.	)	
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	)	
SOUTHTRUST BANK, MANAGEMENT BY INNOVATION, INC.,	)	
	)	Adversary No. 6:04-ap-201
Plaintiffs,	)	
vs.	)	
	)	
ORIX FINANCIAL SERVICES, INC.,	)	
	)	
Defendant.	)	
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**MEMORANDUM OPINION GRANTING DEFENDANT’S  
MOTION FOR SUMMARY JUDGMENT AND  
DENYING PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

This adversary proceeding came on for hearing on December 1, 2004, to consider the Motion for Summary Judgment (Doc. No. 4) filed by the plaintiff, SouthTrust Bank (“SouthTrust”), and the Cross Motion for Summary Judgment (Doc. No. 14) filed by the defendant, Orix Financial Services, Inc. (“Orix”). SouthTrust and Orix are secured creditors of the debtor, Management by Innovation, Inc. (“MBI”) and have security interests in some of the same collateral. SouthTrust initiated this adversary proceeding seeking a judgment that its security interest in the collateral is superior to Orix’s despite the fact that its security interest arose after Orix filed UCC-1 financing statements concerning the same collateral, contending that the financing statements filed by Orix are misleading and insufficiently describe all of the encumbered collateral in violation of Florida Statute Section 679.1081. The sole issue presented

in the parties' motions for summary judgment is whether Orix's financing statements sufficiently describe the encumbered collateral. For the reasons explained below, Orix's motion for summary judgment is granted and SouthTrust's is denied.

The parties agree that there are no disputed facts. On June 15, 1999, long before MBI filed its Chapter 11 case, MBI executed an equipment lease agreement with Orix to lease a large printing press described as a "Komori Lithone, Model L426111, S/N:346." (Exhibit A, attached). The description of the equipment is prominently placed in a large box at the top of the 1999 lease. However, paragraph nine of the lease further provides that:

"The lessee [MBI] grants the lessor [Orix] a security interest in the equipment and any and all documents, instruments, chattel paper, goods, general intangibles, inventory, machinery, contracts rights equipment, fixtures, accounts and insurance in which lessee now or hereafter has any right or interest...[which] secures the payment, performance and fulfillment of all the obligations of lessee to lessor."

Shortly after executing the 1999 lease, on June 28, 1999, Orix filed a UCC-1 financing statement with the State of Florida to perfect its security interest (Exhibit B, attached). Section 5 of the 1999 financing statement lists the property subject to Orix's security interest as: "The property and/or the equipment and all other types of collateral as described **in this attached entire agreement** [the equipment lease] and in any schedule attached thereto. The attached security agreement and any schedule attached thereto are being submitted for filing as a financing statement." (Emphasis added).

In 2000, MBI executed and filed a similar equipment lease agreement and UCC-1 financing statement with the State of Florida. For all practical purposes, the financing statement and lease executed in 1999 are identical to those executed in 2000 except that the 2000 lease addresses a different type of printing press, a "Komori, 20"X26" 4 Color Lithone Sheet Fed Press."

SouthTrust acknowledges that Orix's financing statements and related equipment leases plainly and conspicuously described the two printing presses Orix leased to MBI and agrees that Orix holds a first priority security interest in this equipment. SouthTrust does assert, however, that Orix has no blanket lien in MBI's other personal property because the financing statements are misleading and insufficiently describe any collateral other than the printing presses. Orix allegedly buried the text of the blanket lien in small type in a paragraph toward the end of the first page of the equipment lease.

Conversely, Orix contends that the financing statements are *not* misleading, that they clearly describe the property subject to Orix's security interest, and that they are adequate to put any subsequent creditors, such as SouthTrust, on notice. Accordingly, Orix contends that it has a first priority, valid and enforceable blanket lien in substantially all of MBI's other personal property in addition to its liens on the leased equipment.

Because no material factual disputes preclude entry of summary judgment as a matter of law, the issue presented is properly resolved on summary judgment. Pursuant to Federal Rule of Civil Procedure 56, which is applicable under the Federal Rule of Bankruptcy Procedure 7056, a court may grant summary judgment where "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56. The moving party has the burden of establishing the right to summary judgment. Fitzpatrick v. Schlitz (In re Schlitz), 97 B.R. 671, 672 (Bankr. N.D. Ga. 1986). In determining entitlement to summary judgment, a court must view all evidence and make all reasonable inferences in favor of the party opposing the motion. Haves v. City of Miami, 52 F.3d 918, 921 (11th Cir. 1995) (citing Dibrell Bros. Int'l S.A. v. Banca Nazionale Del Lavoro, 38 F.3d 1571, 1578 (11th Cir. 1994)). Therefore, a material factual dispute precludes summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). When opposing a motion for summary judgment, a party may not simply rest on the pleadings but must demonstrate the

existence of elements essential to the non-moving party's case and for which the non-moving party will bear the burden of proof at trial. See Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) (cert. denied, 484 U.S. 1066, 108 S.Ct. 1028, 98 L.Ed.2d 992 (1988)).

Section 679.1081 of the Florida Statutes sets forth the test to determine the sufficiency of the description of collateral in both a security agreement and a financing statement. Section 679.1081(1) provides, in relevant part, that a description of collateral is sufficient if it reasonably identifies what is described. Courts are directed to specifically consider whether the collateral description in a financing statement is sufficient to give third-party creditors notice of the type of collateral that may be subject to a security interest. American Restaurant Supply Co. v. Wilson, 371 So.2d 489 (Fla. 1st Dist. Ct. App. 1979). A description of collateral in a financing statement is sufficient if "the description does the job assigned to it: it makes possible the identification of the thing described." Official Comment, Section 9-108 of the Uniform Commercial Code.

