

SENATE BILL No. 462

August 22, 1991, Introduced by Senators HONIGMAN,
DILLINGHAM and BOUCHARD and referred to the
Committee on Corporations and Economic Development.

A bill to amend the title and sections 1105, 1201, and 9113
of Act No. 174 of the Public Acts of 1962, entitled as amended
"Uniform commercial code,"
section 1201 as amended by Act No. 16 of the Public Acts of 1987,
being sections 440.1105, 440.1201, and 440.9113 of the Michigan
Compiled Laws; and to add article 2a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 1105, 1201, and 9113 of
2 Act No. 174 of the Public Acts of 1962, section 1201 as amended
3 by Act No. 16 of the Public Acts of 1987, being
4 sections 440.1105, 440.1201, and 440.9113 of the Michigan
5 Compiled Laws, are amended and article 2a is added to read as
6 follows:

TITLE

1
2 An act to enact the uniform commercial code, relating to
3 certain commercial transactions in or regarding personal property
4 and contracts and other documents concerning them, including
5 sales, commercial paper, bank deposits and collections, letters
6 of credit, bulk transfers, warehouse receipts, bills of lading,
7 other documents of title, investment securities, LEASES, and
8 secured transactions, including certain sales of accounts, chat-
9 tel paper and contract rights; to provide for public notice to
10 third parties in certain circumstances; to regulate procedure,
11 evidence and damages in certain court actions involving such
12 transactions, contracts or documents; to make uniform the law
13 with respect thereto; to make an appropriation; to provide penal-
14 ties; and to repeal certain acts and parts of acts.

15 Sec. 1105. (1) Except as provided hereafter in this sec-
16 tion, when a transaction bears a reasonable relation to this
17 state and also to another state or nation the parties may agree
18 that the law either of this state or of such other state or
19 nation shall govern their rights and duties. Failing such agree-
20 ment this act applies to transactions bearing an appropriate
21 relation to this state.

22 (2) Where 1 of the following provisions of this act speci-
23 fies the applicable law, that provision governs and a contrary
24 agreement is effective only to the extent permitted by the law
25 (including the conflict of laws rules) so specified:

1 Rights of creditors against sold goods. Section 2402.
2 Applicability of the article on bank deposits and
3 collections. Section 4102.
4 Bulk transfers subject to the article on bulk
5 transfers. Section 6102.
6 Applicability of the article on investment
7 securities. Section 8106.
8 APPLICABILITY OF THE ARTICLE ON LEASES. SECTIONS 2A105 AND 2A106.
9 Perfection provisions of the article on secured
10 transactions. Section 9103.
11 Sec. 1201. Subject to additional definitions contained in
12 the subsequent articles of this act which are applicable to spe-
13 cific articles or parts of this act, and unless the context oth-
14 erwise requires, in this act:
15 (1) "Action" in the sense of a judicial proceeding includes
16 recoupment, counterclaim, setoff, suit in equity, and any other
17 proceedings in which rights are determined.
18 (2) "Aggrieved party" means a party entitled to resort to a
19 remedy.
20 (3) "Agreement" means the bargain of the parties in fact as
21 found in their language or by implication from other circum-
22 stances including course of dealing or usage of trade or course
23 of performance as provided in this act (sections 1205 and 2208).
24 Whether an agreement has legal consequences is determined by the
25 provisions of this act, if applicable; otherwise by the law of
26 contracts (section 1103). (Compare "Contract".)

1 (4) "Bank" means any person engaged in the business of
2 banking.

3 (5) "Bearer" means the person in possession of an instru-
4 ment, document of title, or certificated security payable to
5 bearer or indorsed in blank.

6 (6) "Bill of lading" means a document evidencing the receipt
7 of goods for shipment issued by a person engaged in the business
8 of transporting or forwarding goods, and includes an airbill.

9 "Airbill" means a document serving for air transportation as a
10 bill of lading does for marine or rail transportation, and
11 includes an air consignment note or air waybill.

12 (7) "Branch" includes a separately incorporated foreign
13 branch of a bank.

14 (8) "Burden of establishing a fact" means the burden of per-
15 suading the triers of fact that the existence of the fact is more
16 probable than its nonexistence.

17 (9) "Buyer in ordinary course of business" means a person
18 who in good faith and without knowledge that the sale to him or
19 her is in violation of the ownership rights or security interest
20 of a third party in the goods buys in ordinary course from a
21 person in the business of selling goods of that kind but does not
22 include a pawnbroker. All persons who sell minerals or the like,
23 including oil and gas, at wellhead or minehead shall be deemed to
24 be persons in the business of selling goods of that kind.

25 "Buying" may be for cash or by exchange of other property or on
26 secured or unsecured credit and includes receiving goods or
27 documents of title under a preexisting contract for sale but does

1 not include a transfer in bulk or as security for or in total or
2 partial satisfaction of a money debt.

3 (10) "Conspicuous": A term or clause is conspicuous when it
4 is so written that a reasonable person against whom it is to
5 operate ought to have noticed it. A printed heading in capitals
6 (as: non-negotiable bill of lading) is conspicuous. Language in
7 the body of a form is "conspicuous" if it is in larger or other
8 contrasting type or color. But in a telegram any stated term is
9 "conspicuous". Whether a term or clause is "conspicuous" or not
10 is for decision by the court.

11 (11) "Contract" means the total legal obligation which
12 results from the parties' agreement as affected by this act and
13 any other applicable rules of law. (Compare "agreement".)

14 (12) "Creditor" includes a general creditor, a secured cred-
15 itor, a lien creditor and any representative of creditors,
16 including an assignee for the benefit of creditors, a trustee in
17 bankruptcy, a receiver in equity, and an executor or administra-
18 tor of an insolvent debtor's or assignor's estate.

19 (13) "Defendant" includes a person in the position of
20 defendant in a cross action or counterclaim.

21 (14) "Delivery" with respect to instruments, documents of
22 title, chattel paper, or certificated securities means voluntary
23 transfer of possession.

24 (15) "Document of title" includes bill of lading, dock war-
25 rant, dock receipt, warehouse receipt, or order for the delivery
26 of goods, and also any other document which in the regular course
27 of business or financing is treated as adequately evidencing that

1 the person in possession of it is entitled to receive, hold, and
2 dispose of the document and the goods it covers. To be a docu-
3 ment of title a document must purport to be issued by or
4 addressed to a bailee and purport to cover goods in the bailee's
5 possession which are either identified or are fungible portions
6 of an identified mass.

7 (16) "Fault" means wrongful act, omission, or breach.

8 (17) "Fungible" with respect to goods or securities means
9 goods or securities of which any unit is, by nature or usage of
10 trade, the equivalent of any other like unit. Goods which are
11 not fungible shall be deemed fungible for the purposes of this
12 act to the extent that under a particular agreement or document
13 unlike units are treated as equivalents.

14 (18) "Genuine" means free of forgery or counterfeiting.

15 (19) "Good faith" means honesty in fact in the conduct or
16 transaction concerned.

17 (20) "Holder" means a person who is in possession of a docu-
18 ment of title or an instrument or a certificated security drawn,
19 issued, or indorsed to him or her or to his or her order or to
20 bearer or in blank.

21 (21) To "honor" is to pay or to accept and pay, or where a
22 credit so engages to purchase or discount a draft complying with
23 the terms of the credit.

24 (22) "Insolvency proceedings" includes any assignment for
25 the benefit of creditors or other proceedings intended to liqui-
26 date or rehabilitate the estate of the person involved.

1 (23) A person is "insolvent" who either has ceased to pay
2 his or her debts in the ordinary course of business or cannot pay
3 his or her debts as they become due or is insolvent within the
4 meaning of the federal bankruptcy law.

5 (24) "Money" means a medium of exchange authorized or
6 adopted by a domestic or foreign government as a part of its
7 currency.

8 (25) A person has "notice" of a fact when:

9 (a) He or she has actual knowledge of it; or

10 (b) He or she has received a notice or notification of it;
11 or

12 (c) From all the facts and circumstances known to him or her
13 at the time in question he or she has reason to know that it
14 exists. A person "knows" or has "knowledge" of a fact when he or
15 she has actual knowledge of it. "Discover" or "learn" or a word
16 or phrase of similar import refers to knowledge rather than to
17 reason to know. The time and circumstances under which a notice
18 or notification may cease to be effective are not determined by
19 this act.

20 (26) A person "notifies" or "gives" a notice or notification
21 to another by taking such steps as may be reasonably required to
22 inform the other in ordinary course whether or not such other
23 actually comes to know of it. A person "receives" a notice or
24 notification when:

25 (a) It comes to his or her attention; or

1 (b) It is duly delivered at the place of business through
2 which the contract was made or at any other place held out by him
3 or her as the place for receipt of such communications.

4 (27) Notice, knowledge, or a notice or notification received
5 by an organization is effective for a particular transaction from
6 the time when it is brought to the attention of the individual
7 conducting that transaction, and in any event from the time when
8 it would have been brought to the individual's attention if the
9 organization had exercised due diligence. An organization exer-
10 cises due diligence if it maintains reasonable routines for com-
11 municating significant information to the person conducting the
12 transaction and there is reasonable compliance with the
13 routines. Due diligence does not require an individual acting
14 for the organization to communicate information unless such com-
15 munication is part of his or her regular duties or unless he or
16 she has reason to know of the transaction and that the transac-
17 tion would be materially affected by the information.

18 (28) "Organization" includes a corporation, government, or
19 governmental subdivision or agency, business trust, estate,
20 trust, partnership or association, 2 or more persons having a
21 joint or common interest, or any other legal or commercial
22 entity.

23 (29) "Party", as distinct from "third party", means a person
24 who has engaged in a transaction or made an agreement within this
25 act.

26 (30) "Person" includes an individual or an organization (see
27 section 1102).

1 (31) "Presumption" or "presumed" means that the trier of
2 fact must find the existence of the fact presumed unless and
3 until evidence is introduced which would support a finding of its
4 nonexistence.

5 (32) "Purchase" includes taking by sale, discount, negotia-
6 tion, mortgage, pledge, lien, issue or reissue, gift, or any
7 other voluntary transaction creating an interest in property.

8 (33) "Purchaser" means a person who takes by purchase.

9 (34) "Remedy" means any remedial right to which an aggrieved
10 party is entitled with or without resort to a tribunal.

11 (35) "Representative" includes an agent, an officer of a
12 corporation or association, and a trustee, executor, or adminis-
13 trator of an estate, or any other person empowered to act for
14 another.

15 (36) "Rights" includes remedies.

