

**Fill in this information to identify the case:**

Debtor ProSomnus Sleep Technologies, Inc.

United States Bankruptcy Court for the: \_\_\_\_\_ District of Delaware  
(State)

Case number 24-10974

**Official Form 410  
Proof of Claim**

**04/22**

**Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.**

**Filers must leave out or redact** information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

**Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.**

**Part 1: Identify the Claim**

1. **Who is the current creditor?** Wells Fargo Equipment Finance, Inc.  
Name of the current creditor (the person or entity to be paid for this claim)  
Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. <b>Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>	<b>Where should payments to the creditor be sent? (if different)</b>
	Wells Fargo Equipment Finance, Inc. 800 Walnut St. MAC F0005-055, Attn: Nicholas Root Des Moines, IA 50309	Wells Fargo Equipment Finance, Inc. PO Box 858178 Minneapolis, MN 55485
	Contact phone <u>877-657-8457</u>	Contact phone _____
	Contact email <u>See summary page</u>	Contact email _____
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: 5000 \_\_\_\_\_

7. How much is the claim? \$ 121014.14. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.  
Money Loaned

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: Milling Machines  
**Basis for perfection:** UCC-1  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ 29250.00  
**Amount of the claim that is secured:** \$ 29250.00  
**Amount of the claim that is unsecured:** \$ 91764.14 (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ 2005.90  
**Annual Interest Rate** (when case was filed) 0.00 %  
 Fixed  
 Variable

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Up to \$3,350\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

Wages, salaries, or commissions (up to \$15,150\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.

Amount entitled to priority

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 05/28/2024  
MM / DD / YYYY

/s/Nicholas Root  
Signature

Print the name of the person who is completing and signing this claim:

Name Nicholas Root  
First name Middle name Last name

Title Loan Workout Specialist

Company Wells Fargo Equipment Finance, Inc.  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



# KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (888) 647-1744 | International (310) 751-2628

<b>Debtor:</b> 24-10974 - ProSomnus Sleep Technologies, Inc.		
<b>District:</b> District of Delaware		
<b>Creditor:</b> Wells Fargo Equipment Finance, Inc.  800 Walnut St. MAC F0005-055 Attn: Nicholas Root Des Moines, IA, 50309  <b>Phone:</b> 877-657-8457 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> bankruptcynoticesDFVendor@wellsfargo.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Creditor	
<b>Disbursement/Notice Parties:</b> Wells Fargo Equipment Finance, Inc.  PO Box 858178  Minneapolis, MN, 55485  <b>Phone:</b>  <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b>  <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> Money Loaned	<b>Last 4 Digits:</b> Yes - 5000	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> 121014.14	<b>Includes Interest or Charges:</b> Yes	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> Yes: 29250.00  <b>Based on Lease:</b> No  <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> Other Describe: Milling Machines  <b>Value of Property:</b> 29250.00  <b>Annual Interest Rate:</b> 0.00%, Fixed  <b>Arrearage Amount:</b> 2005.90  <b>Basis for Perfection:</b> UCC-1  <b>Amount Unsecured:</b> 91764.14	

**Submitted By:**

Nicholas Root on 28-May-2024 8:15:38 a.m. Eastern Time

**Title:**

Loan Workout Specialist

**Company:**

Wells Fargo Equipment Finance, Inc.

**Fill in this information to identify the case:**

Debtor 1 \_\_\_\_\_  
Debtor 2 \_\_\_\_\_  
(Spouse, if filing)  
United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
Case number \_\_\_\_\_

# Official Form 410 Proof of Claim

04/22

**Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.**

**Filers must leave out or redact** information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

**Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.**

## Part 1: Identify the Claim

**1. Who is the current creditor?**

\_\_\_\_\_  
Name of the current creditor (the person or entity to be paid for this claim)  
Other names the creditor used with the debtor \_\_\_\_\_

**2. Has this claim been acquired from someone else?**

No  
 Yes. From whom? \_\_\_\_\_

**3. Where should notices and payments to the creditor be sent?**

**Where should notices to the creditor be sent?**

**Where should payments to the creditor be sent? (if different)**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

\_\_\_\_\_  
City State ZIP Code

\_\_\_\_\_  
Contact phone

\_\_\_\_\_  
Contact phone

\_\_\_\_\_  
Contact email bankruptcynoticesDFVendor@wellsfargo.com

\_\_\_\_\_  
Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
-----

**4. Does this claim amend one already filed?**

No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_

Filed on \_\_\_\_\_  
MM / DD / YYYY

**5. Do you know if anyone else has filed a proof of claim for this claim?**

No  
 Yes. Who made the earlier filing? \_\_\_\_\_

**Part 2:** Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_ \_

7. **How much is the claim?** \$\_\_\_\_\_. **Does this amount include interest or other charges?**  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?** Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.

\_\_\_\_\_

9. **Is all or part of the claim secured?**  No  
 Yes. The claim is secured by a lien on property.

**Nature of property:**

Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

Motor vehicle

Other. Describe: \_\_\_\_\_

**Basis for perfection:** \_\_\_\_\_

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

**Value of property:** \$ \_\_\_\_\_

**Amount of the claim that is secured:** \$ \_\_\_\_\_

**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amounts should match the amount in line 7.)

**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_

**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %

Fixed  
 Variable

10. **Is this claim based on a lease?**  No  
 Yes. **Amount necessary to cure any default as of the date of the petition.** \$ \_\_\_\_\_

11. **Is this claim subject to a right of setoff?**  No  
 Yes. Identify the property: \_\_\_\_\_

**12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

No

Yes. Check one:

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Up to \$3,350\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

Wages, salaries, or commissions (up to \$15,150\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

Other. Specify subsection of 11 U.S.C. § 507(a)(    ) that applies.