The Eleventh Circuit Court of Appeals has addressed this precise issue on almost identical facts in Leasing Serv. Corp. v. Hobbs Equipment Co., 894 F.2d 1287 (11<sup>th</sup> Cir. 1990).<sup>1</sup> In Hobbs, the lessor with the earlier-in-time financing statement sought to recover proceeds paid to a later-in-time creditor. Similar to this case, the lessor had leased equipment to a debtor who then filed a Chapter 11 reorganization case. The parties' equipment lease had text granting a blanket lien, similar to the equipment leases signed by MBI in this case. Further, the lessor in Hobbs filed a financing statement that attached the equipment lease, just as in this case. In concluding that the lessor held a valid first priority blanket lien, the Eleventh Circuit Court of Appeals found that any creditor, but particularly a bank, could read the attached equipment lease

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<sup>1</sup> The Hobbs decision was decided under Alabama law. However, the relevant sections of the Uniform Commercial Code as adopted in both Alabama and Florida are identical. Interestingly, the lessor in Hobbs asserting a similar blanket lien was a predecessor in interest to Orix, the lessor in this case. So, even the parties have some commonality.

and determine that the lessor claimed a blanket lien. The court found that the financing statement was clear and that the bank's failure to read the entire lease agreement was inexcusable. Hobbs, 894 F.2d at 1290, 1291.

Here, paragraph nine of Orix's leases clearly and sufficiently list the types of collateral encumbered by the security interest granted to Orix by the debtor. Specifically, paragraph nine of the leases grant Orix a security interest in, among other things, all documents, instruments, chattel paper, goods, general intangibles, inventory, machinery, contract rights, equipment, fixtures, accounts, and insurance. The leases are standard commercial type documents and are only two pages in length. While the type is small, the agreements are legible. Moreover, the language used in paragraph nine granting the blanket security lien is clear and would be sufficient to put any reasonable creditor exercising due diligence on notice that a prior blanket lien could potentially exist.

The fact that the collateral description is contained in an equipment lease attached to the financing statements is irrelevant under the standard articulated by the Eleventh Circuit Court of Appeals in Hobbs. Subsequent creditors are charged with the obligation to read the entire document, not just select portions of filed financing statements. Any reasonable creditor reviewing the financing statements in this case would have been able to identify the general types of collateral in which Orix is asserting a security interest. SouthTrust simply failed to do so.

Therefore, Orix's financing statements are enforceable. Any creditor exercising due diligence and reasonable care in searching the records would find the blanket lien. They need not be prophets. Durbin v. Jefferson National Bank, 46 B.R. 595, 600 (S.D. Fla. 1985) (citing Ray v. Citibank and Trust Co. of Natchez, Mississippi, 358 F.Supp. 630 (S.D. Ohio 1973)).

Accordingly, because the court concludes that Orix's financing statements are sufficient to provide adequate notice to third-party creditors, the court further must conclude that Orix's

blanket security lien is superior in time and enforceable against SouthTrust's later lien encumbering the same or similar property. As such, Orix's Cross-Motion for Summary Judgment (Doc. No. 14) is granted. Judgment will be entered in favor of Orix and against SouthTrust. SouthTrust's Motion for Summary Judgment (Doc. No. 4) is denied. A separate order consistent with this memorandum opinion shall be entered.

DONE AND ORDERED in Orlando, Florida, on the 12th day of January, 2005.

/s/Karen S. Jennemann  
KAREN S. JENNEMANN  
United States Bankruptcy Judge

ORIX CREDIT ALLIANCE, INC. (the "LESSOR")

300 Lighting Way • Secaucus, New Jersey 07096-1525 Telephone: (201) 601-9000

LEASE NO.

FULL LEGAL NAME AND ADDRESS OF "LESSEE"  
MANAGEMENT BY INNOVATION, INC.

1415 SOUTH S.R. 15A  
DELAND FLORIDA 32720

SUPPLIER OF EQUIPMENT (complete address)  
GRAPHIC EQUIPMENT SERVICE, INC.  
4912 PETRA CENTER WINTER SPRINGS FL 32708

NAME AND TITLE OF PERSON TO CONTACT :

DESCRIPTION: MODEL #, CATALOG #, OR OTHER IDENTIFICATION.

EQUIPMENT  
LEASED

ONE KOMORI LITHONE, MODEL L426III, S/N: 346.

LOCATION OF EQUIPMENT: STREET ADDRESS (IF DIFFERENT THAN LESSEE'S ADDRESS SHOWN ABOVE)

CITY: COUNTY: STATE: RECORD OWNER:

FOR INITIAL TERM OF THIS LEASE		INITIAL TERM OF LEASE (NO. OF MONTHS)		ADVANCE RENT	AFTER INITIAL TERM MONTHLY RENEWAL RENT
AMOUNT OF EACH RENT PAYMENT	NO. OF RENT PAYMENTS	TOTAL RENT			
\$ 5,189.00	84	\$ 435,876.00	84	\$ 0.00	\$ 0.00
(PLUS SALES TAX, IF APPLICABLE)		(PLUS SALES TAX, IF APPLICABLE)	MONTHS	(PLUS SALES TAX, IF APPLICABLE)	(PLUS SALES TAX, IF APPLICABLE)

Terms and Conditions of Lease

1. Lessee hereby leases from Lessor, and Lessor leases to Lessee, the equipment and/or personal property described above and in any schedule made part hereof (here called "Equipment") which Lessee warrants shall be used for commercial purposes only and not for any farming or other agricultural purpose.