16 (37) "Security interest" means an interest in personal prop-
17 erty or fixtures which secures payment or performance of an
18 obligation. The retention or reservation of title by a seller of
19 goods notwithstanding shipment or delivery to the buyer (section
20 2401) is limited in effect to a reservation of a "security
21 interest". The term also includes any interest of a buyer of
22 accounts or chattel paper which is subject to article 9. The
23 special property interest of a buyer of goods on identification
24 of ~~such~~ THOSE goods to a contract for sale under section 2401
25 is not a "security interest", but a buyer may also acquire a
26 "security interest" by complying with article 9. Unless a ~~lease~~
27 ~~or~~ consignment is intended as security, reservation of title

1 ~~hereunder~~ THEREUNDER is not a "security interest", but a
2 consignment ~~is~~ in any event IS subject to the provisions on
3 consignment sales (section 2326). Whether a ~~lease is intended~~
4 ~~as~~ A TRANSACTION CREATES A LEASE OR security INTEREST is ~~to be~~
5 determined by the facts of each case; however, ~~(a) the inclusion~~
6 ~~of an option to purchase does not of itself make the lease one~~
7 ~~intended for security, and (b) an agreement that upon compliance~~
8 ~~with the terms of the lease the lessee shall become or has the~~
9 ~~option to become the owner of the property for no additional con-~~
10 ~~sideration or for a nominal consideration does make the lease one~~
11 ~~intended for security~~ A TRANSACTION CREATES A SECURITY INTEREST
12 IF THE CONSIDERATION THE LESSEE IS TO PAY THE LESSOR FOR THE
13 RIGHT TO POSSESSION AND USE OF THE GOODS IS AN OBLIGATION FOR THE
14 TERM OF THE LEASE NOT SUBJECT TO TERMINATION BY THE LESSEE, AND
15 ANY OF THE FOLLOWING:

16 (A) THE ORIGINAL TERM OF THE LEASE IS EQUAL TO OR GREATER
17 THAN THE REMAINING ECONOMIC LIFE OF THE GOODS.

18 (B) THE LESSEE IS BOUND TO RENEW THE LEASE FOR THE REMAINING
19 ECONOMIC LIFE OF THE GOODS OR IS BOUND TO BECOME THE OWNER OF THE
20 GOODS.

21 (C) THE LESSEE HAS AN OPTION TO RENEW THE LEASE FOR THE
22 REMAINING ECONOMIC LIFE OF THE GOODS FOR NO ADDITIONAL CONSIDERA-
23 TION OR NOMINAL ADDITIONAL CONSIDERATION UPON COMPLIANCE WITH THE
24 LEASE AGREEMENT.

25 (D) THE LESSEE HAS AN OPTION TO BECOME THE OWNER OF THE
26 GOODS FOR NO ADDITIONAL CONSIDERATION OR NOMINAL ADDITIONAL
27 CONSIDERATION UPON COMPLIANCE WITH THE LEASE AGREEMENT.

1 A TRANSACTION DOES NOT CREATE A SECURITY INTEREST MERELY
2 BECAUSE IT PROVIDES ANY OF THE FOLLOWING:

3 (A) THE PRESENT VALUE OF THE CONSIDERATION THE LESSEE IS
4 OBLIGATED TO PAY THE LESSOR FOR THE RIGHT TO POSSESSION AND USE
5 OF THE GOODS IS SUBSTANTIALLY EQUAL TO OR IS GREATER THAN THE
6 FAIR MARKET VALUE OF THE GOODS AT THE TIME THE LEASE IS ENTERED
7 INTO.

8 (B) THE LESSEE ASSUMES RISK OF LOSS OF THE GOODS, OR AGREES
9 TO PAY TAXES, INSURANCE, FILING, RECORDING, OR REGISTRATION FEES,
10 OR SERVICE OR MAINTENANCE COSTS WITH RESPECT TO THE GOODS.

11 (C) THE LESSEE HAS AN OPTION TO RENEW THE LEASE OR TO BECOME
12 THE OWNER OF THE GOODS.

13 (D) THE LESSEE HAS AN OPTION TO RENEW THE LEASE FOR A FIXED
14 RENT THAT IS EQUAL TO OR GREATER THAN THE REASONABLY PREDICTABLE
15 FAIR MARKET RENT FOR THE USE OF THE GOODS FOR THE TERM OF THE
16 RENEWAL AT THE TIME THE OPTION IS TO BE PERFORMED.

17 (E) THE LESSEE HAS AN OPTION TO BECOME THE OWNER OF THE
18 GOODS FOR A FIXED PRICE THAT IS EQUAL TO OR GREATER THAN THE REA-
19 SONABLY PREDICTABLE FAIR MARKET VALUE OF THE GOODS AT THE TIME
20 THE OPTION IS TO BE PERFORMED.

21 AS USED IN THIS SUBSECTION:

22 (A) ADDITIONAL CONSIDERATION IS NOT NOMINAL IF WHEN THE
23 OPTION TO RENEW THE LEASE IS GRANTED TO THE LESSEE THE RENT IS
24 STATED TO BE THE FAIR MARKET RENT FOR THE USE OF THE GOODS FOR
25 THE TERM OF THE RENEWAL DETERMINED AT THE TIME THE OPTION IS TO
26 BE PERFORMED, OR WHEN THE OPTION TO BECOME THE OWNER OF THE GOODS
27 IS GRANTED TO THE LESSEE, THE PRICE IS STATED TO BE THE FAIR

1 MARKET VALUE OF THE GOODS DETERMINED AT THE TIME THE OPTION IS TO
2 BE PERFORMED. ADDITIONAL CONSIDERATION IS NOMINAL IF IT IS LESS
3 THAN THE LESSEE'S REASONABLY PREDICTABLE COST OF PERFORMING UNDER
4 THE LEASE AGREEMENT IF THE OPTION IS NOT EXERCISED.

5 (B) "PRESENT VALUE" MEANS THE AMOUNT AS OF A DATE CERTAIN OF
6 1 OR MORE SUMS PAYABLE IN THE FUTURE, DISCOUNTED TO THE DATE
7 CERTAIN. THE DISCOUNT IS DETERMINED BY THE INTEREST RATE SPECI-
8 FIED BY THE PARTIES IF THE RATE IS NOT MANIFESTLY UNREASONABLE AT
9 THE TIME THE TRANSACTION IS ENTERED INTO; OTHERWISE, THE DISCOUNT
10 IS DETERMINED BY A COMMERCIALY REASONABLE RATE THAT TAKES INTO
11 ACCOUNT THE FACTS AND CIRCUMSTANCES OF EACH CASE AT THE TIME THE
12 TRANSACTION WAS ENTERED INTO.

13 (C) "REASONABLY PREDICTABLE" AND "REMAINING ECONOMIC LIFE OF
14 THE GOODS" ARE TO BE DETERMINED WITH REFERENCE TO THE FACTS AND
15 CIRCUMSTANCES AT THE TIME THE TRANSACTION IS ENTERED INTO.

16 (38) "Send" in connection with any writing or notice means
17 to deposit in the mail or deliver for transmission by any other
18 usual means of communication with postage or cost of transmission
19 provided for and properly addressed and in the case of an instru-
20 ment to an address specified thereon or otherwise agreed, or if
21 there be none to any address reasonable under the circumstances.
22 The receipt of any writing or notice within the time at which it
23 would have arrived, if properly sent, has the effect of a proper
24 sending.

25 (39) "Signed" includes any symbol executed or adopted by a
26 party with present intention to authenticate a writing, including
27 a carbon copy of his or her signature.

1 (40) "Surety" includes guarantor.

2 (41) "Telegram" includes a message transmitted by radio,
3 teletype, cable, any mechanical method of transmission, or the
4 like.

5 (42) "Term" means that portion of an agreement which relates
6 to a particular matter.

7 (43) "Unauthorized" signature or indorsement means one made
8 without actual, implied or apparent authority and includes a
9 forgery.

10 (44) "Value". Except as otherwise provided with respect to
11 negotiable instruments and bank collections (sections 3303, 4208,
12 and 4209) a person gives "value" for rights if the person
13 acquires them:

14 (a) In return for a binding commitment to extend credit or
15 for the extension of immediately available credit whether or not
16 drawn upon and whether or not a charge-back is provided for in
17 the event of difficulties in collection; or

18 (b) As security for or in total or partial satisfaction of a
19 preexisting claim; or

20 (c) By accepting delivery pursuant to a preexisting contract
21 for purchase; or

22 (d) Generally, in return for any consideration sufficient to
23 support a simple contract.

24 (45) "Warehouse receipt" means a receipt issued by a person
25 engaged in the business of storing goods for hire.

26 (46) "Written" or "writing" includes printing, typewriting,
27 or any other intentional reduction to tangible form.

ARTICLE 2A LEASES

PART 1. GENERAL PROVISIONS

SEC. 2A101. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "UNIFORM COMMERCIAL CODE - LEASES".

SEC. 2A102. THIS ARTICLE APPLIES TO ANY TRANSACTION, REGARDLESS OF FORM, THAT CREATES A LEASE.

SEC. 2A103. (1) IN THIS ARTICLE UNLESS THE CONTEXT OTHERWISE REQUIRES:

(A) "BUYER IN ORDINARY COURSE OF BUSINESS" MEANS A PERSON WHO IN GOOD FAITH AND WITHOUT KNOWLEDGE THAT THE SALE TO HIM OR HER IS IN VIOLATION OF THE OWNERSHIP RIGHTS OR SECURITY INTEREST OR LEASEHOLD INTEREST OF A THIRD PARTY IN THE GOODS BUYS IN ORDINARY COURSE FROM A PERSON IN THE BUSINESS OF SELLING GOODS OF THAT KIND BUT DOES NOT INCLUDE A PAWNBROKER. "BUYING" MAY BE FOR CASH OR BY EXCHANGE OF OTHER PROPERTY OR ON SECURED OR UNSECURED CREDIT AND INCLUDES RECEIVING GOODS OR DOCUMENTS OF TITLE UNDER A PRE-EXISTING CONTRACT FOR SALE BUT DOES NOT INCLUDE A TRANSFER IN BULK OR AS SECURITY FOR OR IN TOTAL OR PARTIAL SATISFACTION OF A MONEY DEBT.

(B) "CANCELLATION" OCCURS WHEN EITHER PARTY PUTS AN END TO THE LEASE CONTRACT FOR DEFAULT BY THE OTHER PARTY.

(C) "COMMERCIAL UNIT" MEANS SUCH A UNIT OF GOODS AS BY COMMERCIAL USAGE IS A SINGLE WHOLE FOR PURPOSES OF LEASE AND DIVISION OF WHICH MATERIALLY IMPAIRS ITS CHARACTER OR VALUE ON THE MARKET OR IN USE. A COMMERCIAL UNIT MAY BE A SINGLE ARTICLE, AS A MACHINE, OR A SET OF ARTICLES, AS A SUITE OF FURNITURE OR A LINE OF MACHINERY, OR A QUANTITY, AS A GROSS OR CARLOAD, OR ANY

1 OTHER UNIT TREATED IN USE OR IN THE RELEVANT MARKET AS A SINGLE
2 WHOLE.

3 (D) "CONFORMING" MEANS GOODS OR PERFORMANCE UNDER A LEASE
4 CONTRACT THAT ARE IN ACCORDANCE WITH THE OBLIGATIONS UNDER THE
5 LEASE CONTRACT.