**Amount entitled to priority**

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

**Part 3: Sign Below**

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**

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Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date \_\_\_\_\_  
MM / DD / YYYY

/s/ Nicholas Root  
Signature

**Print the name of the person who is completing and signing this claim:**

Name \_\_\_\_\_  
First name Middle name Last name

Title \_\_\_\_\_

Company \_\_\_\_\_  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_  
Number Street

City State ZIP Code

Contact phone \_\_\_\_\_ Email bankruptcynticesDFVendor@wellsfargo.com



**BALANCE DUE SUMMARY--BANKRUPTCY**

*This is a contingent claim arising from an equipment lease except for those amounts designated as "Pre-Petition Amounts Due" below. In the event this lease is rejected all amounts asserted hereunder become a non-contingent liability of the debtor. The claim reflected herein is consistent with Claimant's position that the contracts underlying the claim are true leases. In the event the contracts are recharacterized, Claimant reserves the right to amend this proof of claim to, among other things, assert secured claims against the estate for the value of the equipment that remains in the Debtor's possession or control. A portion of this claim may include post-petition property taxes.*

Account Name: Prosomnus Sleep Technologies, Inc.  
 Account Schedule: ██████████ 5-000  
 By: Kelly Aasmundstad  
 Case: ██████████  
 Petition Date: 5/7/2024  
 Prepared Date: 5/19/2024  
 Payable: 2 (1 = Advance; 2 = Arrears)  
 Payment Frequency: M  
 Term (Months): 59  
 Planned End Date: 7/24/2026  
 Sales Tax Rate: 0.000%

**A. OPEN/ACCRUED ITEMS:**

	Monthly Unit Cost		No. Months	Aggregate	Due Date
1) Regular Payment:	\$ -	X		\$ -	
	\$ -	X		\$ -	
Prorated Payment:	\$ 4,629.00	X	1	\$ 2,005.90	5/24/2024
2) Sales/Use Tax:	\$ -	X		\$ -	
	\$ -	X		\$ -	
Tax on Prorated Payment:	\$ -	X		\$ -	
3) Late Charges:	\$ -	X		\$ -	
4) Collection Fee:	\$ -	X		\$ -	
5) Late Charge on Prop Tax:	\$ -	X		\$ -	
6) Property Tax Admin Fee:	\$ -	X		\$ -	
	<b>PRE-PETITION RENTS &amp; CHARGES</b>			<b>\$ 2,005.90</b>	

**B. PROPERTY TAX CHARGES:**

	Aggregate	Due Date
1) Billed Property Tax:	\$ -	
2) Sales/Use Tax on Prop Tax:	\$ -	
3) Estimated Property Tax:	\$ -	
4) Sales/Use Tax on Est Ptax:	\$ -	
<b>TOTAL PROPERTY TAX CHARGES:</b>	<b>\$ -</b>	
<b>TOTAL PRE-PETITION AMOUNTS DUE:</b>	<b>\$ 2,005.90</b>	

**C. REMAINING AMOUNTS DUE:**

# Remaining Rents Owing through Lease term:			
	\$ 4,629.00	X	26
	\$ -	X	
1. Balance of Prorated Payment:	\$ 2,623.10		
2. Rental Steam of Future Rents Present Valued @ 3%:	\$ 116,385.14		
3. Equipment Fair Market Value or Purchase Option:	\$ -		
4. Sales Tax on Remaining Amounts Due:	\$ -		
<b>TOTAL REMAINING AMOUNTS DUE:</b>	<b>\$ 119,008.24</b>		

**D. EQUIPMENT SALE:**

1. Equipment Sale Proceeds:	\$ -
2. Repossession Expenses:	\$ -
<b>NET EQUIPMENT SALES PROCEEDS:</b>	<b>\$ -</b>
<b>TOTAL CLAIM:</b>	<b>\$ 121,014.14</b>

(This total does not include applicable legal fees)

# Equipment Lease Agreement of Sale

Wells Fargo Equipment Finance, Inc. | 600 South 4th Street | MAC N9300-100 | Minneapolis, MN 55415

Equipment Lease Number [REDACTED] 5-000 dated as of July 28, 2021

Name and Address of Lessee:  
**PROSOMNUS SLEEP TECHNOLOGIES, INC.**  
5860 W. Las Positas Blvd., Suite 205  
Pleasanton, CA 94588

**Notice: Lessor reserves the right to withdraw the terms of this Supplement and issue a modified Supplement without notice to Lessee if Lessor is not in receipt of a fully executed original or facsimile of this document within five (5) business days of the date of this Supplement. However, in that event, no such modifications will be binding on Lessee unless and until Lessee executes the modified document containing all such modifications.**

**Equipment Description: Six (6) New VHF S5 Milling Machines**  
s/n S5ID129035028, S5ID129035128, S5ID129035228, S5ID129035328, S5ID129035428, S5ID129035528 **Including all attachments and accessories**

After Lessee signs this Lease, Lessee authorizes Lessor to insert any missing information or change any inaccurate information (such as the model year of the Equipment or its serial number or VIN) into this Equipment Description.

**Equipment Location: 5860 W. Las Positas Blvd., Suite 20, Pleasanton, CA 94588**

### SUMMARY OF PAYMENT TERMS

Initial Term (Months): <b>59</b>	Total Cost: <b>\$233,780.15</b>
Payment Frequency: Monthly	Total Basic Rent: <b>\$273,111.00</b>
Basic Rental Payment: <b>\$4,629.00</b> plus applicable sales and use tax	Purchase Agreement: <b>\$1.00</b>
Number of Installments: <b>59</b>	Cutoff Date: <b>October 13, 2021</b>
Payments in Arrears, See Additional Provisions.	Security Deposit: <b>N/A</b>

### Additional Provisions:

**Notwithstanding anything in this Lease to the contrary, Lessee shall pay installments in arrears beginning one month from the Rent Commencement Date. The Basic Rental Payment, Total Basic Rent, and Interim Rent Daily Rate may be determined prior to final disbursement of the Total Cost.**

### Lease Provisions

**1. LEASE.** Lessee hereby agrees to lease from Lessor, the personal property described on the first page of this Lease on the terms and conditions set forth herein (such property together with all replacements, substitutions, parts, improvements, repairs, and accessories and all additions incorporated therein or affixed thereto being referred to herein as the "Equipment"). Lessee's execution of this Lease shall obligate Lessee to lease the Equipment from Lessor. This Lease shall not be binding on Lessor unless and until executed by Lessor. Anything to the contrary notwithstanding, Lessor shall have no obligation to accept, execute or enter into this Lease or to acquire or lease to Lessee the Equipment. Lessee grants Lessor a security interest in the Equipment to secure its obligations under this Lease and all other indebtedness (except QFC Obligations) at any time owing by Lessee to Lessor. "QFC Obligations" means obligations arising under a securities contract, commodities contract, forward contract, repurchase agreement, swap agreement, or any similar agreement (as defined for purposes of Treasury Part 148 under 12 U.S.C. 5390(c)(8)(H) or FDIC Part 371 under 12 U.S.C. 1821(e)(8)(D)) that the FDIC determines by regulation, resolution, or order to be a qualified financial contract.