2. Lessee requests Lessor to purchase Equipment of the type and quality specified above from the supplier named above and agrees upon written acceptance hereof signed at Lessor's office by an authorized officer of Lessor, to lease said Equipment from Lessor on the terms, provisions and conditions of this lease. Lessor agrees to order such Equipment from said supplier, but shall not be liable for specific performance of this lease or for damages if for any reason the supplier delays or fails to fill an order. Lessee shall accept such Equipment upon delivery, and hereby authorizes Lessor to add to this lease the serial number of each item of Equipment so delivered. Any delay in such delivery shall not affect Lessee's obligations hereunder. LESSEE REPRESENTS THAT LESSEE HAS SELECTED THE EQUIPMENT LEASED HEREUNDER PRIOR TO HAVING REQUESTED LESSOR TO PURCHASE THE SAME FOR LEASING TO LESSEE AND APPROVES THE SAME AND LESSEE AGREES THAT LESSOR HAS NOT MADE AND MAKES NO REPRESENTATIONS OR WARRANTIES, DIRECTLY OR INDIRECTLY EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, CONDITION, QUALITY OR OTHERWISE OF ANY SUCH EQUIPMENT. LESSEE SPECIFICALLY WAIVES ALL RIGHTS TO MAKE CLAIM AGAINST LESSOR HEREIN FOR BREACH OF ANY WARRANTY OF ANY KIND WHATSOEVER AND AS TO LESSOR OR LESSOR'S ASSIGNEE LESSEE LEASES THE EQUIPMENT "AS IS". LESSOR HEREBY ADVISES LESSEE THAT IT MAY HAVE RIGHTS AGAINST THE SUPPLIER OF THE EQUIPMENT AND THAT IT SHOULD CONTACT THE SUPPLIER FOR A DESCRIPTION OF SUCH RIGHTS. LESSEE AGREES TO CLAIM ONLY AGAINST THE SUPPLIER FOR COMPLIANCE WITH ANY SUCH WARRANTIES AS MAY EXIST; LESSOR AND LESSOR'S ASSIGNEE SHALL NOT BE LIABLE TO LESSEE FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED DIRECTLY OR INDIRECTLY BY ANY EQUIPMENT LEASED HEREUNDER OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIRS, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY THEREOF, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS OR DAMAGE WHATSOEVER AND HOWSOEVER CAUSED.

3. As used herein, "Actual Cost" means the cost to Lessor of purchasing and delivering Equipment to Lessee, including taxes, transportation charges, and other charge and the amount of any transaction charge disclosed below and not paid in cash by Lessee at the time of acceptance by Lessor. The amount of each Rent Payment, the Advance Rent, and any Renewal Rent set forth above are based on the estimated cost to Lessor and shall each be adjusted proportionally if the Actual Cost differs from said estimated cost. Lessee hereby irrevocably authorizes Lessor to correct the figures set forth above when the Actual Cost is known, and each Rent Payment shall be increased by any sales or other tax that may be imposed on or measured by the rent payments. If Actual Cost differs from the estimated cost by more than ten percent thereof, Lessor at its option, may terminate this lease by giving written notice to Lessee after receiving notice of Actual Cost. If prior to delivery there shall occur any event of default hereunder, Lessee shall be liable for Lessor's damages occasioned thereby, which for purposes of this paragraph only, it is agreed shall be all amounts paid on account of the Equipment and other charges incurred in connection with the Lease plus interest thereon at the Past Due Rate defined below.

4. The initial term of this lease commences upon the acceptance hereof by Lessor and ends upon the expiration of the number of months specified above (for the initial lease term) after the rent commencement date, which date shall be the date upon which the supplier ships the Equipment to Lessee, or whichever is earlier. Lessee agrees to pay Lessor a transaction charge of \$ 251.00 upon its acceptance hereof.

5. Lessor will upon Lessee's written request, request the supplier to authorize Lessee to enforce in its own name all warranties, agreements or representations, if any which may be made by the supplier to Lessee or Lessor. Notwithstanding the foregoing, Lessor itself makes no express nor implied nor statutory warranties as to any matter whatsoever, including, without limitation, the condition of Equipment, its merchantability or its fitness for any particular purpose. No defect or unfitness of Equipment shall relieve Lessee of the obligation to pay rent or of any other obligation under this lease. Lessee agrees that any maintenance service to be performed is the sole obligation of Lessee who may arrange for same with the supplier of Equipment.