6 (E) "CONSUMER LEASE" MEANS A LEASE THAT A LESSOR REGULARLY
7 ENGAGED IN THE BUSINESS OF LEASING OR SELLING MAKES TO A LESSEE
8 WHO IS AN INDIVIDUAL AND WHO TAKES UNDER THE LEASE PRIMARILY FOR
9 A PERSONAL, FAMILY, OR HOUSEHOLD PURPOSE, IF THE TOTAL PAYMENTS
10 TO BE MADE UNDER THE LEASE CONTRACT, EXCLUDING PAYMENTS FOR
11 OPTIONS TO RENEW OR BUY, DO NOT EXCEED \$25,000.00.

12 (F) "FAULT" MEANS WRONGFUL ACT, OMISSION, BREACH, OR
13 DEFAULT.

14 (G) "FINANCE LEASE" MEANS A LEASE WITH RESPECT TO WHICH ALL
15 OF THE FOLLOWING APPLY:

16 (i) THE LESSOR DOES NOT SELECT, MANUFACTURE, OR SUPPLY THE
17 GOODS.

18 (ii) THE LESSOR ACQUIRES THE GOODS OR THE RIGHT TO POSSES-
19 SION AND USE OF THE GOODS IN CONNECTION WITH THE LEASE.

20 (iii) ONE OF THE FOLLOWING OCCURS:

21 (A) THE LESSEE RECEIVES A COPY OF THE CONTRACT BY WHICH THE
22 LESSOR ACQUIRED THE GOODS OR THE RIGHT TO POSSESSION AND USE OF
23 THE GOODS BEFORE SIGNING THE LEASE CONTRACT.

24 (B) THE LESSEE'S APPROVAL OF THE CONTRACT BY WHICH THE
25 LESSOR ACQUIRED THE GOODS OR THE RIGHT TO POSSESSION AND USE OF
26 THE GOODS IS A CONDITION TO EFFECTIVENESS OF THE LEASE CONTRACT.

1 (C) THE LESSEE, BEFORE SIGNING THE LEASE CONTRACT, RECEIVES
2 AN ACCURATE AND COMPLETE STATEMENT DESIGNATING THE PROMISES AND
3 WARRANTIES, AND ANY DISCLAIMERS OF WARRANTIES, LIMITATIONS OR
4 MODIFICATIONS OF REMEDIES, OR LIQUIDATED DAMAGES, INCLUDING THOSE
5 OF A THIRD PARTY, SUCH AS THE MANUFACTURER OF THE GOODS, PROVIDED
6 TO THE LESSOR BY THE PERSON SUPPLYING THE GOODS IN CONNECTION
7 WITH OR AS PART OF THE CONTRACT BY WHICH THE LESSOR ACQUIRED THE
8 GOODS OR THE RIGHT TO POSSESSION AND USE OF THE GOODS.

9 (D) IF THE LEASE IS NOT A CONSUMER LEASE, THE LESSOR, BEFORE
10 THE LESSEE SIGNS THE LEASE CONTRACT, INFORMS THE LESSEE IN WRIT-
11 ING OF THE FOLLOWING:

12 (I) THE IDENTITY OF THE PERSON SUPPLYING THE GOODS TO THE
13 LESSOR, UNLESS THE LESSEE HAS SELECTED THAT PERSON AND DIRECTED
14 THE LESSOR TO ACQUIRE THE GOODS OR THE RIGHT TO POSSESSION AND
15 USE OF THE GOODS FROM THAT PERSON.

16 (II) THE LESSEE IS ENTITLED UNDER THIS ARTICLE TO THE PROM-
17 ISES AND WARRANTIES, INCLUDING THOSE OF ANY THIRD PARTY, PROVIDED
18 TO THE LESSOR BY THE PERSON SUPPLYING THE GOODS IN CONNECTION
19 WITH OR AS PART OF THE CONTRACT BY WHICH THE LESSOR ACQUIRED THE
20 GOODS OR THE RIGHT TO POSSESSION AND USE OF THE GOODS.

21 (III) THE LESSEE MAY COMMUNICATE WITH THE PERSON SUPPLYING
22 THE GOODS TO THE LESSOR AND RECEIVE AN ACCURATE AND COMPLETE
23 STATEMENT OF THOSE PROMISES AND WARRANTIES, INCLUDING ANY DIS-
24 CLAIMERS AND LIMITATIONS OF THEM OR OF REMEDIES.

25 (H) "GOODS" MEANS ALL THINGS THAT ARE MOVABLE AT THE TIME OF
26 IDENTIFICATION TO THE LEASE CONTRACT, OR ARE FIXTURES (SECTION
27 2A309), BUT THE TERM DOES NOT INCLUDE MONEY, DOCUMENTS,

1 INSTRUMENTS, ACCOUNTS, CHATTEL PAPER, GENERAL INTANGIBLES, OR
2 MINERALS OR THE LIKE, INCLUDING OIL AND GAS, BEFORE EXTRACTION.
3 THE TERM ALSO INCLUDES THE UNBORN YOUNG OF ANIMALS.

4 (I) "INSTALLMENT LEASE CONTRACT" MEANS A LEASE CONTRACT THAT
5 AUTHORIZES OR REQUIRES THE DELIVERY OF GOODS IN SEPARATE LOTS TO
6 BE SEPARATELY ACCEPTED, EVEN THOUGH THE LEASE CONTRACT CONTAINS A
7 CLAUSE "EACH DELIVERY IS A SEPARATE LEASE" OR ITS EQUIVALENT.

8 (J) "LEASE" MEANS A TRANSFER OF THE RIGHT TO POSSESSION AND
9 USE OF GOODS FOR A TERM IN RETURN FOR CONSIDERATION, BUT A SALE,
10 INCLUDING A SALE ON APPROVAL OR A SALE OR RETURN, OR RETENTION OR
11 CREATION OF A SECURITY INTEREST IS NOT A LEASE. UNLESS THE CON-
12 TEXT CLEARLY INDICATES OTHERWISE, THE TERM INCLUDES A SUBLEASE.

13 (K) "LEASE AGREEMENT" MEANS THE BARGAIN, WITH RESPECT TO THE
14 LEASE, OF THE LESSOR AND THE LESSEE IN FACT AS FOUND IN THEIR
15 LANGUAGE OR BY IMPLICATION FROM OTHER CIRCUMSTANCES INCLUDING
16 COURSE OF DEALING OR USAGE OF TRADE OR COURSE OF PERFORMANCE AS
17 PROVIDED IN THIS ARTICLE. UNLESS THE CONTEXT CLEARLY INDICATES
18 OTHERWISE, THE TERM INCLUDES A SUBLEASE AGREEMENT.

19 (L) "LEASE CONTRACT" MEANS THE TOTAL LEGAL OBLIGATION THAT
20 RESULTS FROM THE LEASE AGREEMENT AS AFFECTED BY THIS ARTICLE AND
21 ANY OTHER APPLICABLE RULES OF LAW. UNLESS THE CONTEXT CLEARLY
22 INDICATES OTHERWISE, THE TERM INCLUDES A SUBLEASE CONTRACT.

23 (M) "LEASEHOLD INTEREST" MEANS THE INTEREST OF THE LESSOR OR
24 THE LESSEE UNDER A LEASE CONTRACT.

25 (N) "LESSEE" MEANS A PERSON WHO ACQUIRES THE RIGHT TO POS-
26 SESSION AND USE OF GOODS UNDER A LEASE. UNLESS THE CONTEXT
27 CLEARLY INDICATES OTHERWISE, THE TERM INCLUDES A SUBLESSEE.

1 (O) "LESSEE IN ORDINARY COURSE OF BUSINESS" MEANS A PERSON
2 WHO IN GOOD FAITH AND WITHOUT KNOWLEDGE THAT THE LEASE TO HIM OR
3 HER IS IN VIOLATION OF THE OWNERSHIP RIGHTS OR SECURITY INTEREST
4 OR LEASEHOLD INTEREST OF A THIRD PARTY IN THE GOODS LEASES IN
5 ORDINARY COURSE FROM A PERSON IN THE BUSINESS OF SELLING OR LEAS-
6 ING GOODS OF THAT KIND BUT DOES NOT INCLUDE A PAWNBROKER.

7 "LEASING" MAY BE FOR CASH OR BY EXCHANGE OF OTHER PROPERTY OR ON
8 SECURED OR UNSECURED CREDIT AND INCLUDES RECEIVING GOODS OR DOCU-
9 MENTS OF TITLE UNDER A PRE-EXISTING LEASE CONTRACT BUT DOES NOT
10 INCLUDE A TRANSFER IN BULK OR AS SECURITY FOR OR IN TOTAL OR PAR-
11 TIAL SATISFACTION OF A MONEY DEBT.

12 (P) "LESSOR" MEANS A PERSON WHO TRANSFERS THE RIGHT TO POS-
13 SESSION AND USE OF GOODS UNDER A LEASE. UNLESS THE CONTEXT
14 CLEARLY INDICATES OTHERWISE, THE TERM INCLUDES A SUBLESSOR.

15 (Q) "LESSOR'S RESIDUAL INTEREST" MEANS THE LESSOR'S INTEREST
16 IN THE GOODS AFTER EXPIRATION, TERMINATION, OR CANCELLATION OF
17 THE LEASE CONTRACT.

18 (R) "LIEN" MEANS A CHARGE AGAINST OR INTEREST IN GOODS TO
19 SECURE PAYMENT OF A DEBT OR PERFORMANCE OF AN OBLIGATION, BUT THE
20 TERM DOES NOT INCLUDE A SECURITY INTEREST.

21 (S) "LOT" MEANS A PARCEL OR A SINGLE ARTICLE THAT IS THE
22 SUBJECT MATTER OF A SEPARATE LEASE OR DELIVERY, WHETHER OR NOT IT
23 IS SUFFICIENT TO PERFORM THE LEASE CONTRACT.

24 (T) "MERCHANT LESSEE" MEANS A LESSEE THAT IS A MERCHANT WITH
25 RESPECT TO GOODS OF THE KIND SUBJECT TO THE LEASE.

26 (U) "PRESENT VALUE" MEANS THE AMOUNT AS OF A DATE CERTAIN OF
27 1 OR MORE SUMS PAYABLE IN THE FUTURE, DISCOUNTED TO THE DATE

1 CERTAIN. THE DISCOUNT IS DETERMINED BY THE INTEREST RATE
 2 SPECIFIED BY THE PARTIES IF THE RATE WAS NOT MANIFESTLY UNREASON-
 3 ABLE AT THE TIME THE TRANSACTION WAS ENTERED INTO; OTHERWISE, THE
 4 DISCOUNT IS DETERMINED BY A COMMERCIALY REASONABLE RATE THAT
 5 TAKES INTO ACCOUNT THE FACTS AND CIRCUMSTANCES OF EACH CASE AT
 6 THE TIME THE TRANSACTION WAS ENTERED INTO.