### THIS AGREEMENT INCLUDES THE TERMS ON THE NUMBER OF PAGES IDENTIFIED BELOW

Lessor: Wells Fargo Equipment Finance, Inc.  
By: Gruke, Theresa 9/3/2021  
By: DBEE61515E554F5...  
Authorized Signor  
Title

Lessee: **PROSOMNUS SLEEP TECHNOLOGIES, INC.**  
Mindy Hungerman  
By: Mindy Hungerman CFO  
Print Name and Title

8/24/2021

Rent Commencement Date

**2. EQUIPMENT ACCEPTANCE; TERM; RENT.** The "Acceptance Date" for the Equipment shall be the date Lessee accepts the Equipment under a separately signed Delivery and Acceptance Certificate. Lessee represents and warrants that as of such date, the Equipment has been delivered to Lessee, Lessee has unconditionally accepted the Equipment and Lessee agrees that the Equipment is subject to this Lease. Lessee agrees that if all of the items of Equipment have not been delivered and accepted hereunder before the Cutoff Date as set forth above, Lessor shall have no obligation to lease the Equipment to Lessee. The term of this Lease shall begin on the Rent Commencement Date and shall continue for the Initial Term as set forth above unless earlier terminated by Lessor as provided herein. The Rent Commencement Date is the Acceptance Date.

Lessee shall pay as basic rent for the Initial Term of this Lease the amount shown above as Total Basic Rent (subject to adjustment as set forth below). The Total Basic Rent shall be payable in installments each in the amount of the Basic Rental Payment set forth above (subject to adjustment as set forth below) plus any applicable sales and use tax thereon beginning on the Rent Commencement Date and continuing on the same day of each subsequent month during the Initial Term. If the actual cost of the Equipment is more or less than the Total Cost as shown above, the amount of each installment of rent will be adjusted up or down to provide the same yield to Lessor as would have been obtained if the actual cost had been the same as the Total Cost. The Basic Rental Payment amount and the Total Basic Rent set forth above were calculated based on Lessor's cost of funds within two business days of the date of this Lease set forth above. Notwithstanding anything in this Lease to the contrary, unless the Acceptance Date has already occurred and is set forth above as referenced in clause (b) of the first paragraph of this Section, if Lessor has not received a Delivery and Acceptance Certificate signed by Lessee within fifteen (15) business days of the date of this Lease and Lessor's cost of funds has increased subsequent to the date of this Lease, the Basic Rental Payment amount and the Total Basic Rent will be increased to provide the same yield to Lessor as would have been obtained if Lessor's cost of funds had not increased. The Basic Rental Payment amount and the Total Basic Rent shall be calculated by Lessor taking into account its cost of funds two business days prior to the date that this Lease is funded. Lessee agrees that the funding date shall not occur until Lessor has received all documentation and information required by Lessor, which may include, without limitation, evidence of insurance, invoices, landlord waivers and evidence of no adverse liens or security interests on the Equipment. In such event Lessee and Lessor shall sign an amendment to this Lease reflecting the change in Total Basic Rent and Basic Rental Payment.

If any payment due hereunder is not received by Lessor within ten (10) days of its due date, Lessee agrees to pay a late fee to Lessor equal to the lesser of (i) 5% of the past due amount or (ii) the highest amount allowed by applicable law. Payments thereafter received shall be applied first to delinquent installments and then to current installments.

**3. SECURITY DEPOSIT.** Upon execution of this Lease, Lessee shall pay to Lessor the Security Deposit, if any, set forth above. Lessor may apply any security deposit toward any obligation of Lessee, and shall return any unapplied balance to Lessee without interest upon full satisfaction of Lessee's obligations.

**4. NO WARRANTIES.** Lessee agrees that it has selected each item of Equipment based upon its own judgment and disclaims any reliance upon any statements or representations made by Lessor. LESSEE ACKNOWLEDGES THAT: LESSOR IS NOT THE MANUFACTURER OF THE EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN; THE EQUIPMENT IS OF A SIZE, DESIGN, CAPACITY, DESCRIPTION AND MANUFACTURE SELECTED BY LESSEE; LESSEE IS SATISFIED THAT THE EQUIPMENT IS SUITABLE AND FIT FOR ITS PURPOSES; AND LESSOR HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY WITH RESPECT TO THE EQUIPMENT, EXPRESS OR IMPLIED AND LESSOR SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, OR AS TO THE QUALITY, CONDITION OR CAPACITY OF THE EQUIPMENT OR THE MATERIALS IN THE EQUIPMENT OR WORKMANSHIP OF THE EQUIPMENT, LESSOR'S TITLE TO THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER. LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY LOSS, DAMAGE, OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY ANY EQUIPMENT OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OR OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY AN INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED. LESSOR SHALL NOT BE LIABLE FOR DAMAGES OF ANY KIND INCLUDING ANY LIABILITY FOR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR THE INABILITY TO USE THE EQUIPMENT. No defect or unfitness of the Equipment, and no failure on the part of the manufacturer or the shipper of the Equipment to deliver the Equipment or any part thereof to Lessee shall relieve Lessee of the obligation to pay rent or any other obligation hereunder. Lessor shall have no obligation in respect of the Equipment and shall have no obligation to install, erect, test, adjust or service the Equipment. Lessee shall only look to persons other than Lessor such as the manufacturer, vendor or carrier thereof should any item of Equipment for any reason and in any way be defective. To the extent permitted by the manufacturer and/or vendor and provided Lessee is not in default under the Lease, Lessor shall make available to Lessee all manufacturer and/or vendor warranties with respect to the Equipment.