6. Lessee agrees to pay to Lessor at 100 Dutch Hill Road, Orangeburg, New York or at such other place as Lessor may direct in writing Total Rent equal to the number of rent payments specified herein multiplied by the amount of each payment specified herein. The first rent payment and any advance rent shall be due upon execution of this lease by Lessee, any deposit or acceptance of such sum by Lessor shall not be deemed acceptance of this lease. In no event shall the first rent payment or advance rent be refunded to Lessee. The second rent payment shall be due and payable one month after the rent commencement date and subsequent rent payments for the initial term shall continue on the same date of each successive month thereafter until the Total Rent and any other sums payable hereunder are paid in full. Any installment not paid on or before its due date and, to the extent permitted by applicable law, the entire unpaid Total Rent after acceleration shall thereafter bear interest at a rate of 12% of the periodic rate (the "Past Due Rate") until this lease is paid in full. In no event shall any late charge or the Past Due Rate exceed any maximum permitted by law. If for any reason the interest rate, late charge, fee or other charge imposed or which may be imposed under this Lease exceeds the maximum amount which may be imposed under applicable law, the amount of such interest rate, late charge, fee or other charge in excess of the maximum shall be void and any such excess collected by Lessor applied to the reduction of this lease or, to the extent permitted by applicable law, to other obligations of the Lessee owing to Lessor, as Lessor may determine, and any remaining excess shall be returned to Lessee. Should Lessor pay for or on account of the Equipment any sums more than thirty days prior to the rent commencement date, Lessee will pay Lessor an additional sum along with the first rent payment due after the rent commencement date an amount equal to the Past Due Rate for each day from the date of payment to the rent commencement date. Lessee will pay in advance to Lessor, if so requested, any personal property tax as estimated by Lessor, pro-rated on a monthly basis.

7. Lessor may, but shall not be obligated, to apply any advance rent toward curing any default of Lessee hereunder, in which event Lessee shall promptly reimburse the advance rent to the full amount specified herein. Any advance rent is paid to Lessor without charge or interest and may be applied by Lessor, in its sole discretion, against the unpaid installments of rent hereunder in the inverse order of their respective maturities, but Lessor shall not be obligated to do so.

8. If, upon the expiration of the original or any renewal term hereof, Lessee is not then and has not been in default in any of Lessee's obligations to Lessor and this lease specifies a Renewal Rent amount, Lessee may renew this lease for one year at the Renewal Rent so specified by giving Lessor written notice of renewal at least sixty days prior to the expiration of the initial or any renewal term and payment along with such notice of the Renewal Rent amount. If this lease is not renewed under the terms of the immediately preceding sentence for any reason whatsoever, Lessor may notify Lessee prior to the expiration of the original or any renewal term hereof, that if Lessee fails to return the Equipment as herein provided at the end of the then current term hereof, this lease shall be renewed for an additional one year term at the same rate provided for in this lease for the initial term. All of the terms and conditions of this lease shall apply and be in full force and effect during any and all renewal terms.

9. Lessor is hereby authorized to file one or more financing statements or a reproduction hereof as a financing statement. Lessee hereby irrevocably appoints Lessor as the true and lawful attorney-in-fact of Lessee, coupled with an interest, with full power in Lessee's name, place and stead to execute financing statements on Lessee's behalf and to do any and all other acts on Lessee's behalf necessary or helpful to perfect Lessor's security interest in the Collateral (defined below) pursuant to the Uniform Commercial Code or other applicable law. The Lessee grants to Lessor a security interest in the Equipment and any and all documents, instruments, chattel paper, goods, general intangibles, inventory, machinery, contract rights, equipment, fixtures, accounts and insurance in which Lessee now or hereafter has any right or interest, all of the foregoing, together with all accessories, attachments, replacements, substitutions and accessions thereto, and all proceeds, products and rents therefrom, collectively called "Collateral" and agrees that said security interest secures the payment, performance and fulfillment of all the obligations of Lessee to Lessor or any affiliate of Lessor whether such obligations are now existing or hereafter incurred or arising, are direct or indirect, arise by assignment or otherwise or are contemplated or not contemplated as of the date of this lease. Lessor may at any time, with or without exercising any of the rights or remedies available to it and without notice to Lessee, sell or otherwise dispose of the Collateral in whole or in part to satisfy its obligations to Lessor or any affiliate of Lessor.

SEE PAGE (2) FOR ADDITIONAL TERMS AND CONDITIONS WHICH ARE PART OF THIS LEASE.

The undersigned Lessor and Lessee agree to all terms and conditions set forth above and on Page (2) hereof, and in witness thereof hereby execute this lease. THE EQUIPMENT IS LEASED HEREUNDER AS-IS, AND LESSOR MAKES NO EXPRESS NOR IMPLIED NOR STATUTORY WARRANTIES AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PURPOSE.

Accepted By: ORIX CREDIT ALLIANCE, INC.

LESSEE(S): DATE 6/15/99

At its (VICE PRESIDENT)

By: JAMES J. GROGAN (Print Name of Lessee Here)

By: Shannon Barker (Witness as to Lessor's and Co-Lessee's Signature)

Date 6/26-796-71-8260 (Drivers License #) (State) FL

By: Pres. G 625-450-46-144-D FCA (Print Name of Co-Lessee Here)

By: Patricia de la Cruz (Witness as to Lessor's and Co-Lessee's Signature)

Date 224-693-36-636-D FL (Drivers License #) (State) Page 1 of 2

(State) (Drivers License #) (State)



prior notice or demand to Lessee, appropriate and apply toward payment of any of Lessee's obligations to Lessor any and all balances, sums, property, credits, deposits, accounts, reserves, collections, monies, drafts, notes or checks coming into Lessor's possession and belonging or owing to Lessee and for such purposes, endorse Lessee's name on any such instrument made payable to Lessor for deposit, negotiation, discount or collection. Such applications may be made and/or any monies paid to Lessor may be applied and/or previously applied to apply, without notice to Lessee, partly or entirely to any of Lessee's obligations to Lessor arising hereunder or otherwise as Lessor in its sole discretion may elect.