7 (V) "PURCHASE" INCLUDES TAKING BY SALE, LEASE, MORTGAGE,
 8 SECURITY INTEREST, PLEDGE, GIFT, OR ANY OTHER VOLUNTARY TRANSAC-
 9 TION CREATING AN INTEREST IN GOODS.

10 (W) "SUBLEASE" MEANS A LEASE OF GOODS THE RIGHT TO POSSES-
 11 SION AND USE OF WHICH WAS ACQUIRED BY THE LESSOR AS A LESSEE
 12 UNDER AN EXISTING LEASE.

13 (X) "SUPPLIER" MEANS A PERSON FROM WHOM A LESSOR BUYS OR
 14 LEASES GOODS TO BE LEASED UNDER A FINANCE LEASE.

15 (Y) "SUPPLY CONTRACT" MEANS A CONTRACT UNDER WHICH A LESSOR
 16 BUYS OR LEASES GOODS TO BE LEASED.

17 (Z) "TERMINATION" OCCURS WHEN EITHER PARTY PURSUANT TO A
 18 POWER CREATED BY AGREEMENT OR LAW PUTS AN END TO THE LEASE CON-
 19 TRACT OTHERWISE THAN FOR DEFAULT.

20 (2) OTHER DEFINITIONS APPLYING TO THIS ARTICLE AND THE SEC-
 21 TIONS IN WHICH THEY APPEAR ARE:

22 "ACCESSIONS".	SECTION 2A310(1).
23 "CONSTRUCTION MORTGAGE".	SECTION 2A309(1)(D).
24 "ENCUMBRANCE".	SECTION 2A309(1)(E).
25 "FIXTURES".	SECTION 2A309(1)(A).
26 "FIXTURE FILING".	SECTION 2A309(1)(B).

- 1 "PURCHASE MONEY LEASE". SECTION 2A309(1)(C).
- 2 (3) THE FOLLOWING DEFINITIONS IN OTHER ARTICLES APPLY TO
- 3 THIS ARTICLE:
- 4 "ACCOUNT". SECTION 9106.
- 5 "BETWEEN MERCHANTS". SECTION 2104(3).
- 6 "BUYER". SECTION 2103(1)(A).
- 7 "CHATTEL PAPER". SECTION 9105(1)(B).
- 8 "CONSUMER GOODS". SECTION 9109(1).
- 9 "DOCUMENT". SECTION 9105(1)(F).
- 10 "ENTRUSTING". SECTION 2403(3).
- 11 "GENERAL INTANGIBLES". SECTION 9106.
- 12 "GOOD FAITH". SECTION 2103(1)(B).
- 13 "INSTRUMENT". SECTION 9105(1)(I).
- 14 "MERCHANT". SECTION 2104(1).
- 15 "MORTGAGE". SECTION 9105(1)(J).
- 16 "PURSUANT TO COMMITMENT". SECTION 9105(1)(K).
- 17 "RECEIPT". SECTION 2103(1)(C).
- 18 "SALE". SECTION 2106(1).
- 19 "SALE ON APPROVAL". SECTION 2326(1)(A).
- 20 "SALE OR RETURN". SECTION 2326(1)(B).
- 21 "SELLER". SECTION 2103(1)(D).
- 22 (4) IN ADDITION ARTICLE 1 CONTAINS GENERAL DEFINITIONS AND
- 23 PRINCIPLES OF CONSTRUCTION AND INTERPRETATION APPLICABLE THROUGH-
- 24 OUT THIS ARTICLE.
- 25 SEC. 2A104. (1) A LEASE, ALTHOUGH SUBJECT TO THIS ARTICLE,
- 26 IS ALSO SUBJECT TO ALL OF THE FOLLOWING:

1 (A) A CERTIFICATE OF TITLE STATUTE OF THIS STATE, INCLUDING,
2 BUT NOT LIMITED TO, ACT NO. 160 OF THE PUBLIC ACTS OF 1976, BEING
3 SECTIONS 281.1201 TO 281.1223 OF THE MICHIGAN COMPILED LAWS; THE
4 MOBILE HOME COMMISSION ACT, ACT NO. 96 OF THE PUBLIC ACTS OF
5 1987, BEING SECTIONS 125.2301 TO 125.2349 OF THE MICHIGAN
6 COMPILED LAWS; AND CHAPTER II OF THE MICHIGAN VEHICLE CODE, ACT
7 NO. 300 OF THE PUBLIC ACTS OF 1949, BEING SECTIONS 257.201 TO
8 257.259 OF THE MICHIGAN COMPILED LAWS.

9 (B) A CERTIFICATE OF TITLE STATUTE OF ANOTHER JURISDICTION
10 (SECTION 2A105).

11 (C) THE MICHIGAN CONSUMER PROTECTION ACT, ACT NO. 331 OF THE
12 PUBLIC ACTS OF 1976, BEING SECTIONS 445.901 TO 445.922 OF THE
13 MICHIGAN COMPILED LAWS.

14 (2) EXCEPT FOR SECTIONS 2A105, 2A304(3), AND 2A305(3), IN
15 CASE OF CONFLICT BETWEEN THIS ARTICLE AND A STATUTE REFERRED TO
16 IN SUBSECTION (1), THE STATUTE CONTROLS.

17 (3) FAILURE TO COMPLY WITH ANY APPLICABLE STATUTE HAS ONLY
18 THE EFFECT SPECIFIED IN THE STATUTE.

19 SEC. 2A105. SUBJECT TO THE PROVISIONS OF SECTIONS 2A304(3)
20 AND 2A305(3), WITH RESPECT TO GOODS COVERED BY A CERTIFICATE OF
21 TITLE ISSUED UNDER A STATUTE OF THIS STATE OR OF ANOTHER JURIS-
22 DICTION, COMPLIANCE AND THE EFFECT OF COMPLIANCE OR NONCOMPLIANCE
23 WITH A CERTIFICATE OF TITLE STATUTE ARE GOVERNED BY THE LAW OF
24 THE JURISDICTION ISSUING THE CERTIFICATE UNTIL THE EARLIER OF THE
25 FOLLOWING:

26 (A) SURRENDER OF THE CERTIFICATE.

1 (B) FOUR MONTHS AFTER THE GOODS ARE REMOVED FROM THAT
2 JURISDICTION AND THEREAFTER UNTIL A NEW CERTIFICATE OF TITLE IS
3 ISSUED BY ANOTHER JURISDICTION.

4 SEC. 2A106. (1) IF THE LAW CHOSEN BY THE PARTIES TO A CON-
5 SUMER LEASE IS THAT OF A JURISDICTION OTHER THAN A JURISDICTION
6 IN WHICH THE LESSEE RESIDES AT THE TIME THE LEASE AGREEMENT
7 BECOMES ENFORCEABLE OR WITHIN 30 DAYS THEREAFTER OR IN WHICH THE
8 GOODS ARE TO BE USED, THE CHOICE IS NOT ENFORCEABLE.

9 (2) IF THE JUDICIAL FORUM CHOSEN BY THE PARTIES TO A CON-
10 SUMER LEASE IS A FORUM THAT WOULD NOT OTHERWISE HAVE JURISDICTION
11 OVER THE LESSEE, THE CHOICE IS NOT ENFORCEABLE.

12 SEC. 2A107. A CLAIM OR RIGHT ARISING OUT OF AN ALLEGED
13 DEFAULT OR BREACH OF WARRANTY MAY BE DISCHARGED IN WHOLE OR IN
14 PART WITHOUT CONSIDERATION BY A WRITTEN WAIVER OR RENUNCIATION
15 SIGNED AND DELIVERED BY THE AGGRIEVED PARTY.

16 SEC. 2A108. (1) IF A COURT, AS A MATTER OF LAW, FINDS A
17 LEASE CONTRACT OR ANY CLAUSE OF A LEASE CONTRACT TO HAVE BEEN
18 UNCONSCIONABLE AT THE TIME IT WAS MADE, THE COURT MAY REFUSE TO
19 ENFORCE THE LEASE CONTRACT, OR IT MAY ENFORCE THE REMAINDER OF
20 THE LEASE CONTRACT WITHOUT THE UNCONSCIONABLE CLAUSE, OR IT MAY
21 SO LIMIT THE APPLICATION OF ANY UNCONSCIONABLE CLAUSE AS TO AVOID
22 ANY UNCONSCIONABLE RESULT.

23 (2) WITH RESPECT TO A CONSUMER LEASE, IF A COURT, AS A
24 MATTER OF LAW, FINDS THAT A LEASE CONTRACT OR ANY CLAUSE OF A
25 LEASE CONTRACT HAS BEEN INDUCED BY UNCONSCIONABLE CONDUCT OR THAT
26 UNCONSCIONABLE CONDUCT HAS OCCURRED IN THE COLLECTION OF A CLAIM

1 ARISING FROM A LEASE CONTRACT, THE COURT MAY GRANT APPROPRIATE
2 RELIEF.

3 (3) BEFORE MAKING A FINDING OF UNCONSCIONABILITY UNDER
4 SUBSECTION (1) OR (2), THE COURT, ON ITS OWN MOTION OR THAT OF A
5 PARTY, SHALL AFFORD THE PARTIES A REASONABLE OPPORTUNITY TO
6 PRESENT EVIDENCE AS TO THE SETTING, PURPOSE, AND EFFECT OF THE
7 LEASE CONTRACT OR CLAUSE THEREOF, OR OF THE CONDUCT.

8 (4) IN AN ACTION IN WHICH THE LESSEE CLAIMS UNCONSCIONABIL-
9 ITY WITH RESPECT TO A CONSUMER LEASE, ALL OF THE FOLLOWING
10 APPLY:

11 (A) IF THE COURT FINDS UNCONSCIONABILITY UNDER
12 SUBSECTION (1) OR (2), THE COURT SHALL AWARD REASONABLE
13 ATTORNEY'S FEES TO THE LESSEE.

14 (B) IF THE COURT DOES NOT FIND UNCONSCIONABILITY AND THE
15 LESSEE CLAIMING UNCONSCIONABILITY HAS BROUGHT OR MAINTAINED AN
16 ACTION HE OR SHE KNEW TO BE GROUNDLESS, THE COURT SHALL AWARD
17 REASONABLE ATTORNEY'S FEES TO THE PARTY AGAINST WHOM THE CLAIM IS
18 MADE.

19 (C) IN DETERMINING ATTORNEY'S FEES, THE AMOUNT OF THE RECOV-
20 ERY ON BEHALF OF THE CLAIMANT UNDER SUBSECTIONS (1) AND (2) IS
21 NOT CONTROLLING.