**5. TAXES.** Lessee shall promptly pay when due and indemnify and hold Lessor harmless (on an after-tax basis) from, all sales, use, property, excise and other taxes and all license and registration fees now or hereafter imposed by any governmental body or agency upon the Equipment or its use, purchase, ownership, delivery, leasing, possession, storage, operation, maintenance, repair, return or other disposition of the Equipment, or for titling or registering the Equipment, or upon the income or other proceeds received with respect to the Equipment or Lease or the rentals hereunder; provided, however, that Lessee shall not be required to pay taxes on or measured by the net income of Lessor. Upon request by Lessor, Lessee shall prepare and file all tax returns relating to taxes for which Lessee is responsible hereunder which Lessee is permitted to file under the laws of the applicable taxing jurisdiction. Upon the expiration or earlier termination of the Lease, Lessee shall pay to Lessor any such taxes accrued or assessed but not yet due and payable.

**6. INDEMNITY.** Lessee hereby agrees to indemnify and hold Lessor harmless (on an after-tax basis) from and against any and all claims, losses, liabilities (including negligence, tort and strict liability), damages, judgments, obligations, actions, suits and all legal proceedings, and any and all costs and expenses in connection therewith (including attorneys' fees) arising out of or in any manner connected with, or resulting directly or indirectly from, the Equipment, including, without limitation, the manufacture, purchase, lease, financing, selection, ownership, delivery, rejection, non-delivery, transportation, possession, use, storage, operation, condition, maintenance, repair, return or other disposition of the Equipment or with this Lease, including without limitation, claims for injury to or death of persons and for damage to property, whether arising under the doctrine of strict liability, by operation of law or otherwise, and to give Lessor prompt notice of any such claim or liability.

**7. ASSIGNMENT; STATUS OF LESSEE.** Lessor may sell or assign any or all of its interest in this Lease or sell or grant a security interest in all or any part of the Equipment without notice to or the consent of Lessee. Lessee agrees not to assert against any assignee of Lessor any setoff, recoupment, claim counterclaim or defense Lessee may have against Lessor or any person other than such

assignee. LESSEE SHALL NOT (a) ASSIGN OR IN ANY WAY TRANSFER OR DISPOSE OF ALL OR ANY PART OF ITS RIGHTS OR OBLIGATIONS UNDER THIS LEASE, (b) ENTER INTO ANY SUBLEASE OF ALL OR ANY PART OF THE EQUIPMENT, (c) sell, transfer or assign any material portion of its assets, (d) allow a controlling interest in Lessee to be sold, transferred or assigned to any person(s) or entity(ies) other than those who hold a controlling interest as of the date hereof whether by merger, sale or otherwise, (e) allow a Blocked Person to have an ownership interest in or control of Lessee, (f) enter into any merger or reorganization in which Lessee is not the surviving entity, or (g) unless Lessee shall have given Lessor no less than thirty (30) days' prior written notice change (i) its name or business address from that set forth above, and, if an individual, its state of residence, (ii) the state under whose laws it is organized as of the date hereof, or (iii) the type of organization under which it exists as of the date hereof. "Blocked Person" means any person or entity that is now or at any time (A) on a list of Specially Designated Nationals issued by the Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury or any sectoral sanctions identification list, or (B) whose property or interests in property are blocked by OFAC or who is subject to sanctions imposed by law, including any executive order of any branch or department of the United States government or (C) otherwise designated by the United States or any regulator having jurisdiction or regulatory oversight over Lessor, to be a person to whom Lessor is not permitted to extend credit or with regard to whom a lessee relationship may result in penalties against Lessor or limitations on a lessor's ability to enforce a transaction.

**8. OWNERSHIP; LOCATION; USE AND MAINTENANCE.** Lessee agrees that the Equipment is and shall remain personal property and shall not permit it to become attached to real property. Lessee shall not permit, suffer or allow any liens, charges or encumbrances to be placed on or levied against the Equipment and shall at all times keep the Equipment free and clear of all such liens, charges and encumbrances. Lessee shall not without prior written notice to Lessor, remove or allow any of the Equipment to be removed from the Equipment Location specified above. Lessee will use the Equipment with due care and only for the purpose for which it is intended. Lessee will maintain the Equipment in good repair, condition and working order and will furnish all parts and services required therefor, all at its expense, ordinary wear and tear excepted. Lessee shall, at its expense, make all modifications and improvements to the Equipment required by law, and shall not make other modifications or improvements to the Equipment without the prior written consent of Lessor. All parts, modifications and improvements to the Equipment shall, when installed or made, immediately become the property of Lessor and part of the Equipment for all purposes. Lessee shall, at any and all times during business hours, grant Lessor free access to enter upon the premises wherein the Equipment shall be located or used and permit Lessor to inspect the Equipment and all applicable maintenance records. The Equipment shall not be used outside of the United States without Lessor's prior written consent.

**9. LOSS OR DAMAGE.** No loss or damage to the Equipment or any part thereof shall affect any obligation of Lessee under this Lease which shall continue in full force and effect. Lessee shall advise Lessor in writing within five (5) days of any item of Equipment becoming lost, stolen or damaged and of the circumstances and extent of such damage. In the event any item of Equipment shall become lost, stolen, destroyed, damaged beyond repair or rendered permanently unfit for use for any reason, or in the event of condemnation or seizure of any item of Equipment, Lessee shall promptly, within ten (10) days after demand by Lessor, pay Lessor an amount equal to Lessor's Loss as defined in paragraph 14 with respect to such item at the time of payment based on the proportion that the original cost of such item bears to the Total Cost of all items of Equipment. Upon payment of such amount to Lessor, such item shall become the property of Lessee, Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest therein, the rent with respect to such item shall terminate, and the Basic Rental Payments on the remaining items shall be reduced accordingly. Lessee shall pay any sales and use taxes due on such transfer. Any insurance or condemnation proceeds received shall be credited to Lessee's obligation under this paragraph and Lessee shall be entitled to any surplus. Whenever the Equipment is damaged and such damage can be repaired, Lessee shall, at its expense, promptly effect such repairs as Lessor shall deem necessary for compliance with paragraph 8 above. Proceeds of insurance shall be paid to Lessor with respect to such repairable damage to the Equipment and shall, at the election of Lessor, be applied either to the repair of the Equipment by payment by Lessor directly to the party completing the repairs, or to the reimbursement of Lessee for the cost of such repairs; provided, however, that Lessor shall have no obligation to make such payment or any part thereof until receipt of such evidence as Lessor shall deem satisfactory that such repairs have been completed and further provided that Lessor may apply such proceeds to the payment of any rent or other sum due or to become due hereunder if at the time such proceeds are received by Lessor there shall have occurred any Event of Default or any event which with lapse of time or notice, or both, would become an Event of Default.

