

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE: )  
 )  
RED TOP RENTALS, INC. ) CAUSE NO: 09-05229-JKC-11  
 )  
 )  
DEBTOR. )  
 )  
\_\_\_\_\_ )

**MOTION TO REJECT UNEXPIRED LEASE  
WITH DOLPHIN CAPITAL CORPORATION**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Red Top Rentals, Inc., the debtor and debtor-in-possession (the “Debtor”), by counsel, in support of the above-entitled motion (this “Motion”), and respectfully states:

1. Since the Petition Date, the Debtor has continued in the possession of their property pursuant to §§ 1107 and 1108 of the Bankruptcy Code, codified at 11 U.S.C. §101, *et seq.* (the “Code”), and is a debtor-in-possession. A creditors committee has not been appointed in this case.

2. The Court has jurisdiction over this application pursuant to 28 U.S.C. §157 and 1334. Venue is proper pursuant to 28 U.S.C. §1408 and 1409. This application is a core proceeding pursuant to 28 U.S.C. §157(b)(2). The statutory predicates for the relief requested herein are 11 U.S.C. §365 and Fed. R. Bankr. P. 6006.

3. Prior to the Petition Date, the Debtor, in its normal course of business, entered into a lease agreement with Dolphin Capital Corporation (the “Lease”). Attached as **Attachment A** is a copy of the Lease.

4. The Lease is for the lease of two (2) water coolers located at the corporate headquarters of the Debtor at 5925 Stockberger Place, Indianapolis, Indiana 46241. The Lease appears to be still be executory and appears to expire on or around August 14, 2012. Rent is \$240 per quarter.

5. Assignment of the Lease is not deemed by the Debtor to have any value.

6. The Debtor has no further need to lease the water coolers since the Debtor no longer has a full staff working at this location. The Lease is a burden on the Debtor and is not a source of potential value for this estate.

7. Section 365(a) of the Bankruptcy Code provides that a debtor-in-possession, “subject to the court’s approval, [may] assume or reject any executory contract or unexpired lease.” See In re FBI Distribution Corp., 330 F.3d 36, 42 (1<sup>st</sup> Cir. 2003); University Medical Center v. Sullivan (In re University Medical Center), 973 F.2d 1065, 1075 (3d Cir. 1992). The assumption or rejection of an unexpired lease by a debtor is subject to review under the business judgment standard. In the Matter of Federated Dept. Stores, Inc., 131 B.R. 808, 811 (S.D. Ohio 1991) (“Courts traditionally have applied the business judgment standard in determining whether to authorize the rejection of executory contracts and unexpired leases.”). This standard is satisfied when the debtor determines that rejection will benefit the estate. Commercial Fin., Ltd. v. Hawaii Dimensions, Inc. (In re Hawaii Dimensions, Inc.), 47 B.R. 425, 427 (D. Haw. 1985) (“Under the business judgment test, a court should approve a debtor’s proposed rejection if such rejection will benefit the estate.”) (citation omitted).

8. If the debtor’s business judgment has been reasonably exercised, a court should approve the assumption or rejection of an unexpired lease. See, e.g., NLRB v. Bildisco and Bildisco, 465 U.S. 513, 523 (1984); Group of Institutional Investors v. Chicago, M., St. P. & P.R.

Co., 318 U.S. 523, 550 (1943); Sharon Steel Corp. v. National Fuel Gas Distribution Corp., 872 F.2d 36, 39-40 (3d Cir. 1989); In the Matter of Goldblatt Bros., Inc., 766 F.2d 1136, 1139 (7<sup>th</sup> Cir. 1985).

9. In applying the “business judgment” standard, courts show great deference to the debtor’s decision to reject. See Summit Land Co. v. Allen (In re Summit Land Co.), 13 B.R. 310, 315 (Bankr. D. Utah 1981) (absent extraordinary circumstances, court approval of a debtor’s decision to assume or reject an executory contract “should be granted as a matter of course”).

10. The Debtor clearly satisfies the “business judgment” standard in rejecting the Lease. As explained above, the Lease is not a source of potential value for the estate. Accordingly, the Debtor has determined that, in the sound exercise of their business judgment, the Lease should be rejected and such rejection will benefit the Debtor’s estates.

### **Request for Relief**

The Debtor respectfully requests that the Court grant this Motion and grant such other and further relief as is just and proper.