22 SEC. 2A109. (1) A TERM PROVIDING THAT 1 PARTY OR HIS OR HER
23 SUCCESSOR IN INTEREST MAY ACCELERATE PAYMENT OR PERFORMANCE OR
24 REQUIRE COLLATERAL OR ADDITIONAL COLLATERAL "AT WILL" OR WHEN HE
25 OR SHE DEEMS HIMSELF OR HERSELF INSECURE OR IN WORDS OF SIMILAR
26 IMPORT MUST BE CONSTRUED TO MEAN THAT HE OR SHE HAS POWER TO DO

1 SO ONLY IF HE OR SHE IN GOOD FAITH BELIEVES THAT THE PROSPECT OF
2 PAYMENT OR PERFORMANCE IS IMPAIRED.

3 (2) WITH RESPECT TO A CONSUMER LEASE, THE BURDEN OF ESTAB-
4 LISHING GOOD FAITH UNDER SUBSECTION (1) IS ON THE PARTY WHO EXER-
5 CISED THE POWER; OTHERWISE, THE BURDEN OF ESTABLISHING LACK OF
6 GOOD FAITH IS ON THE PARTY AGAINST WHOM THE POWER HAS BEEN
7 EXERCISED.

8 PART 2. FORMATION AND CONSTRUCTION OF LEASE CONTRACT

9 SEC. 2A201. (1) A LEASE CONTRACT IS NOT ENFORCEABLE BY WAY
10 OF ACTION OR DEFENSE UNLESS 1 OF THE FOLLOWING APPLIES:

11 (A) THE TOTAL PAYMENTS TO BE MADE UNDER THE LEASE CONTRACT,
12 EXCLUDING PAYMENTS FOR OPTIONS TO RENEW OR BUY, ARE LESS THAN
13 \$1,000.00.

14 (B) THERE IS A WRITING, SIGNED BY THE PARTY AGAINST WHOM
15 ENFORCEMENT IS SOUGHT OR BY THAT PARTY'S AUTHORIZED AGENT, SUFFI-
16 CIENT TO INDICATE THAT A LEASE CONTRACT HAS BEEN MADE BETWEEN THE
17 PARTIES AND TO DESCRIBE THE GOODS LEASED AND THE LEASE TERM.

18 (2) ANY DESCRIPTION OF LEASED GOODS OR OF THE LEASE TERM IS
19 SUFFICIENT AND SATISFIES SUBSECTION (1)(B), WHETHER OR NOT IT IS
20 SPECIFIC, IF IT REASONABLY IDENTIFIES WHAT IS DESCRIBED.

21 (3) A WRITING IS NOT INSUFFICIENT BECAUSE IT OMITTS OR INCOR-
22 RECTLY STATES A TERM AGREED UPON, BUT THE LEASE CONTRACT IS NOT
23 ENFORCEABLE UNDER SUBSECTION (1)(B) BEYOND THE LEASE TERM AND THE
24 QUANTITY OF GOODS SHOWN IN THE WRITING.

25 (4) A LEASE CONTRACT THAT DOES NOT SATISFY THE REQUIREMENTS
26 OF SUBSECTION (1), BUT WHICH IS VALID IN OTHER RESPECTS, IS
27 ENFORCEABLE FOR ANY OF THE FOLLOWING:

1 (A) IF THE GOODS ARE TO BE SPECIALLY MANUFACTURED OR
2 OBTAINED FOR THE LESSEE AND ARE NOT SUITABLE FOR LEASE OR SALE TO
3 OTHERS IN THE ORDINARY COURSE OF THE LESSOR'S BUSINESS, AND THE
4 LESSOR, BEFORE NOTICE OF REPUDIATION IS RECEIVED AND UNDER CIR-
5 CUMSTANCES THAT REASONABLY INDICATE THAT THE GOODS ARE FOR THE
6 LESSEE, HAS MADE EITHER A SUBSTANTIAL BEGINNING OF THEIR MANUFAC-
7 TURE OR COMMITMENTS FOR THEIR PROCUREMENT.

8 (B) IF THE PARTY AGAINST WHOM ENFORCEMENT IS SOUGHT ADMITS
9 IN THAT PARTY'S PLEADING, TESTIMONY, OR OTHERWISE IN COURT THAT A
10 LEASE CONTRACT WAS MADE, BUT THE LEASE CONTRACT IS NOT ENFORCE-
11 ABLE UNDER THIS PROVISION BEYOND THE QUANTITY OF GOODS ADMITTED.

12 (C) WITH RESPECT TO GOODS THAT HAVE BEEN RECEIVED AND
13 ACCEPTED BY THE LESSEE.

14 (5) THE LEASE TERM UNDER A LEASE CONTRACT REFERRED TO IN
15 SUBSECTION (4) IS DETERMINED AS FOLLOWS:

16 (A) TERM SPECIFIED IF THERE IS A WRITING SIGNED BY THE PARTY
17 AGAINST WHOM ENFORCEMENT IS SOUGHT OR BY THAT PARTY'S AUTHORIZED
18 AGENT SPECIFYING THE LEASE TERM.

19 (B) IF THE PARTY AGAINST WHOM ENFORCEMENT IS SOUGHT ADMITS
20 IN THAT PARTY'S PLEADING, TESTIMONY, OR OTHERWISE IN COURT A
21 LEASE TERM, THE TERM SO ADMITTED.

22 (C) A REASONABLE LEASE TERM.

23 SEC. 2A202. TERMS WITH RESPECT TO WHICH THE CONFIRMATORY
24 MEMORANDA OF THE PARTIES AGREE OR WHICH ARE OTHERWISE SET FORTH
25 IN A WRITING INTENDED BY THE PARTIES AS A FINAL EXPRESSION OF
26 THEIR AGREEMENT WITH RESPECT TO SUCH TERMS AS ARE INCLUDED
27 THEREIN MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR

1 AGREEMENT OR OF A CONTEMPORANEOUS ORAL AGREEMENT BUT MAY BE
2 EXPLAINED OR SUPPLEMENTED BY ANY OF THE FOLLOWING:

3 (A) BY COURSE OF DEALING OR USAGE OF TRADE OR BY COURSE OF
4 PERFORMANCE.

5 (B) BY EVIDENCE OF CONSISTENT ADDITIONAL TERMS UNLESS THE
6 COURT FINDS THE WRITING TO HAVE BEEN INTENDED ALSO AS A COMPLETE
7 AND EXCLUSIVE STATEMENT OF THE TERMS OF THE AGREEMENT.

8 SEC. 2A203. THE AFFIXING OF A SEAL TO A WRITING EVIDENCING
9 A LEASE CONTRACT OR AN OFFER TO ENTER INTO A LEASE CONTRACT DOES
10 NOT RENDER THE WRITING A SEALED INSTRUMENT AND THE LAW WITH
11 RESPECT TO SEALED INSTRUMENTS DOES NOT APPLY TO THE LEASE CON-
12 TRACT OR OFFER.

13 SEC. 2A204. (1) A LEASE CONTRACT MAY BE MADE IN ANY MANNER
14 SUFFICIENT TO SHOW AGREEMENT, INCLUDING CONDUCT BY BOTH PARTIES
15 WHICH RECOGNIZES THE EXISTENCE OF A LEASE CONTRACT.

16 (2) AN AGREEMENT SUFFICIENT TO CONSTITUTE A LEASE CONTRACT
17 MAY BE FOUND ALTHOUGH THE MOMENT OF ITS MAKING IS UNDETERMINED.

18 (3) ALTHOUGH 1 OR MORE TERMS ARE LEFT OPEN, A LEASE CONTRACT
19 DOES NOT FAIL FOR INDEFINITENESS IF THE PARTIES HAVE INTENDED TO
20 MAKE A LEASE CONTRACT AND THERE IS A REASONABLY CERTAIN BASIS FOR
21 GIVING AN APPROPRIATE REMEDY.

22 SEC. 2A205. AN OFFER BY A MERCHANT TO LEASE GOODS TO OR
23 FROM ANOTHER PERSON IN A SIGNED WRITING THAT BY ITS TERMS GIVES
24 ASSURANCE IT WILL BE HELD OPEN IS NOT REVOCABLE, FOR LACK OF CON-
25 sideration, DURING THE TIME STATED OR, IF NO TIME IS STATED, FOR
26 A REASONABLE TIME, BUT IN NO EVENT MAY THE PERIOD OF
27 IRREVOCABILITY EXCEED 3 MONTHS. ANY SUCH TERM OF ASSURANCE ON A

1 FORM SUPPLIED BY THE OFFEREE MUST BE SEPARATELY SIGNED BY THE
2 OFFEROR.

3 SEC. 2A206. (1) UNLESS OTHERWISE UNAMBIGUOUSLY INDICATED BY
4 THE LANGUAGE OR CIRCUMSTANCES, AN OFFER TO MAKE A LEASE CONTRACT
5 MUST BE CONSTRUED AS INVITING ACCEPTANCE IN ANY MANNER AND BY ANY
6 MEDIUM REASONABLE IN THE CIRCUMSTANCES.

7 (2) IF THE BEGINNING OF A REQUESTED PERFORMANCE IS A REASON-
8 ABLE MODE OF ACCEPTANCE, AN OFFEROR WHO IS NOT NOTIFIED OF ACCEP-
9 TANCE WITHIN A REASONABLE TIME MAY TREAT THE OFFER AS HAVING
10 LAPSED BEFORE ACCEPTANCE.

11 SEC. 2A207. (1) IF A LEASE CONTRACT INVOLVES REPEATED OCCA-
12 SIONS FOR PERFORMANCE BY EITHER PARTY WITH KNOWLEDGE OF THE
13 NATURE OF THE PERFORMANCE AND OPPORTUNITY FOR OBJECTION TO IT BY
14 THE OTHER, ANY COURSE OF PERFORMANCE ACCEPTED OR ACQUIESCED IN
15 WITHOUT OBJECTION IS RELEVANT TO DETERMINE THE MEANING OF THE
16 LEASE AGREEMENT.

17 (2) THE EXPRESS TERMS OF A LEASE AGREEMENT AND ANY COURSE OF
18 PERFORMANCE, AS WELL AS ANY COURSE OF DEALING AND USAGE OF TRADE,
19 MUST BE CONSTRUED WHENEVER REASONABLE AS CONSISTENT WITH EACH
20 OTHER, BUT IF THAT CONSTRUCTION IS UNREASONABLE, EXPRESS TERMS
21 CONTROL COURSE OF PERFORMANCE, COURSE OF PERFORMANCE CONTROLS
22 BOTH COURSE OF DEALING AND USAGE OF TRADE, AND COURSE OF DEALING
23 CONTROLS USAGE OF TRADE.

24 (3) SUBJECT TO THE PROVISIONS OF SECTION 2A-208 ON MODIFICA-
25 TION AND WAIVER, COURSE OF PERFORMANCE IS RELEVANT TO SHOW A
26 WAIVER OR MODIFICATION OF ANY TERM INCONSISTENT WITH THE COURSE
27 OF PERFORMANCE.