**10. INSURANCE.** Lessee shall obtain and maintain on or with respect to the Equipment at its own expense (a) liability insurance (including bodily injury and property damage) with a minimum \$1 million combined single limit per occurrence and (b) all-risk physical damage insurance insuring against loss or damage to the Equipment in an amount not less than the full replacement value of the Equipment. Lessee shall furnish Lessor with a certificate of insurance evidencing the issuance of a policy or policies to Lessee in at least the minimum amounts required herein naming Lessor as an additional insured thereunder for the liability coverage and as (i) loss payee for the property damage coverage if the aggregate original cost of the Equipment leased hereunder is \$1 million or less, or (ii) lender loss payee for the property damage coverage if the aggregate original cost of the Equipment leased hereunder exceeds \$1 million. Each such policy shall be in such form and with such insurers as may be satisfactory to Lessor, and shall contain a clause specifying that no action or misrepresentation by Lessee shall invalidate such policy and a clause requiring the insurer to give to Lessor at least thirty (30) days' prior written notice of (i) the cancellation or non-renewal of such policy or (ii) any amendment to the terms of such policy if such amendment would cause the policy no longer to conform to the policy requirements stated in this paragraph; and ten (10) days prior notice of cancellation for non-payment of premium. Lessee shall deliver to Lessor, annually and upon renewal or replacement of any insurance required herein, evidence satisfactory to Lessor of the required insurance coverage. Lessee hereby assigns to Lessor the proceeds of all such insurance and directs any insurer to make payments directly to Lessor. Lessor shall be under no duty to ascertain the existence of or to examine any such policy or to advise Lessee in the event any such policy shall not comply with the requirements hereof.

**11. PURCHASE.** Upon expiration of this Lease, Lessee shall pay (a) the amount of all rent and other amounts owed by Lessee hereunder but unpaid as of such date and, (b) the dollar amount specified in the "Purchase Agreement" box on the first page of this Lease, plus applicable sales tax. Upon receipt of such amounts, the Equipment shall be deemed transferred to Lessee at its then location. Lessor hereby warrants that at the time of transfer the Equipment will be free of all security interests and other liens created by Lessor or in favor of persons claiming through Lessor. LESSOR MAKES NO OTHER WARRANTY WITH RESPECT TO THE EQUIPMENT, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE AND ANY LIABILITY FOR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR THE INABILITY TO USE THE EQUIPMENT. Lessor makes no representation with respect to the income tax consequences of the transaction evidenced by this Lease. Lessor will treat the lease as a sale regardless of how the Lease is treated by Lessee.

**12. ADDITIONAL ACTION.** Lessee will promptly execute and deliver to Lessor such further documents, take such further action and provide such information as Lessor may request in order to carry out more effectively the intent and purpose of this Lease, and/or comply with laws or regulations applicable to Lessor, Lessee, and/or the transaction evidenced by this Lease, including information identifying the owners of Lessee and its affiliates and their respective ownership interests. Lessor and any assignee of Lessor is authorized to file one or more Uniform Commercial Code financing statements without the signature of Lessee. Lessee hereby grants to Lessor a power of attorney in Lessee's name, to apply for a certificate of title for any item of Equipment that is required to be titled under the laws of any jurisdiction where the Equipment is or may be used and/or to transfer title thereto upon the exercise by Lessor of its remedies upon an Event of Default by Lessee under this Lease. Lessee will pay (or reimburse Lessor for) the reasonable costs and expenses related to (a) filing any financing, continuation or termination statements, (b) any title and lien searches with respect to this Lease and the Equipment, (c) any documentary stamp taxes relating to the Lease, and (d) procuring certified charter documents and good standing certificates of Lessee and any guarantor of Lessee's obligations hereunder. Lessee will do whatever may be necessary to have a statement of the interest of Lessor and any assignee of Lessor in the Equipment noted on any certificate of title relating to the Equipment and will deliver said certificate to Lessor. If Lessee fails to perform or comply with any of its agreements, Lessor may perform or comply with such agreements in its own name or in Lessee's name as attorney-in-fact and the amount of any payments and expenses of Lessor incurred in connection with such performance or compliance, together with interest thereon at the rate provided below, shall be deemed rent payable by Lessee upon demand.

**13. DEFAULT.** Each of the following events shall constitute an "Event of Default" hereunder: (a) Lessee shall fail to pay within ten (10) days of when due any installment of interim rent, basic rent or any other amount due hereunder; (b) any certificate, statement, representation, warranty or financial or credit information heretofore or hereafter made or furnished by or on behalf of Lessee or any guarantor of any of Lessee's obligations hereunder (a "Guarantor") proves to have been false or misleading in any material respect or omitted any material fact, contingent or unliquidated liability or claim against Lessee or any such Guarantor; (c) Lessee shall fail to observe or perform any other agreement to be observed or performed by Lessee hereunder and the continuance thereof for ten (10) days following the earlier of (i) written notice thereof by Lessor to Lessee or (ii) Lessee's first knowledge thereof; (d) Lessee or any Guarantor or any partner of Lessee if Lessee is a partnership shall cease doing business as a going concern, make an assignment for the benefit of creditors, become insolvent, or engage in any dissolution or liquidation proceedings; (e) Lessee or any Guarantor or any partner of Lessee if Lessee is a partnership shall voluntarily file, or have filed against it involuntarily, a petition for liquidation, reorganization, adjustment of debt, or similar relief under the federal Bankruptcy Code or any other present or future federal or state bankruptcy or insolvency law, or a trustee, receiver, or liquidator shall be appointed of it or of all or a substantial part of its assets; (f) any individual Lessee, Guarantor, or partner of Lessee if Lessee is a partnership shall die; (g) Lessee or any Guarantor shall be in breach of or in default in the payment or performance of any material obligation under any credit agreement, conditional sales contract, lease, guaranty, or other contract with Lessor, an affiliate of Lessor or any other person or entity, howsoever arising; (h) Lessee, or any Guarantor shall suffer a material adverse change in its financial condition from the date hereof, and as a result thereof Lessor deems itself or any of the Equipment to be insecure; (i) any Guarantor fails to pay or perform any term, condition, covenant, representation or warranty contained in any agreement made by such Guarantor in favor of Lessor and such failure or breach continues beyond the applicable grace or cure period set forth in such agreement, if any; or (j) Lessee, any Guarantor, or any principal owner, senior officer or director of Lessee or of any Guarantor is convicted of a felony.