Respectfully submitted,

**TUCKER | HESTER, LLC**

/s/ Jeffrey M. Hester

Jeffrey M. Hester

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Delphin Capital Corp.  
 P.O. Box 64 4006  
 Cummins, Ohio 45224  
 Rental Agreement

(RENTOR)  
 DELPHIN CAPITAL CORP.  
 1720A CRETE ST.  
 MOBERLY, MO 65270  
 (800) 602-3759  
 FAX (800) 426-2626

THIS IS A NON-CANCELLABLE, BINDING CONTRACT

DESCRIPTION OF RENTED EQUIPMENT & MANAGED SERVICES (include quantity, make, model, serial no. and all attachments) (Attach separate schedule "A" if necessary)  
**2 FOUR STATE REVERSS OSMOSIS SYSTEM** 070405 UD

VENDOR'S NAME: SUPERIOR WATER SYSTEMS (Vendor # 20799)  
 RENTING CUSTOMER (Rentor): (Complete Legal Name. If a corporation, use EXACT registered corporate name.)  
 Company Name: **DELPHIN CAPITAL CORP.**  
 Tax Identification Number: **15-1814484** Telephone No: **317-247-9500**

Billing Address: **5925 SOLLBERGER PLACE** Equipment Location (if other than Billing Address):  
**INDIANAPOLIS, IN 46221** County: **MARIION**

TERM OF RENTAL		TOTAL NUMBER RENTAL PAYMENTS	AMOUNT OF EACH PAYMENT*	SECURITY DEPOSIT PAYOUT*	PAYMENT FREQUENCY
RENTAL	60	20	\$240	\$	Monthly
(In Months)			(The Applicable Taxes)	ADVANCE PMT	Quarterly
AUTHORIZED SIGNATURE		Date:	Print Name and Title	Witness	Other
<b>X Edward Haggard</b>		8-14-07	<b>Edward Haggard</b>	<b>Greg Strick</b>	<b>30 Days Before</b>
Print Name and Title					
<b>ED Haggard</b>			<b>General Manager</b>	<b>Greg Strick</b>	<b>SALES MANAGER</b>
PERSONAL GUARANTY		I/WE INDIVIDUALLY, PERSONALLY, ABSOLUTELY AND UNCONDITIONALLY GUARANTEE ALL PAYMENTS AND OTHER OBLIGATIONS TO THE RENTING COMPANY AND THIS GUARANTY, I/WE AGREE THAT THE RENTING COMPANY MAY PROCEED DIRECTLY AGAINST ME/US WITHOUT FIRST PROCEEDING AGAINST THE RENTING CUSTOMER OR THE EQUIPMENT. I/WE CONSENT TO PERSONAL JURISDICTION IN THE COURTS OF RANDOLPH COUNTY, MISSOURI AS SET FORTH IN PARAGRAPH SIX BELOW.			
SIGNATURE (INDIVIDUALLY, NO TITLES)		Date:	SIGNATURE (INDIVIDUALLY, NO TITLES)		
<b>X</b>			<b>X</b>		
GUARANTOR #1 Name and Home Address (Please Print)		GUARANTOR #2 Name and Home Address (Please Print)			
DELIVERY AND ACCEPTANCE CERTIFICATION					
THE RENTER HEREBY CERTIFIES THAT ALL EQUIPMENT REFERRED TO ABOVE HAS BEEN DELIVERED, IS FULLY INSTALLED AND THE MANAGED SERVICE IS IN GOOD OPERATING ORDER. RENTER UNCONDITIONALLY ACCEPTS THE EQUIPMENT AND REQUESTS THAT RENTING COMPANY SIGN THIS RENTAL AND PAY THE EQUIPMENT VENDOR.					
DATE OF DELIVERY	8-14-07	AUTHORIZED SIGNER: <b>X</b>	TITLE <b>General Manager</b>		
ACCEPT BY RENTOR:		Title:	Date:		
By:			Rental #:		

TERMS AND CONDITIONS

1. RENTAL CHARGES. You (the renting customer, or renter) agree to rent from us (the above renting company) the above equipment for the periodic payment amount and for the full term stated above. We may charge you a partial payment for the time between the delivery date and the due date for the first payment. If any payment is late, we may charge you a late fee of \$25.00 or 15% of the amount that is late, whichever is greater, unless otherwise limited by law. We may also charge \$25.00 for each NSF check, and \$10.00 for each collection call. You agree to return the equipment to us at your cost at the end of the rental unless we have given you a written purchase option and you exercise the option at that time. If you don't return the equipment, this rental will continue for the same check payment by marking "ACH" above.