1 SEC. 2A208. (1) AN AGREEMENT MODIFYING A LEASE CONTRACT
2 NEEDS NO CONSIDERATION TO BE BINDING.

3 (2) A SIGNED LEASE AGREEMENT THAT EXCLUDES MODIFICATION OR
4 RESCISSION EXCEPT BY A SIGNED WRITING MAY NOT BE OTHERWISE MODI-
5 FIED OR RESCINDED, BUT, EXCEPT AS BETWEEN MERCHANTS, SUCH A
6 REQUIREMENT ON A FORM SUPPLIED BY A MERCHANT MUST BE SEPARATELY
7 SIGNED BY THE OTHER PARTY.

8 (3) ALTHOUGH AN ATTEMPT AT MODIFICATION OR RESCISSION DOES
9 NOT SATISFY THE REQUIREMENTS OF SUBSECTION (2), IT MAY OPERATE AS
10 A WAIVER.

11 (4) A PARTY WHO HAS MADE A WAIVER AFFECTING AN EXECUTORY
12 PORTION OF A LEASE CONTRACT MAY RETRACT THE WAIVER BY REASONABLE
13 NOTIFICATION RECEIVED BY THE OTHER PARTY THAT STRICT PERFORMANCE
14 WILL BE REQUIRED OF ANY TERM WAIVED, UNLESS THE RETRACTION WOULD
15 BE UNJUST IN VIEW OF A MATERIAL CHANGE OF POSITION IN RELIANCE ON
16 THE WAIVER.

17 SEC. 2A209. (1) THE BENEFIT OF A SUPPLIER'S PROMISES TO THE
18 LESSOR UNDER THE SUPPLY CONTRACT AND OF ALL WARRANTIES, WHETHER
19 EXPRESS OR IMPLIED, INCLUDING THOSE OF ANY THIRD PARTY PROVIDED
20 IN CONNECTION WITH OR AS PART OF THE SUPPLY CONTRACT, EXTENDS TO
21 THE LESSEE TO THE EXTENT OF THE LESSEE'S LEASEHOLD INTEREST UNDER
22 A FINANCE LEASE RELATED TO THE SUPPLY CONTRACT, BUT IS SUBJECT TO
23 THE TERMS OF THE WARRANTY AND OF THE SUPPLY CONTRACT AND ALL
24 DEFENSES OR CLAIMS ARISING THEREFROM.

25 (2) THE EXTENSION OF THE BENEFIT OF A SUPPLIER'S PROMISES
26 AND OF WARRANTIES TO THE LESSEE DOES NOT DO EITHER OF THE
27 FOLLOWING:

1 (A) MODIFY THE RIGHTS AND OBLIGATIONS OF THE PARTIES TO THE
2 SUPPLY CONTRACT, WHETHER ARISING THEREFROM OR OTHERWISE.

3 (B) IMPOSE ANY DUTY OR LIABILITY UNDER THE SUPPLY CONTRACT
4 ON THE LESSEE.

5 (3) ANY MODIFICATION OR RESCISSION OF THE SUPPLY CONTRACT BY
6 THE SUPPLIER AND THE LESSOR IS EFFECTIVE BETWEEN THE SUPPLIER AND
7 THE LESSEE UNLESS, BEFORE THE MODIFICATION OR RESCISSION, THE
8 SUPPLIER HAS RECEIVED NOTICE THAT THE LESSEE HAS ENTERED INTO A
9 FINANCE LEASE RELATED TO THE SUPPLY CONTRACT. IF THE MODIFICA-
10 TION OR RESCISSION IS EFFECTIVE BETWEEN THE SUPPLIER AND THE
11 LESSEE, THE LESSOR IS DEEMED TO HAVE ASSUMED, IN ADDITION TO THE
12 OBLIGATIONS OF THE LESSOR TO THE LESSEE UNDER THE LEASE CONTRACT,
13 PROMISES OF THE SUPPLIER TO THE LESSOR AND WARRANTIES THAT WERE
14 SO MODIFIED OR RESCINDED AS THEY EXISTED AND WERE AVAILABLE TO
15 THE LESSEE BEFORE MODIFICATION OR RESCISSION.

16 (4) IN ADDITION TO THE EXTENSION OF THE BENEFIT OF THE
17 SUPPLIER'S PROMISES AND OF WARRANTIES TO THE LESSEE UNDER SUBSEC-
18 TION (1), THE LESSEE RETAINS ALL RIGHTS THAT THE LESSEE MAY HAVE
19 AGAINST THE SUPPLIER WHICH ARISE FROM AN AGREEMENT BETWEEN THE
20 LESSEE AND THE SUPPLIER OR UNDER OTHER LAW.

21 SEC. 2A210. (1) EXPRESS WARRANTIES BY THE LESSOR ARE CRE-
22 ATED AS FOLLOWS:

23 (A) ANY AFFIRMATION OF FACT OR PROMISE MADE BY THE LESSOR TO
24 THE LESSEE WHICH RELATES TO THE GOODS AND BECOMES PART OF THE
25 BASIS OF THE BARGAIN CREATES AN EXPRESS WARRANTY THAT THE GOODS
26 WILL CONFORM TO THE AFFIRMATION OR PROMISE.

1 (B) ANY DESCRIPTION OF THE GOODS WHICH IS MADE PART OF THE
2 BASIS OF THE BARGAIN CREATES AN EXPRESS WARRANTY THAT THE GOODS
3 WILL CONFORM TO THE DESCRIPTION.

4 (C) ANY SAMPLE OR MODEL THAT IS MADE PART OF THE BASIS OF
5 THE BARGAIN CREATES AN EXPRESS WARRANTY THAT THE WHOLE OF THE
6 GOODS WILL CONFORM TO THE SAMPLE OR MODEL.

7 (2) IT IS NOT NECESSARY TO THE CREATION OF AN EXPRESS WAR-
8 RANTY THAT THE LESSOR USE FORMAL WORDS, SUCH AS "WARRANT" OR
9 "GUARANTEE", OR THAT THE LESSOR HAVE A SPECIFIC INTENTION TO MAKE
10 A WARRANTY, BUT AN AFFIRMATION MERELY OF THE VALUE OF THE GOODS
11 OR A STATEMENT PURPORTING TO BE MERELY THE LESSOR'S OPINION OR
12 COMMENDATION OF THE GOODS DOES NOT CREATE A WARRANTY.

13 SEC. 2A211. (1) THERE IS IN A LEASE CONTRACT A WARRANTY
14 THAT FOR THE LEASE TERM NO PERSON HOLDS A CLAIM TO OR INTEREST IN
15 THE GOODS THAT AROSE FROM AN ACT OR OMISSION OF THE LESSOR, OTHER
16 THAN A CLAIM BY WAY OF INFRINGEMENT OR THE LIKE, WHICH WILL
17 INTERFERE WITH THE LESSEE'S ENJOYMENT OF ITS LEASEHOLD INTEREST.

18 (2) EXCEPT IN A FINANCE LEASE, THERE IS IN A LEASE CONTRACT
19 BY A LESSOR WHO IS A MERCHANT REGULARLY DEALING IN GOODS OF THE
20 KIND A WARRANTY THAT THE GOODS ARE DELIVERED FREE OF THE RIGHTFUL
21 CLAIM OF ANY PERSON BY WAY OF INFRINGEMENT OR THE LIKE.

22 (3) A LESSEE WHO FURNISHES SPECIFICATIONS TO A LESSOR OR A
23 SUPPLIER SHALL HOLD THE LESSOR AND THE SUPPLIER HARMLESS AGAINST
24 ANY CLAIM BY WAY OF INFRINGEMENT OR THE LIKE THAT ARISES OUT OF
25 COMPLIANCE WITH THE SPECIFICATIONS.

1 SEC. 2A212. (1) EXCEPT IN A FINANCE LEASE, A WARRANTY THAT
2 THE GOODS WILL BE MERCHANTABLE IS IMPLIED IN A LEASE CONTRACT IF
3 THE LESSOR IS A MERCHANT WITH RESPECT TO GOODS OF THAT KIND.

4 (2) GOODS TO BE MERCHANTABLE MUST BE AT LEAST ALL OF THE
5 FOLLOWING:

6 (A) PASS WITHOUT OBJECTION IN THE TRADE UNDER THE DESCRIP-
7 TION IN THE LEASE AGREEMENT.

8 (B) IN THE CASE OF FUNGIBLE GOODS, ARE OF FAIR AVERAGE QUAL-
9 ITY WITHIN THE DESCRIPTION.

10 (C) ARE FIT FOR THE ORDINARY PURPOSES FOR WHICH GOODS OF
11 THAT TYPE ARE USED.

12 (D) RUN, WITHIN THE VARIATION PERMITTED BY THE LEASE AGREE-
13 MENT, OF EVEN KIND, QUALITY, AND QUANTITY WITHIN EACH UNIT AND
14 AMONG ALL UNITS INVOLVED.

15 (E) ARE ADEQUATELY CONTAINED, PACKAGED, AND LABELED AS THE
16 LEASE AGREEMENT MAY REQUIRE.

17 (F) CONFORM TO ANY PROMISES OR AFFIRMATIONS OF FACT MADE ON
18 THE CONTAINER OR LABEL.

19 (3) OTHER IMPLIED WARRANTIES MAY ARISE FROM COURSE OF DEAL-
20 ING OR USAGE OF TRADE.

21 SEC. 2A213. EXCEPT IN A FINANCE LEASE, IF THE LESSOR AT THE
22 TIME THE LEASE CONTRACT IS MADE HAS REASON TO KNOW OF ANY PARTIC-
23 ULAR PURPOSE FOR WHICH THE GOODS ARE REQUIRED AND THAT THE LESSEE
24 IS RELYING ON THE LESSOR'S SKILL OR JUDGMENT TO SELECT OR FURNISH
25 SUITABLE GOODS, THERE IS IN THE LEASE CONTRACT AN IMPLIED WAR-
26 RANTY THAT THE GOODS WILL BE FIT FOR THAT PURPOSE.

1 SEC. 2A214. (1) WORDS OR CONDUCT RELEVANT TO THE CREATION
2 OF AN EXPRESS WARRANTY AND WORDS OR CONDUCT TENDING TO NEGATE OR
3 LIMIT A WARRANTY MUST BE CONSTRUED WHEREVER REASONABLE AS CONSIS-
4 TENT WITH EACH OTHER, BUT, SUBJECT TO THE PROVISIONS OF SECTION
5 2A202 ON PAROL OR EXTRINSIC EVIDENCE, NEGATION OR LIMITATION IS
6 INOPERATIVE TO THE EXTENT THAT THE CONSTRUCTION IS UNREASONABLE.