**14. REMEDIES.** Lessor and Lessee agree that Lessor's damages suffered by reason of an Event of Default are uncertain and not capable of exact measurement at the time this Lease is executed because the value of the Equipment at the expiration of this Lease is uncertain, and therefore they agree that for purposes of this paragraph 14 "Lessor's Loss" as of any date shall be the sum of the following: (1) the amount of all rent and other amounts payable by Lessee hereunder due but unpaid as of such date plus (2) the amount of all unpaid rent for the balance of the term of this Lease not yet due as of such date discounted from the respective dates installment payments would be due at the Discount Rate as defined below plus (3) the Purchase Agreement as specified on the first page of this Lease. "Discount Rate" means (i) the rate set forth for the United States Treasury Bond or Note having the closest term to (but not longer than) the original term of this Lease, as set forth in the Wall Street Journal two business days prior to the Rent Commencement Date, (ii) the rate set forth for the United States Treasury Bond or Note having the closest term to (but not longer than) the remaining term of this Lease, as set forth in the Wall Street Journal two business days prior to the date of calculation of Lessor's Loss, or (iii) 3%, whichever is lowest. If a rate referred to in the preceding clauses "(i)" or "(ii)" is not published in the Wall Street Journal, such rate shall be taken from a reputable source selected by Lessor. Upon the occurrence of an Event of Default and at any time thereafter, Lessor may exercise any one or more of the remedies listed below as Lessor in its sole discretion may lawfully elect; provided, however, that upon the occurrence of an Event of Default specified in paragraph 13(e), an amount equal to Lessor's Loss as of the date of such occurrence shall automatically become and be immediately due and payable without notice or demand of any kind. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy, and such remedies may be exercised concurrently or separately but only to the extent necessary to permit Lessor to recover amounts for which Lessee is liable hereunder.

(a) Lessor may, by written notice to Lessee, terminate this Lease as to any or all of the Equipment subject hereto and declare an amount equal to Lessor's Loss as of the date of such notice to be immediately due and payable, as liquidated damages and not as a penalty, and the same shall thereupon be and become immediately due and payable without further notice or demand, and all rights of Lessee to use the Equipment shall terminate but Lessee shall be and remain liable as provided in this paragraph 14. Lessee shall at its expense promptly deliver the Equipment to Lessor at a location or locations within the continental United States designated by Lessor. Lessor may also enter upon the premises where the Equipment is located and take immediate possession of and remove the same with or without instituting legal proceedings.

(b) Lessor may proceed by appropriate court action to enforce performance by Lessee of the applicable covenants of this Lease or to recover, for breach of this Lease, Lessor's Loss as of the date Lessor's Loss is declared due and payable hereunder; provided, however, that upon recovery of Lessor's Loss from Lessee in any such action without having to repossess and dispose of the Equipment, Lessor shall transfer the Equipment to Lessee at its then location upon payment of any additional amount due under clauses (d), (e) and (f) below.

(c) In the event Lessor repossesses the Equipment, Lessor shall either retain the Equipment in full satisfaction of Lessee's obligation hereunder or sell or lease each item of Equipment in such manner and upon such terms as Lessor may in its sole discretion determine. The proceeds of any such sale or lease shall be applied to reimburse Lessor for Lessor's Loss and any additional amount due under clauses (d), (e) and (f) below. Lessee shall be entitled to any surplus and shall remain liable for any deficiency.

(d) Lessor may recover interest on the unpaid balance of Lessor's Loss plus any amounts recoverable under clauses (e) and (f) of this paragraph 14 from the date it becomes payable until fully paid at the rate of the lesser of 12% per annum or the highest rate permitted by law.

(e) In addition to any other recovery permitted hereunder or under applicable law, Lessor may recover from Lessee an amount that will fully compensate Lessor for any loss of or damage to Lessor's residual interest in the Equipment.

(f) Lessor may exercise any other right or remedy available to it by law or by agreement, and may in any event recover legal fees and other costs and expenses incurred by reason of an Event of Default or the exercise of any remedy hereunder, including expenses of repossession, repair, storage, transportation, and disposition of the Equipment. Any payment received by Lessor may be applied to unpaid obligations as Lessor in its sole discretion determines.

Lessee agrees that upon the occurrence of an Event of Default, in addition to all of the other rights and remedies available to Lessor hereunder, Lessor shall have all of the rights and remedies of a secured party under the Uniform Commercial Code. In no event shall Lessee's obligations under this Lease be secured by any real property unless the document granting an interest in real property specifically references this Lease by date and/or Equipment Lease Number. No express or implied waiver by Lessor of any breach of Lessee's obligations hereunder shall constitute a waiver of any other breach of Lessee's obligations hereunder.

**15. NET LEASE AND UNCONDITIONAL OBLIGATION.** This Lease is a completely net lease and Lessee's obligation to pay rent and amounts payable by Lessee hereunder is unconditional and irrevocable and shall be paid without any abatement, reduction, setoff or defense of any kind. This Lease cannot be canceled, prepaid or terminated except as expressly provided herein.

**16. NON-WAIVER.** No course of dealing between Lessor and Lessee or any delay or omission on the part of Lessor in exercising any rights hereunder shall operate as a waiver of any rights of Lessor. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. No waiver or consent shall be binding upon Lessor unless it is in writing and signed by Lessor. To the extent permitted by applicable law, Lessee hereby waives the benefit and advantage of, and covenants not to assert against Lessor, any valuation, inquisition, stay, appraisalment, extension or redemption laws now existing or which may hereafter exist which, but for this provision, might be applicable to any sale or re-leasing made under the judgment, order or decree of any court or under the powers of sale and re-leasing conferred by this Lease or otherwise. To the extent permitted by applicable law, Lessee hereby waives any and all rights and remedies conferred upon a Lessee by Article 2A-508 through 2A-522 of the Uniform Commercial Code, including but not limited to Lessee's rights to: (i) cancel this Lease; (ii) repudiate this Lease; (iii) reject the Equipment; (iv) revoke acceptance of the Equipment; (v) recover damages from Lessor for any breaches of warranty or for any other reason; (vi) claim a security interest in the Equipment in Lessee's possession or control for any reason; (vii) deduct all or any part of any claimed damages resulting from Lessor's default, if any, under this Lease; (viii) accept partial delivery of the Equipment; (ix) "cover" by making any purchase or lease of or contract to purchase or lease Equipment in substitution of Equipment identified to this Lease; (x) recover any general, special, incidental, or consequential damages, for any reason whatsoever; and (xi) specific performance, replevin, detinue, sequestration, claim, delivery or the like for any Equipment identified to this Lease.