10. Unless Lessee gives Lessor written notice of each defect or other proper objection to an item of Equipment within three business days after receipt thereof, it shall be conclusively presumed, as between Lessee and Lessor, that the item was delivered in good repair and that Lessee accepts it as an item of Equipment described in this lease. Lessee warrants and represents that no item of Equipment has been delivered to Lessee prior to the date of Lessor's acceptance hereof, which shall be deemed the date of this lease. Lessee will deliver to Lessor a delivery/installation receipt (Lessor's form) for each and every item immediately upon Lessor's request. At Lessor's request, Lessee will furnish current financial statements satisfactory to Lessor in form, preparation and content.

11. Lessee shall use Equipment in a careful manner and shall comply with all laws relating to its possession, use and maintenance. The Equipment shall be delivered and thereafter kept at the location specified above or, if none is specified, at Lessee's address as set forth above, and in no event shall the Equipment or the Collateral be removed therefrom or from the contiguous States of the United States without Lessor's prior written consent. Lessor may, for the purpose of inspection, at all reasonable times, enter upon any premises where Equipment is located and may remove Equipment forth with, without notice to Lessee, if Equipment is, in the opinion of Lessor, being used beyond its capacity or in any manner improperly cared for or abused.

12. If Lessor supplies Lessee with labels stating that Equipment is owned by Lessor, Lessee shall affix and keep same in a prominent place on each item of Equipment. Lessee, at its expense, shall keep Equipment in good repair and furnish all parts, mechanisms and devices required therefor. Lessee shall not make any alterations, additions or improvements to Equipment without Lessor's prior written consent. All additions and improvements made in Equipment shall belong to Lessor. Upon the expiration or earlier termination of this lease, Lessee at its sole expense, shall return Equipment in good repair, ordinary wear and tear resulting from proper use thereof excepted, by delivering it to such place as Lessor may specify. If Lessor, for any reason, does not receive the Equipment immediately upon the expiration of the term hereof and there is no renewal under section 8 hereof, Lessor will receive as use and occupancy of the Equipment or any portion thereof for each month or portion thereof, between the date of expiration and the date of return of Equipment, an amount equal to 150% of the monthly rent specified for the initial lease term and the provisions hereof shall remain in effect and bind Lessee until such return of Equipment.

13. Lessee hereby assigns and shall bear the entire risk of loss of and damage to Equipment from any and every cause whatsoever. No loss of or damage to Equipment or any part thereof shall constitute an obligation of Lessee hereunder, which shall continue in full force and effect. In the event of damage of any kind whatsoever to any item of Equipment (unless the same be damaged beyond repair), Lessee, at the option of Lessor, shall at Lessee's expense place the same in good repair condition and working order, or replace the same with like Equipment of the same make and the same or a later model, in good repair, condition and working order. If Equipment, or any portion thereof, is determined by Lessor to be lost, stolen, destroyed or damaged beyond repair, Lessee shall immediately pay Lessor therefor in cash an amount equal to the sum of (a) the greater of the actual fair market value of the Equipment involved or fifty percent (50%) of the Actual Cost of the Equipment involved, plus (b) the greater of 25% of the aggregate amount of unpaid Total Rent for the balance of the term of this lease or 115% of the unpaid Total Rent allocated by Lessor to the Equipment involved. Upon payment as aforesaid, this lease shall terminate with respect to the items of Equipment involved. The proceeds of any insurance payable as a result of loss of or damage to Equipment shall be applied, at the option of Lessor, toward the replacement, restoration or repair of Equipment. Lessee shall at Lessee's own expense, provide and maintain insurance, satisfactory to Lessor, against loss, theft, conversion, damage or destruction of the Equipment in an amount not less than the full replacement value thereof with loss payable to Lessor. Each policy shall be delivered to Lessor and shall expressly provide that said insurance as to Lessor and its assigns shall not be invalidated by any act, omission or neglect of Lessee, and that the insurer shall give thirty (30) days written notice to Lessor of the alteration or cancellation of the policy. Lessor may apply the proceeds of any of said insurance to replace or repair Equipment and/or to satisfy, in whole or in part, Lessee's obligations to Lessor. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of and execute and endorse all documents, checks or drafts received in payment for loss of or damage to any of said insurance. Lessee shall also provide and maintain paid public liability (personal injury and property damage) insurance, satisfactory to Lessor, naming Lessor as additional insured. Notwithstanding the above, Lessor has the right, but not the obligation, to obtain insurance on the Equipment protecting Lessor from Lessee's expense and to maintain such insurance at Lessee's expense unless written evidence of such insurance satisfactory to Lessor is provided to Lessor when and as requested by Lessor. Lessee's expense shall include the full premium paid by Lessor for such insurance and any customary charges or fees of Lessor and of any designee associated with such insurance. Lessee shall pay such amounts in equal installments allocated to each lease payment plus interest on such amount at the Past Due Rate.

14. Lessee shall hold harmless and indemnify Lessor against any and all claims, actions, proceedings, expenses, attorneys' fees, damages and liabilities, arising in connection with the Equipment, its manufacture, selection, purchase, delivery, possession, ownership, leasing, renting, control, maintenance, use, operation and/or return and the recovery of claims under insurance policies thereon. Lessee shall pay promptly when due all charges and taxes (local, state and federal) which may now or hereinafter be imposed upon the ownership, leasing, renting, sale, purchase, possession or use of Equipment, and shall save Lessor harmless against any actual or asserted violations and pay all costs, expenses, penalties, interest and charges of every kind in connection therewith or arising therefrom. The obligations of Lessee shall survive the termination of this agreement.