7 (2) SUBJECT TO SUBSECTION (3), TO EXCLUDE OR MODIFY THE
8 IMPLIED WARRANTY OF MERCHANTABILITY OR ANY PART OF IT, THE LAN-
9 GUAGE MUST MENTION "MERCHANTABILITY", BE BY A WRITING, AND BE
10 CONSPICUOUS. SUBJECT TO SUBSECTION (3), TO EXCLUDE OR MODIFY ANY
11 IMPLIED WARRANTY OF FITNESS, THE EXCLUSION MUST BE BY A WRITING
12 AND BE CONSPICUOUS. LANGUAGE TO EXCLUDE ALL IMPLIED WARRANTIES
13 OF FITNESS IS SUFFICIENT IF IT IS IN WRITING, IS CONSPICUOUS, AND
14 STATES, FOR EXAMPLE, "THERE IS NO WARRANTY THAT THE GOODS WILL BE
15 FIT FOR A PARTICULAR PURPOSE".

16 (3) NOTWITHSTANDING SUBSECTION (2), BUT SUBJECT TO SUBSEC-
17 TION (4), ALL OF THE FOLLOWING APPLY:

18 (A) UNLESS THE CIRCUMSTANCES INDICATE OTHERWISE, ALL IMPLIED
19 WARRANTIES ARE EXCLUDED BY EXPRESSIONS LIKE "AS IS", OR "WITH ALL
20 FAULTS", OR BY OTHER LANGUAGE THAT IN COMMON UNDERSTANDING CALLS
21 THE LESSEE'S ATTENTION TO THE EXCLUSION OF WARRANTIES AND MAKES
22 PLAIN THAT THERE IS NO IMPLIED WARRANTY, IF IN WRITING AND
23 CONSPICUOUS.

24 (B) IF THE LESSEE BEFORE ENTERING INTO THE LEASE CONTRACT
25 HAS EXAMINED THE GOODS OR THE SAMPLE OR MODEL AS FULLY AS DESIRED
26 OR HAS REFUSED TO EXAMINE THE GOODS, THERE IS NO IMPLIED WARRANTY

1 WITH REGARD TO DEFECTS THAT AN EXAMINATION OUGHT IN THE
2 CIRCUMSTANCES TO HAVE REVEALED.

3 (C) AN IMPLIED WARRANTY MAY ALSO BE EXCLUDED OR MODIFIED BY
4 COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE.

5 (4) TO EXCLUDE OR MODIFY A WARRANTY AGAINST INTERFERENCE OR
6 AGAINST INFRINGEMENT (SECTION 2A211) OR ANY PART OF IT, THE LAN-
7 GUAGE MUST BE SPECIFIC, BE BY A WRITING, AND BE CONSPICUOUS,
8 UNLESS THE CIRCUMSTANCES, INCLUDING COURSE OF PERFORMANCE, COURSE
9 OF DEALING, OR USAGE OF TRADE, GIVE THE LESSEE REASON TO KNOW
10 THAT THE GOODS ARE BEING LEASED SUBJECT TO A CLAIM OR INTEREST OF
11 ANY PERSON.

12 SEC. 2A215. WARRANTIES, WHETHER EXPRESS OR IMPLIED, MUST BE
13 CONSTRUED AS CONSISTENT WITH EACH OTHER AND AS CUMULATIVE, BUT IF
14 THAT CONSTRUCTION IS UNREASONABLE, THE INTENTION OF THE PARTIES
15 DETERMINES WHICH WARRANTY IS DOMINANT. IN ASCERTAINING THAT
16 INTENTION, THE FOLLOWING RULES APPLY:

17 (A) EXACT OR TECHNICAL SPECIFICATIONS DISPLACE AN INCONSIS-
18 TENT SAMPLE OR MODEL OR GENERAL LANGUAGE OF DESCRIPTION.

19 (B) A SAMPLE FROM AN EXISTING BULK DISPLACES INCONSISTENT
20 GENERAL LANGUAGE OF DESCRIPTION.

21 (C) EXPRESS WARRANTIES DISPLACE INCONSISTENT IMPLIED WARRANT-
22 TIES OTHER THAN AN IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR
23 PURPOSE.

24 SEC. 2A216. A WARRANTY TO OR FOR THE BENEFIT OF A LESSEE
25 UNDER THIS ARTICLE, WHETHER EXPRESS OR IMPLIED, EXTENDS TO ANY
26 NATURAL PERSON WHO IS IN THE FAMILY OR HOUSEHOLD OF THE LESSEE OR
27 WHO IS A GUEST IN THE LESSEE'S HOME IF IT IS REASONABLE TO EXPECT

1 THAT SUCH PERSON MAY USE, CONSUME, OR BE AFFECTED BY THE GOODS
2 AND WHO IS INJURED IN PERSON BY BREACH OF THE WARRANTY. THIS
3 SECTION DOES NOT DISPLACE PRINCIPLES OF LAW AND EQUITY THAT
4 EXTEND A WARRANTY TO OR FOR THE BENEFIT OF A LESSEE TO OTHER
5 PERSONS. THE OPERATION OF THIS SECTION MAY NOT BE EXCLUDED, MOD-
6 IFIED, OR LIMITED, BUT AN EXCLUSION, MODIFICATION, OR LIMITATION
7 OF THE WARRANTY, INCLUDING ANY WITH RESPECT TO RIGHTS AND REME-
8 DIES, EFFECTIVE AGAINST THE LESSEE IS ALSO EFFECTIVE AGAINST ANY
9 BENEFICIARY DESIGNATED UNDER THIS SECTION.

10 SEC. 2A217. IDENTIFICATION OF GOODS AS GOODS TO WHICH A
11 LEASE CONTRACT REFERS MAY BE MADE AT ANY TIME AND IN ANY MANNER
12 EXPLICITLY AGREED TO BE THE PARTIES. IN THE ABSENCE OF EXPLICIT
13 AGREEMENT, THE FOLLOWING DETERMINES WHEN IDENTIFICATION OCCURS:

14 (A) WHEN THE LEASE CONTRACT IS MADE IF THE LEASE CONTRACT IS
15 FOR A LEASE OF GOODS THAT ARE EXISTING AND IDENTIFIED.

16 (B) WHEN THE GOODS ARE SHIPPED, MARKED, OR OTHERWISE DESIG-
17 NATED BY THE LESSOR AS GOODS TO WHICH THE LEASE CONTRACT REFERS,
18 IF THE LEASE CONTRACT IS FOR A LEASE OF GOODS THAT ARE NOT EXIST-
19 ING AND IDENTIFIED.

20 (C) WHEN THE YOUNG ARE CONCEIVED, IF THE LEASE CONTRACT IS
21 FOR A LEASE OF UNBORN YOUNG OF ANIMALS.

22 SEC. 2A218. (1) A LESSEE OBTAINS AN INSURABLE INTEREST WHEN
23 EXISTING GOODS ARE IDENTIFIED TO THE LEASE CONTRACT EVEN THOUGH
24 THE GOODS IDENTIFIED ARE NONCONFORMING AND THE LESSEE HAS AN
25 OPTION TO REJECT THEM.

26 (2) IF A LESSEE HAS AN INSURABLE INTEREST ONLY BY REASON OF
27 THE LESSOR'S IDENTIFICATION OF THE GOODS, THE LESSOR, UNTIL

1 DEFAULT OR INSOLVENCY OR NOTIFICATION TO THE LESSEE THAT
2 IDENTIFICATION IS FINAL, MAY SUBSTITUTE OTHER GOODS FOR THOSE
3 IDENTIFIED.

4 (3) NOTWITHSTANDING A LESSEE'S INSURABLE INTEREST UNDER SUB-
5 SECTIONS (1) AND (2), THE LESSOR RETAINS AN INSURABLE INTEREST
6 UNTIL AN OPTION TO BUY HAS BEEN EXERCISED BY THE LESSEE AND RISK
7 OF LOSS HAS PASSED TO THE LESSEE.

8 (4) NOTHING IN THIS SECTION IMPAIRS ANY INSURABLE INTEREST
9 RECOGNIZED UNDER ANY OTHER STATUTE OR RULE OF LAW.

10 (5) THE PARTIES BY AGREEMENT MAY DETERMINE THAT 1 OR MORE
11 PARTIES HAVE AN OBLIGATION TO OBTAIN AND PAY FOR INSURANCE COVER-
12 ING THE GOODS AND BY AGREEMENT MAY DETERMINE THE BENEFICIARY OF
13 THE PROCEEDS OF THE INSURANCE.

14 SEC. 2A219. (1) EXCEPT IN THE CASE OF A FINANCE LEASE, RISK
15 OF LOSS IS RETAINED BY THE LESSOR AND DOES NOT PASS TO THE
16 LESSEE. IN THE CASE OF A FINANCE LEASE, RISK OF LOSS PASSES TO
17 THE LESSEE.

18 (2) SUBJECT TO THE PROVISIONS OF THIS ARTICLE ON THE EFFECT
19 OF DEFAULT ON RISK OF LOSS, IF RISK OF LOSS IS TO PASS TO THE
20 LESSEE AND THE TIME OF PASSAGE IS NOT STATED, THE FOLLOWING RULES
21 APPLY:

22 (A) IF THE LEASE CONTRACT REQUIRES OR AUTHORIZES THE GOODS
23 TO BE SHIPPED BY CARRIER AND IT DOES NOT REQUIRE DELIVERY AT A
24 PARTICULAR DESTINATION, THE RISK OF LOSS PASSES TO THE LESSEE
25 WHEN THE GOODS ARE DULY DELIVERED TO THE CARRIER, BUT IF IT DOES
26 REQUIRE DELIVERY AT A PARTICULAR DESTINATION AND THE GOODS ARE
27 THERE DULY TENDERED WHILE IN THE POSSESSION OF THE CARRIER, THE

1 RISK OF LOSS PASSES TO THE LESSEE WHEN THE GOODS ARE THERE DULY
2 SO TENDERED AS TO ENABLE THE LESSEE TO TAKE DELIVERY.

3 (B) IF THE GOODS ARE HELD BY A BAILEE TO BE DELIVERED WITH-
4 OUT BEING MOVED, THE RISK OF LOSS PASSES TO THE LESSEE ON
5 ACKNOWLEDGMENT BY THE BAILEE OF THE LESSEE'S RIGHT TO POSSESSION
6 OF THE GOODS.

7 (C) IN ANY CASE NOT WITHIN SUBDIVISION (A) OR (B), THE RISK
8 OF LOSS PASSES TO THE LESSEE ON THE LESSEE'S RECEIPT OF THE GOODS
9 IF THE LESSOR, OR, IN THE CASE OF A FINANCE LEASE, THE SUPPLIER,
10 IS A MERCHANT; OTHERWISE, THE RISK PASSES TO THE LESSEE ON TENDER
11 OF DELIVERY.

12 SEC. 2A220. (1) WHERE RISK OF LOSS IS TO PASS TO THE LESSEE
13 AND THE TIME OF PASSAGE IS NOT STATED, THEN THE FOLLOWING RULES
14 APPLY:

15 (A) IF A TENDER OR DELIVERY OF GOODS SO FAILS TO CONFORM TO
16 THE LEASE CONTRACT AS TO GIVE A RIGHT OF REJECTION, THE RISK OF
17 THEIR LOSS REMAINS WITH THE LESSOR, OR, IN THE CASE OF A FINANCE
18 LEASE, THE SUPPLIER, UNTIL CURE OR ACCEPTANCE.