**17. REPRESENTATIONS AND AGREEMENTS.** Lessee hereby represents and agrees that (a) effective on the date on which Lessee executes this Lease: (i) if Lessee is a partnership, corporation, limited liability company or other legal entity, the execution and delivery of this Lease and the performance of Lessee's obligations hereunder have been duly authorized by all necessary action on the part of the Lessee; (ii) the person signing the Lease on behalf of Lessee is duly authorized; (iii) all information provided by Lessee to Lessor in connection with this Lease is true and correct; and (iv) this Lease constitutes a legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms; (b) the Equipment will be used primarily for business purposes as opposed to personal, family or household purposes; (c) Lessee shall comply with all federal, state and local laws, regulations and rules relating to the ownership or operation of Lessee's business, the Equipment and/or its use; (d) Lessee authorizes Lessor to pay the Total Cost as set forth on the first page of this Lease directly to the seller of the Equipment to the extent of the unpaid balance of the purchase price; and (e) Lessee shall (i) maintain a system of accounts established and administered in accordance with generally accepted accounting principles and practices consistently applied; (ii) within forty-five (45) days after the end of each fiscal quarter other than the final fiscal quarter of each fiscal year, deliver to Lessor a balance sheet and statement of income as at the end of such quarter, each setting forth in comparative form the corresponding figures for the comparable period in the preceding fiscal year and, within one hundred and twenty (120) days after the end of each fiscal year, deliver to Lessor a balance sheet as at the end of such year and statements of income and cash flows for such year, with accompanying notes to financial statements, each setting forth in comparative form the corresponding figures for the preceding year, in each case prepared in accordance with generally accepted accounting principles and practices consistently applied and certified by Lessee's chief financial officer as fairly presenting the financial position and results of operations of Lessee, and, in the case of year-end financial statements, certified by an independent accounting firm acceptable to Lessor; and (iii) with reasonable promptness, furnish Lessor with such other information, financial or otherwise, relating to Lessee or the Equipment as Lessor shall reasonably request.

**18. MISCELLANEOUS.** This Lease constitutes the entire agreement between Lessor and Lessee and may be modified only by a written instrument signed by Lessor and Lessee. Any provision of this Lease that is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions of this Lease, and any such unenforceability in any jurisdiction shall not render unenforceable such provision in any other jurisdiction. Notwithstanding anything to the contrary contained herein, if any rate of interest, late fee or any other charges or fees due hereunder are determined by a court of competent jurisdiction to be usurious, then said interest rate, fees and/or charges shall be reduced to the maximum amount permissible under applicable law and any such excess amounts shall be applied towards the Lessee's obligations hereunder. Paragraph headings are for convenience only, are not part of this Lease and shall not be deemed to effect the meaning or construction of any of the provisions hereof. In the event there is more than one Lessee named in this Lease, the obligations of each shall be joint and several. Lessee's obligations under paragraphs 5, 6, 11 and 14 shall survive termination or expiration of this Lease. Any written notice hereunder to Lessee or Lessor shall be deemed to have been given when delivered personally or deposited with a recognized overnight courier service or in the United States mails, postage prepaid, addressed to recipient at its address set forth on the first page of this Lease or at such other address as may be last known to the sender. Lessor may in its sole discretion, accept a photocopy, electronically transmitted facsimile, pdf or other reproduction of this Lease and/or any document related hereto or thereto (a "Counterpart") as the binding and effective record of this Lease and/or such other document, whether or not an ink signed copy hereof is also received by Lessor from Lessee, provided, however, that if Lessor accepts a Counterpart as the binding and effective record of this Lease or any other document, the Counterpart acknowledged by Lessor (either in ink or electronically) shall constitute the record hereof or thereof. Lessee represents

to Lessor that the signature that appears on the Counterpart that is transmitted by Lessee to Lessor in any manner described above is intended by Lessee to authenticate the Counterpart notwithstanding that such signature is electronic, facsimile or a reproduction and Lessee further agrees that such Counterpart of this Lease or such other document received by Lessor, shall, when acknowledged by Lessor (either in ink or electronically), constitute an original document for the purposes of establishing the provisions hereof and thereof and shall be legally admissible under the best evidence rule and binding on and enforceable against Lessee. If Lessor accepts a Counterpart of a document as the binding and effective record thereof, only such Counterpart acknowledged by Lessor's ink or electronic signature may be marked "Original" and to the extent that this Lease or other document constitutes chattel paper, perfection of a security interest by possession or control may only be accomplished by possession or control of the Counterpart that bears Lessor's acknowledgement. This Lease shall in all respects be governed by, and construed in accordance with, the substantive laws of the state of Minnesota. TIME IS OF THE ESSENCE WITH RESPECT TO THE OBLIGATIONS OF LESSEE UNDER THIS LEASE. LESSEE HEREBY WAIVES ANY RIGHT TO A JURY TRIAL WITH RESPECT TO ANY MATTER UNDER OR IN CONNECTION WITH THIS LEASE.

**ARBITRATION:**

(a) Arbitration. The parties hereto agree, upon demand by any party, whether made before the institution of a judicial proceeding or not more than 60 days after service of a complaint, third party complaint, cross-claim, counterclaim or any answer thereto or any amendment to any of the above, to submit to binding arbitration all claims, disputes and controversies between or among them (and their respective employees, officers, directors, attorneys, and other agents), whether in tort, contract or otherwise arising out of or relating to in any way (i) the Equipment, the leasing of the Equipment and related documents which are the subject of this Lease and its negotiation, execution, collateralization, administration, repayment, modification, extension, substitution, formation, inducement, enforcement, default or termination; or (ii) requests for additional credit. In the event of a court ordered arbitration, the party requesting arbitration shall be responsible for timely filing the demand for arbitration and paying the appropriate filing fee within the 30 days of the abatement order or the time specified by the court. Failure to timely file the demand for arbitration as ordered by the court will result in that party's right to demand arbitration being automatically terminated.