2. OTHER IMPORTANT TERMS. THIS RENTAL CANNOT BE CANCELED OR MODIFIED BY YOU FOR ANY REASON, INCLUDING EQUIPMENT FAILURE, LOSS OR DAMAGE, FAILURE OR THE VENDOR'S ACTS. YOU ARE RENTING THE EQUIPMENT "AS IS" AND WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED. WE ARE NOT RESPONSIBLE FOR SERVICE REPAIRS. Any warranties the vendor gave to us, if any, we hereby assign (pass) to you. You may contact the vendor for a statement of such warranties, if any. NOT CERTIFY to us that the equipment will be used by you solely for business purposes and not for personal, family, or household purposes.

3. TITLE. We will have title to the equipment during this rental. You agree this is a "true rental", not a sale or a loan. However, if this rental is determined not to be a "true rental", you hereby grant us a security interest in the equipment. You also agree this is a "finance lease" under Article 2A of the Uniform Commercial Code, and you waive your rights and remedies conferred upon you by Article 2A. You hereby give us power of attorney to sign and file financing statements in order to perfect this security interest in our favor. You also agree to pay our filing and other administrative and processing fees.

4. LOSS; DAMAGE; INSURANCE. You are responsible for and accept the risk of loss or damage to the equipment. You agree to keep the equipment insured against all risks of loss in an amount at least equal to the replacement cost, and you will list us as loss payee and give us written proof of this insurance. IF YOU DO NOT GIVE US SUCH PROOF, WE MAY (BUT WILL NOT BE OBLIGATED TO) OBTAIN OTHER INSURANCE AND CHARGE YOU A FEE FOR IT, OR WE MAY CHARGE YOU A MONTHLY RISK CHARGE EQUAL TO 0.25% OF THE ORIGINAL EQUIPMENT COST.

5. TAXES AND OTHER FEES; INDEMNIFICATION. You agree to reimburse us for all taxes (such as sales, use and property taxes) and charges in connection with the ownership and use of the equipment, UNLESS WE HAVE GIVEN YOU A WRITTEN OPTION TO PURCHASE THE EQUIPMENT AT THE END OF THE RENTAL, YOU AGREE THAT WE ARE ENTITLED TO ANY AND ALL TAX BENEFITS (SUCH AS DEPRECIATION AND TAX CREDITS), AND YOU WILL NOT DO ANYTHING INCONSISTENT WITH THIS UNDERSTANDING. IF YOU DO, YOU WILL INDEMNIFY (REIMBURSE) US FOR ALL LOSSES AND LIABILITIES ARISING OUT OF THE OWNERSHIP OR YOUR USE OF THE EQUIPMENT. THESE PROMISES WILL CONTINUE AFTER THIS RENTAL ENDS.

6. DEFAULT. If you fail to pay us as agreed, we will have the right to (i) charge your checking or credit card account and/or sue you for all past due payment AND ALL PAYMENTS TO BECOME DUE IN THE FUTURE FOR THE UNREPAID TERM, plus the residual value we have placed on the equipment and other charges you owe us, and (ii) repossess the equipment. You will also pay for our reasonable collection and legal costs. THIS RENTAL IS GOVERNED BY MISSOURI LAW, AND YOU AGREE IN THE EVENT OF YOUR DEFAULT OR ANY DISPUTE YOU MAY HAVE CONCERNING THIS RENTAL THAT THE EXCLUSIVE JURISDICTION IN DETERMINING SUCH DISPUTES SHALL BE THE RESPECTIVE STATE COURTS OF RANDOLPH COUNTY, MISSOURI.

7. ASSIGNMENT. YOU AGREE THAT YOU MAY NOT ASSIGN (TRANSFER) THIS RENTAL OR SUBRENT THE EQUIPMENT TO ANYONE ELSE. YOU AGREE THAT WE MAY SELL OR ASSIGN ANY OF OUR INTERESTS TO A NEW OWNER OR A SECURED PARTY ("Third Person") WITHOUT NOTICE TO YOU. In that event, the Third Person will have such rights as we assign to them but none of our obligations (we will keep those obligations) and the rights of the Third Person will not be subject to any claims, defenses, or set-offs that you may have against us or another person.

8. MISCELLANEOUS. You authorize us to share credit and other information about you and your company with our affiliates. For your convenience, we may accept a facsimile copy of this rental with a legible signature. You agree a facsimile copy will be treated as an original and will be admissible as evidence of this rental.

Edward Haggard at Stockberger office