15. Without Lessor's prior written consent, Lessee shall not (a) assign, transfer, pledge, hypothecate or otherwise dispose of this lease or any interest therein, or (b) sublet or lend Equipment or any part thereof, or permit it to be used by anyone other than Lessee or Lessee's employee. Lessor and its assignee may assign this lease and/or mortgage the Equipment, in whole or in part, without notice to Lessee. Each such assignee and/or mortgagee shall have all of the rights but none of the obligations of Lessor hereunder. Lessee hereby recognizes each such assignment and agrees to pay the balance of Total Rent to any assignee and not to assert against any assignee any defense, counterclaim, recoupment or set-off that Lessee may have against Lessor. Subject to the foregoing, this lease inures to the benefit of and is binding upon the heirs, assigns, personal representatives, survivors, successors and assigns of the parties hereto.

16. This lease and the obligations hereunder shall not be affected by acceptance of any overdue payment. Lessee hereby irrevocably authorizes any attorney of any court of record to appear for and confess judgment against Lessee (except in any jurisdiction where such action is not permitted by law) for all unpaid amounts due hereunder, plus expenses and 20% added for attorneys' fees, without stay of execution, and Lessee hereby waives the issue of process, all rights of appeal and relief from any and all annuities, rents or exemption laws then in force.

17. Lessee fails to pay any other amount hereunder when due or fails to pay when due any obligations of Lessee to Lessor arising independently of this lease or fails to perform any of the terms and provisions hereof or of any other agreement held by Lessor or other insolvency proceeding is instituted by or against Lessee or becomes insolvent or makes an assignment for the benefit of creditors or if any bankruptcy, receivership or other insolvency proceeding is instituted by or against Lessee or if Lessor shall at any time deem the Equipment in danger of misuse, concealment or misappropriation or if Lessor shall deem itself insecure (the occurrence of one or more of the foregoing being a "default" hereunder), then Lessor may, without notice or demand, declare immediately due and payable the unpaid aggregate amount of Total Rent for the entire term hereof (discounted to its then present value using as a rate the then current Federal Reserve Discount Rate for the District of Lessee's residence or principal place of business), plus any additional rent, taxes, late charges, collection charges and all other sums owing to Lessor by Lessee (the sum of all of which is hereinafter called the "Balance") and attorneys' fees (which attorneys' fees are hereby agreed to be not less than 20% of the Balance), whereupon said Balance and attorneys' fees shall immediately be due and payable and Lessee shall immediately deliver possession of Equipment to Lessor and Lessor may, at its option and without notice and without legal process (Lessee hereby waiving, with full knowledge of Lessee's rights and the effect of this waiver, any right to a hearing prior to any repossession of any Collateral by Lessor), to the extent permitted by law: (1) recover the Balance (plus any Terminal Purchase Option Amount which represents Lessor's reversionary interest in the Equipment, if Lessee fails to deliver possession of the Equipment to Lessor), plus attorneys' fees in the amount aforesaid; (2) take possession of the Equipment wherever same may be located (with all additions, accessories, replacements and substitutions), Lessee agreeing to assemble same and deliver same to a place designated by Lessor, whereupon all rights of Lessee in the Equipment shall terminate absolutely (but Lessee shall not be released from its obligations under this agreement until the Balance plus attorneys' fees in the amount aforesaid have been paid in full); Lessee hereby authorizing and empowering Lessor or its designee to enter upon any premises where the Equipment may be found and take possession and carry away same without process of law, and (a) retain Equipment and all prior payments of rent; or (b) sell or lease all prior payments and either (i) sell Equipment at public or private sale with the right in Lessor to purchase any of the Equipment at such sale, which sale shall be made in a commercially reasonable manner in accordance with applicable law if at least 15 days prior notice of any private sale is given, or if at least 10 days prior notice of any public sale is given and advertised in a publication of general circulation in the area of the sale at least twice prior to the sale, applying any net proceeds, as if Lessee fails to deliver possession of the Equipment, any Terminal Purchase Option Amount (which represents Lessor's reversionary interest in the Equipment), to all costs and expenses incurred by Lessor in connection with or incidental to the repossession and sale of the Equipment, including but not limited to transportation, storage, repair, refashioning and advertising costs and attorneys' fees, then to the Balance and then to any other amounts owing by Lessee to Lessor; or (ii) retain the Equipment and sell or lease same with the reasonable value of the Equipment during the remaining term of this lease. Lessee remaining liable for any deficiency; and (3) pursue any remedies permitted by law or equity. It is agreed that any amount to be retained by Lessor and any sums to be paid by Lessee under this paragraph shall not be deemed to be a penalty but are liquidated damages for the breach hereof. The remedies provided for herein are cumulative and may be exercised to the extent permitted by law, successively or concurrently, and the exercise of one shall not bar any other. TO THE MAXIMUM EXTENT PERMITTED BY LAW, LESSOR, LESSEE AND ANY GUARANTOR, EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES (A) ANY AND ALL RIGHT TO TRIAL BY JURY OF ANY AND ALL CLAIMS, DEFENSES, COUNTERCLAIMS, CROSSCLAIMS AND SETOFF OR RECOUPMENT CLAIMS ARISING DIRECTLY OR INDIRECTLY OUT OF, UNDER, IN CONNECTION WITH OR IN ANY WAY RELATED TO THIS LEASE, AND WHETHER BASED IN CONTRACT OR IN TORT OR PURSUANT TO STATUTE, AND (B) ANY AND ALL RIGHT TO CLAIM OR RECOVER ANY PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES.