(b) Governing Rules. Any arbitration proceeding will (i) proceed in a location selected by the American Arbitration Association ("AAA"); (ii) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between the parties; and (iii) be conducted by the AAA, or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's commercial dispute resolution procedures, unless the claim or counterclaim is at least \$1,000,000.00 exclusive of claimed interest, arbitration fees and costs in which case the arbitration shall be conducted in accordance with the AAA's optional procedures for large, complex commercial disputes (the commercial dispute resolution procedures or the optional procedures for large, complex commercial disputes referred to herein, as applicable, as the "Rules"). If there is any inconsistency between the terms hereof and the Rules, the terms and procedures set forth herein shall control. Any party who fails or refuses to submit to arbitration following a demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any dispute. Nothing contained herein shall be deemed to be a waiver by any party that is a bank of the protections afforded to it under 12 U.S.C. §91 or any similar applicable state law.

(c) No Waiver of Provisional Remedies, Self-Help and Foreclosure. The arbitration requirement does not limit the right of any party to (i) foreclose against real or personal property collateral; (ii) exercise self-help remedies relating to collateral or proceeds of collateral such as setoff or repossession; or (iii) obtain provisional or ancillary remedies such as replevin, injunctive relief, attachment or the appointment of a receiver, before during or after the pendency of any arbitration proceeding. This exclusion does not constitute a waiver of the right or obligation of any party to submit any dispute to arbitration or reference hereunder, including those arising from the exercise of the actions detailed in sections (i), (ii) and (iii) of this paragraph.

(d) Arbitrator Qualifications and Powers. Any arbitration proceeding in which the amount in controversy is \$5,000,000.00 or less will be decided by a single arbitrator selected according to the Rules, and who shall not render an award of greater than \$5,000,000.00. Any dispute in which the amount in controversy exceeds \$5,000,000.00 shall be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations. The arbitrator will be a neutral attorney licensed in, or a neutral retired judge of the state or federal judiciary of the state in which the arbitration proceeding takes place, in either case with a minimum of ten years' experience in the substantive law applicable to the subject matter of the dispute to be arbitrated. The arbitrator will determine whether or not an issue is arbitratable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. The arbitrator shall resolve all disputes in accordance with the substantive law of Minnesota and may grant any remedy or relief that a court of such state could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award. The arbitrator shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Minnesota Rules of Civil Procedure or other applicable law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

(e) Discovery. In any arbitration proceeding discovery will be permitted in accordance with the Rules. All discovery shall be expressly limited to matters directly relevant to the dispute being arbitrated and must be completed no later than 20 days before the hearing date. Any requests for an extension of the discovery periods, or any discovery disputes, will be subject to final determination by the arbitrator upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available.

(f) Class Proceedings and Consolidations. Neither party shall be entitled to join or consolidate disputes by or against others in any arbitration, or to include in any arbitration any dispute as a representative or member of a class or to act in any arbitration in the interest of the general public or in a private attorney general capacity.

(g) Payment of Arbitration Costs and Fees. The arbitrator shall award all costs and expenses of the arbitration proceeding.

(h) Miscellaneous. To the maximum extent practicable, the AAA, the arbitrators and the parties shall take all action required to conclude any arbitration proceeding within 180 days of the filing of the dispute with the AAA. No arbitrator or other party to an arbitration proceeding may disclose the existence, content or results thereof, except for disclosures of information by a party

required in the ordinary course of its business or by applicable law or regulation. If more than one agreement for arbitration by or between the parties potentially applies to a dispute, the arbitration provision most directly related to the documents between the parties or the subject matter of the dispute shall control. This arbitration provision shall survive termination, amendment or expiration of any of the documents or any relationship between the parties.

(i) **Small Claims Suits.** Notwithstanding anything herein to the contrary, each party retains the right to pursue in Small Claims Court any dispute in which the remedy sought is entirely within that court's jurisdiction.

COPY VIEW



# UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

<b>A. NAME &amp; PHONE OF CONTACT AT FILER (optional)</b> CSC 800-858-5294
<b>B. E-MAIL CONTACT AT FILER (optional)</b> FILINGDEPT@CSCINFO.COM
<b>C. SEND ACKNOWLEDGMENT TO: (Name and Address)</b> 801 ADLAI STEVENSON DR [219211249] SPRINGFIELD, IL 62703 US

Delaware Department of State  
 U.C.C. Filing Section  
 Filed: 09:49 AM 09/29/2021  
 U.C.C. Initial Filing No: 2021 7753552  
 Service Request No: 20213373038

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. **DEBTOR'S NAME:** Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME PROSOMNUS SLEEP TECHNOLOGIES, INC.					
OR	1b. INDIVIDUAL'S SURNAME		FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS 5860 W LAS POSITAS BLVD, SUITE 20		CITY PLEASANTON	STATE CA	POSTAL CODE 94588	COUNTRY US

2. **DEBTOR'S NAME:** Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME					
OR	2b. INDIVIDUAL'S SURNAME		FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY

3. **SECURED PARTY'S NAME** (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME WELLS FARGO EQUIPMENT FINANCE, INC.					
OR	3b. INDIVIDUAL'S SURNAME		FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS 600 SOUTH 4TH STREET, MAC N9300-100		CITY MINNEAPOLIS	STATE MN	POSTAL CODE 55415	COUNTRY US

4. **COLLATERAL:** This financing statement covers the following collateral:  
 Six (6) VHF S5 Milling Machines S/N S5ID129035028 S5ID129035128 S5ID129035228 S5ID129035328  
 S5ID129035428 S5ID129035528 together with all replacements, substitutions, parts, improvements,  
 repairs, and accessories and all additions incorporated therein or affixed thereto being referred to  
 herein as the "Equipment".

5. Check only if applicable and check only one box: Collateral is  held in a Trust (see UCC1Ad, item 17 and Instructions)  being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:  
 Public-Finance Transaction  Manufactured-Home Transaction  A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:  
 Agricultural Lien  Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable):  Lessee/Lessor  Consignee/Consignor  Seller/Buyer  Bailee/Bailor  Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA: