



4. Debtor has entered into the following Leases (hereinafter individually and collectively the "Lease") with DeLage, to-wit:

(a) Master Lease Agreement, dated May 26, 2005, a copy of which is attached hereto, made a part hereof and marked as Exhibit "A";

(b) Equipment Schedule No. 2, dated June 27, 2005 to the Master Lease Agreement, a copy of which is attached hereto, made a part hereof and marked as Exhibit "B";

(c) Equipment Schedule No. 3, dated July 18, 2005 to the Master Lease Agreement, a copy of which is attached hereto, made a part hereof and marked as Exhibit "C";

and

(d) Equipment Schedule No. 4, dated September 28, 2005 to the Master Lease Agreement, a copy of which is attached hereto, made a part hereof and marked as Exhibit "D".

5. Pursuant to the terms of the Lease, Debtor leased from DeLage the following equipment:

- a. One (1) Volvo A35D Articulated Haul Truck, S/N: A35DV13184;
- b. One (1) Volvo A35D Articulated Haul Truck, S/N: A35DV72084;
- c. One (1) Volvo A35D Articulated Haul Truck, S/N: A35DV72085;
- d. One (1) Volvo A35D Articulated Haul Truck, S/N: A35DV13206;
- e. One (1) Terex TA40 Articulated Haul Truck, S/N: A8421080; and
- f. One (1) Terex TA40 Articulated Haul Truck, S/N: A8421081

(hereinafter individually and collectively the "Leased Equipment").

6. DeLage is the assignee of the lease from Wells Fargo Equipment Finance, Inc. ("Wells Fargo"), Wells Fargo being the assignee from the original lessor, the CIT Group

Financing, Inc. ("CIT"). A redacted copy of the assignment from Wells Fargo to DeLage is attached hereto, made a part hereof and marked as Exhibit "E".

7. As of the petition date, Debtor was three (3) months in arrears in the payment of the amounts due and owing under the Lease and has not made any payments on the Lease post-petition.

8. As of the result of usage, the value of the Leased Equipment and DeLage's interest therein is declining, even if the Leased Equipment is maintained in accordance with the manufacturer's recommendations.

9. Notwithstanding Debtor's default under the Leases, the automatic stay prevents DeLage from enforcing and pursuing its rights and remedies under the Lease in regards to the Leased Equipment.

10. As a result of the existence of the automatic stay, DeLage is being irreparably harmed due to the accrual of interest, fees and costs, the use and depreciation of the Leased Equipment all of which is diminishing DeLage's interest in the Leased Equipment.

WHEREFORE, Citicapital, by counsel, moves this Court for an Order pursuant to 365(d)(2) of the Bankruptcy Code: compelling Debtor to assume or reject the Lease; or in the alternative for relief from the automatic stay and abandoning the Equipment as property of the estate; or, in the alternative, adequate protection; and for all other proper relief.

KIGHTLINGER & GRAY, LLP  
/s/ Peter Velde  
Peter Velde  
Attorneys for DeLage Landen  
Financial Services, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on June 3, 2009, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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