18. All notices relating hereto shall be in writing and delivered in person to an officer of the party to which such notice is being given or mailed by certified mail to such party at its address specified above or at such other address as may hereafter be specified by like notice by either party to the other. All notices will be deemed effective five days after mailing by certified mail to the address shown herein for any party. If more than one Lessee is named in this lease, the liability of each hereunder shall be joint and several.

19. The Equipment is and shall remain the property of Lessor. Lessee, at its own cost and expense, shall protect and defend the title of Lessor. Lessee shall at all times keep Equipment free and clear from all liens, attachments, levies, encumbrances and charges or other judicial process, shall give Lessor immediate written notice thereof and shall indemnify and save Lessor harmless from any loss or damage caused thereby. Lessee shall have no right, title or interest in or to Equipment, except as expressly stated in this lease, nor shall Lessee have any equity nor be deemed to develop any equity in the Equipment by virtue of this agreement or any payment made by Lessee hereunder. Lessee's interest in the Equipment being that of a lessee only. This Equipment shall remain personal property even though installed in or attached to real property. No invoice issued prior to complete performance of this lease shall operate to pass title to Lessee. All Equipment and any proceeds thereof, accessories, parts and attachments for or which are added to or become attached to Equipment shall immediately become the property of Lessor and shall be deemed incorporated in Equipment as subject to the terms of this lease as if originally leased hereunder. AS PART OF THE CONSIDERATION FOR LESSOR'S ENTERING INTO THIS LEASE, LESSEE, LESSOR AND ANY GUARANTOR HEREBY DESIGNATE AND APPOINT EDWIN M. BAUM, ESQ. AND C-A CREDIT CORP., BOTH OF NEW YORK, NY, OR EITHER OF THEM, AS THEIR TRUE AND LAWFUL ATTORNEY-IN-FACT AND AGENT FOR THEM AND IN THEIR NAME, PLACE AND STEAD TO ACCEPT SERVICE OF ANY PROCESS WITHIN THE STATE OF NEW YORK, THE PARTY CAUSING SUCH PROCESS TO BE SERVED AGREEING TO NOTIFY THE OTHER PARTY(IES) AT THEIR ADDRESS SHOWN OR THEIR LAST KNOWN ADDRESS, BY CERTIFIED MAIL, WITHIN THREE DAYS OF SUCH SERVICE HAVING BEEN EFFECTED. LESSEE, LESSOR AND ANY GUARANTOR HEREOF AGREE TO THE EXCLUSIVE VENUE AND JURISDICTION OF ANY COURT IN THE STATE AND COUNTY OF NEW YORK FOR ALL ACTIONS, PROCEEDINGS, CLAIMS, COUNTERCLAIMS OR CROSSCLAIMS ARISING DIRECTLY OR INDIRECTLY OUT OF, UNDER, IN CONNECTION WITH, OR IN ANY WAY RELATED TO THIS LEASE, WHETHER BASED IN CONTRACT OR IN TORT OR AT LAW OR IN EQUITY, OR PURSUANT TO STATUTE WITH THE EXCEPTED EXCEPTIONS THAT AN ACTION TO OBTAIN POSSESSION OF ALL OR PART OF THE COLLATERAL OR ANY OTHER ASSETS OF THE LESSEE OR THE GUARANTOR HOWEVER DENOMINATED, AND EQUITABLE PROCEEDINGS TO ENFORCE THE TERMS OF THIS LEASE, MAY, AT THE SOLE DISCRETION OF THE LESSOR, BE BROUGHT IN A STATE OR FEDERAL COURT HAVING JURISDICTION OVER THE COLLATERAL, OR SUCH OTHER ASSETS AND/OR THE LESSEE, AS THE CASE MAY BE, AND THAT JUDGMENTS MAY BE CONFESSED, ENTERED, OR FORCED IN ANY JURISDICTION WHERE THE LESSEE OR ANY GUARANTOR, OR THE COLLATERAL AND/OR ANY OTHER ASSETS OF THE LESSEE OR GUARANTOR MAY BE LOCATED. LESSEE, LESSOR AND ANY GUARANTOR HEREOF EACH WAIVE ANY RIGHT THEY OR ANY OF THEM MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT IN ACCORDANCE HEREWITH.

20. LESSEE AND ANY GUARANTOR HEREOF EACH DOES HEREBY WAIVE, FOREGO AND AGREE NOT TO ASSERT ANY AND ALL RIGHTS, CLAIMS AND DEFENSES, IF ANY, UNDER THE FEDERAL EQUAL CREDIT OPPORTUNITY ACT AND/OR THE FEDERAL FAIR CREDIT REPORTING ACT AND/OR UNDER ANY COMPARABLE STATE LAWS THAT MAY INURE TO THE BENEFIT OF LESSEE AND/OR GUARANTOR IN CONNECTION WITH THIS LEASE. LESSEE AND ANY GUARANTOR HEREOF EACH DOES HEREBY RATIFY AND APPROVE THE OBTAINING BY LESSOR (OR ANY ASSIGNEE OF LESSOR) OF ANY CREDIT REPORT RELATING TO LESSEE AND GUARANTOR AND HEREBY AGREE THAT LESSOR (OR ANY ASSIGNEE OF LESSOR) MAY HEREAFTER OBTAIN SUCH CREDIT REPORTS AS LESSOR (AND/OR ANY ASSIGNEE OF LESSOR) IN ITS SOLE DISCRETION MAY DETERMINE.

21. Intending that each and every provision of this lease be fully effective according to its terms, the parties agree that the validity, enforceability and effectiveness of each provision hereof and the obligations and remedies of the Lessee, Lessor and any Guarantor in any way related to or arising under this lease shall be governed by and construed in accordance with the laws of the State of New York (excluding its choice of law rules). If any one or more provisions hereof are in conflict with any applicable law or law, and that not void or unenforceable, then each such provision shall be deemed null and void, but only to the extent of such conflict and without invalidating or affecting the remaining provisions hereof.

22. This instrument constitutes the entire agreement between Lessor and Lessee. No agent or employee of the supplier is authorized to bind Lessor to this lease, to waive here any term or condition printed herein or add any provision hereto. Except as provided in section 3 hereof, a provision may be added hereto or a provision hereof may be altered or varied only by a writing signed by an authorized officer of Lessor. Waiver by Lessor of any provisions hereof in one or more instances shall not constitute a ver as to any other instance.

23. This instrument constitutes the entire agreement between Lessor and Lessee. No agent or employee of the supplier is authorized to bind Lessor to this lease, to waive here any term or condition printed herein or add any provision hereto. Except as provided in section 3 hereof, a provision may be added hereto or a provision hereof may be altered or varied only by a writing signed by an authorized officer of Lessor. Waiver by Lessor of any provisions hereof in one or more instances shall not constitute a ver as to any other instance.

24. This instrument constitutes the entire agreement between Lessor and Lessee. No agent or employee of the supplier is authorized to bind Lessor to this lease, to waive here any term or condition printed herein or add any provision hereto. Except as provided in section 3 hereof, a provision may be added hereto or a provision hereof may be altered or varied only by a writing signed by an authorized officer of Lessor. Waiver by Lessor of any provisions hereof in one or more instances shall not constitute a ver as to any other instance.

25. This instrument constitutes the entire agreement between Lessor and Lessee. No agent or employee of the supplier is authorized to bind Lessor to this lease, to waive here any term or condition printed herein or add any provision hereto. Except as provided in section 3 hereof, a provision may be added hereto or a provision hereof may be altered or varied only by a writing signed by an authorized officer of Lessor. Waiver by Lessor of any provisions hereof in one or more instances shall not constitute a ver as to any other instance.

This Financing Statement is presented to a filing officer for filing pursuant to the Uniform Commercial Code:

1. Debtor (Last Name First if an Individual) Management By Innovation, Inc.		1a. Date of Birth or FEI#	
1b. Mailing Address 1415 South S.R. 15A		1c. City, State DeLand, FL	
		1d. Zip Code 32726	
2. Additional Debtor or Trade Name (Last Name First if an Individual)		2a. Date of Birth or FEI#	
2b. Mailing Address		2c. City, State	
		2d. Zip Code	
3. Secured Party (Last Name First if an Individual) ORIX Credit Alliance, Inc.			
3a. Mailing Address 125 TownPark Drive, Suite 100		3b. City, State Kennesaw, GA	
		3c. Zip Code 30144	
4. Assignee of Secured Party (Last Name First if an Individual)			
4a. Mailing Address		4b. City, State	
		4c. Zip Code	

5. This Financing Statement covers the following types or items or property [include description of real property on which located and owner of record when required. If more space is required, attach additional sheet(s)].

THE PROPERTY AND/OR THE EQUIPMENT AND ALL OTHER TYPES OF COLLATERAL AS DESCRIBED IN THE ATTACHED ENTIRE AGREEMENT AND IN ANY SCHEDULE ATTACHED THERETO. THE ATTACHED SECURITY AGREEMENT AND ANY SCHEDULE ATTACHED THERETO ARE BEING SUBMITTED FOR FILING AS A FINANCING STATEMENT.

1-011W-C-09-12654 SOS FL

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-06/28/99--01024--010  
\*\*\*\*\*34.00

6. Check only if Applicable:  Products of collateral are also covered.  Proceeds of collateral are also covered.  Debtor is transmitting utility.

7. Check appropriate box:  All documentary stamp taxes due and payable or to become due and payable pursuant to s. 201.22 F.S., have been paid.  Florida Documentary Stamp Tax is not required.

8. In accordance with s. 679.402(2), F.S., this statement is filed without the Debtor's signature to perfect a security interest in collateral:

already subject to a security interest in another jurisdiction when it was brought into this state or debtor's location changed to this state.

which is proceeds of the original collateral described above in which a security interest was perfected.

as to which the filing has lapsed. Date filed \_\_\_\_\_ and previous UCC-1 file number \_\_\_\_\_

acquired after a change of name, identity, or corporate structure of the debtor.

9. Number of additional sheets presented: \_\_\_\_\_

This Space for Use of Filing Officer

FILED  
JUN 28, 1999 08:00 AM  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA  
990000145268 GB

10. Signature(s) of Debtor(s)  
SEE ATTACHED FOR SIGNATURE  
Management By Innovation, Inc.

11. Signature(s) of Secured Party, or If Assigned, by Assignee(s)  
*James Blinger*  
ORIX Credit Alliance, Inc.

12. Return Copy to:

Name  ORIX Credit Alliance, Inc.  
Address  125 TownPark Drive  
Address  Suite 100  
City, State, Zip  Kennesaw, GA 30144