19 (B) IF THE LESSEE RIGHTFULLY REVOKES ACCEPTANCE, HE OR SHE,
20 TO THE EXTENT OF ANY DEFICIENCY IN HIS OR HER EFFECTIVE INSURANCE
21 COVERAGE, MAY TREAT THE RISK OF LOSS AS HAVING REMAINED WITH THE
22 LESSOR FROM THE BEGINNING.

23 (2) WHETHER OR NOT RISK OF LOSS IS TO PASS TO THE LESSEE, IF
24 THE LESSEE AS TO CONFORMING GOODS ALREADY IDENTIFIED TO A LEASE
25 CONTRACT REPUDIATES OR IS OTHERWISE IN DEFAULT UNDER THE LEASE
26 CONTRACT, THE LESSOR, OR, IN THE CASE OF A FINANCE LEASE, THE
27 SUPPLIER, TO THE EXTENT OF ANY DEFICIENCY IN HIS OR HER EFFECTIVE

1 INSURANCE COVERAGE, MAY TREAT THE RISK OF LOSS AS RESTING ON THE
2 LESSEE FOR A COMMERCIALLY REASONABLE TIME.

3 SEC. 2A221. IF A LEASE CONTRACT REQUIRES GOODS IDENTIFIED
4 WHEN THE LEASE CONTRACT IS MADE, AND THE GOODS SUFFER CASUALTY
5 WITHOUT FAULT OF THE LESSEE, THE LESSOR, OR THE SUPPLIER BEFORE
6 DELIVERY, OR THE GOODS SUFFER CASUALTY BEFORE RISK OF LOSS PASSES
7 TO THE LESSEE PURSUANT TO THE LEASE AGREEMENT OR SECTION 2A219,
8 THEN THE FOLLOWING RULES APPLY:

9 (A) IF THE LOSS IS TOTAL, THE LEASE CONTRACT IS AVOIDED.

10 (B) IF THE LOSS IS PARTIAL OR THE GOODS HAVE SO DETERIORATED
11 AS TO NO LONGER CONFORM TO THE LEASE CONTRACT, THE LESSEE MAY
12 NEVERTHELESS DEMAND INSPECTION AND AT HIS OR HER OPTION EITHER
13 TREAT THE LEASE CONTRACT AS AVOIDED OR, EXCEPT IN A FINANCE LEASE
14 THAT IS NOT A CONSUMER LEASE, ACCEPT THE GOODS WITH DUE ALLOWANCE
15 FROM THE RENT PAYABLE FOR THE BALANCE OF THE LEASE TERM FOR THE
16 DETERIORATION OR THE DEFICIENCY IN QUANTITY BUT WITHOUT FURTHER
17 RIGHT AGAINST THE LESSOR.

18 PART 3. EFFECT OF LEASE CONTRACT

19 SEC. 2A301. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, A
20 LEASE CONTRACT IS EFFECTIVE AND ENFORCEABLE ACCORDING TO ITS
21 TERMS BETWEEN THE PARTIES, AGAINST PURCHASERS OF THE GOODS AND
22 AGAINST CREDITORS OF THE PARTIES.

23 SEC. 2A302. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE,
24 EACH PROVISION OF THIS ARTICLE APPLIES WHETHER THE LESSOR OR A
25 THIRD PARTY HAS TITLE TO THE GOODS, AND WHETHER THE LESSOR, THE
26 LESSEE, OR A THIRD PARTY HAS POSSESSION OF THE GOODS,

1 NOTWITHSTANDING ANY STATUTE OR RULE OF LAW THAT POSSESSION OR THE
2 ABSENCE OF POSSESSION IS FRAUDULENT.

3 SEC. 2A303. (1) AS USED IN THIS SECTION, "CREATION OF A
4 SECURITY INTEREST" INCLUDES THE SALE OF A LEASE CONTRACT THAT IS
5 SUBJECT TO ARTICLE 9, SECURED TRANSACTIONS, BY REASON OF SECTION
6 9102(1)(B).

7 (2) EXCEPT AS PROVIDED IN SUBSECTIONS (3) AND (4), A PROVI-
8 SION IN A LEASE AGREEMENT (i) WHICH PROHIBITS THE VOLUNTARY OR
9 INVOLUNTARY TRANSFER, INCLUDING A TRANSFER BY SALE, SUBLEASE,
10 CREATION, OR ENFORCEMENT OF A SECURITY INTEREST, OR ATTACHMENT,
11 LEVY, OR OTHER JUDICIAL PROCESS, OF AN INTEREST OF A PARTY UNDER
12 THE LEASE CONTRACT OR OF THE LESSOR'S RESIDUAL INTEREST IN THE
13 GOODS, OR (ii) MAKES SUCH A TRANSFER AN EVENT OF DEFAULT, GIVES
14 RISE TO THE RIGHTS AND REMEDIES PROVIDED IN SUBSECTION (5), BUT A
15 TRANSFER THAT IS PROHIBITED OR IS AN EVENT OF DEFAULT UNDER THE
16 LEASE AGREEMENT IS OTHERWISE EFFECTIVE.

17 (3) A PROVISION IN A LEASE AGREEMENT WHICH PROHIBITS THE
18 CREATION OR ENFORCEMENT OF A SECURITY INTEREST IN AN INTEREST OF
19 A PARTY UNDER THE LEASE CONTRACT OR IN THE LESSOR'S RESIDUAL
20 INTEREST IN THE GOODS, OR MAKES SUCH A TRANSFER AN EVENT OF
21 DEFAULT, IS NOT ENFORCEABLE UNLESS, AND THEN ONLY TO THE EXTENT
22 THAT, THERE IS AN ACTUAL TRANSFER BY THE LESSEE OF THE LESSEE'S
23 RIGHT OF POSSESSION OR USE OF THE GOODS IN VIOLATION OF THE PRO-
24 VISION OR AN ACTUAL DELEGATION OF A MATERIAL PERFORMANCE OF
25 EITHER PARTY TO THE LEASE CONTRACT IN VIOLATION OF THE
26 PROVISION. NEITHER THE GRANTING NOR THE ENFORCEMENT OF A
27 SECURITY INTEREST IN (i) THE LESSOR'S INTEREST UNDER THE LEASE

1 CONTRACT OR (ii) THE LESSOR'S RESIDUAL INTEREST IN THE GOODS IS A
2 TRANSFER THAT MATERIALLY IMPAIRS THE PROSPECT OF OBTAINING RETURN
3 PERFORMANCE BY, MATERIALLY CHANGES THE DUTY OF, OR MATERIALLY
4 INCREASES THE BURDEN OR RISK IMPOSED ON, THE LESSEE WITHIN THE
5 PURVIEW OF SUBSECTION (5) UNLESS, AND THEN ONLY TO THE EXTENT
6 THAT, THERE IS AN ACTUAL DELEGATION OF A MATERIAL PERFORMANCE OF
7 THE LESSOR.

8 (4) A PROVISION IN A LEASE AGREEMENT WHICH (i) PROHIBITS A
9 TRANSFER OF A RIGHT TO DAMAGES FOR DEFAULT WITH RESPECT TO THE
10 WHOLE LEASE CONTRACT OR OF A RIGHT TO PAYMENT ARISING OUT OF THE
11 TRANSFEROR'S DUE PERFORMANCE OF THE TRANSFEROR'S ENTIRE OBLIGA-
12 TION, OR (ii) MAKES SUCH A TRANSFER AN EVENT OF DEFAULT, IS NOT
13 ENFORCEABLE, AND SUCH A TRANSFER IS NOT A TRANSFER THAT MATERI-
14 ALLY IMPAIRS THE PROSPECT OF OBTAINING RETURN PERFORMANCE BY,
15 MATERIALLY CHANGES THE DUTY OF, OR MATERIALLY INCREASES THE
16 BURDEN OR RISK IMPOSED ON, THE OTHER PARTY TO THE LEASE CONTRACT
17 WITHIN THE PURVIEW OF SUBSECTION (5).

18 (5) SUBJECT TO SUBSECTIONS (3) AND (4), THE FOLLOWING RULES
19 APPLY:

20 (A) IF A TRANSFER IS MADE WHICH IS MADE AN EVENT OF DEFAULT
21 UNDER A LEASE AGREEMENT, THE PARTY TO THE LEASE CONTRACT NOT
22 MAKING THE TRANSFER, UNLESS THAT PARTY WAIVES THE DEFAULT OR OTH-
23 ERWISE AGREES, HAS THE RIGHTS AND REMEDIES DESCRIBED IN SECTION
24 2A501(2).

25 (B) IF SUBDIVISION (A) IS NOT APPLICABLE AND IF A TRANSFER
26 IS MADE THAT (i) IS PROHIBITED UNDER A LEASE AGREEMENT OR (ii)
27 MATERIALLY IMPAIRS THE PROSPECT OF OBTAINING RETURN PERFORMANCE

1 BY, MATERIALLY CHANGES THE DUTY OF, OR MATERIALLY INCREASES THE
2 BURDEN OR RISK IMPOSED ON, THE OTHER PARTY TO THE LEASE CONTRACT,
3 UNLESS THE PARTY NOT MAKING THE TRANSFER AGREES AT ANY TIME TO
4 THE TRANSFER IN THE LEASE CONTRACT OR OTHERWISE, THEN, EXCEPT AS
5 LIMITED BY CONTRACT, THE TRANSFEROR IS LIABLE TO THE PARTY NOT
6 MAKING THE TRANSFER FOR DAMAGES CAUSED BY THE TRANSFER TO THE
7 EXTENT THAT THE DAMAGES COULD NOT REASONABLY BE PREVENTED BY THE
8 PARTY NOT MAKING THE TRANSFER AND A COURT HAVING JURISDICTION MAY
9 GRANT OTHER APPROPRIATE RELIEF, INCLUDING CANCELLATION OF THE
10 LEASE CONTRACT OR AN INJUNCTION AGAINST THE TRANSFER.

11 (6) A TRANSFER OF "THE LEASE" OR OF "ALL MY RIGHTS UNDER THE
12 LEASE" OR A TRANSFER IN SIMILAR GENERAL TERMS IS A TRANSFER OF
13 RIGHTS AND, UNLESS THE LANGUAGE OR THE CIRCUMSTANCES, AS IN A
14 TRANSFER FOR SECURITY, INDICATE THE CONTRARY, THE TRANSFER IS A
15 DELEGATION OF DUTIES BY THE TRANSFEROR TO THE TRANSFEREE.
16 ACCEPTANCE BY THE TRANSFEREE CONSTITUTES A PROMISE BY THE TRANS-
17 FEREED TO PERFORM THOSE DUTIES. THE PROMISE IS ENFORCEABLE BY
18 EITHER THE TRANSFEROR OR THE OTHER PARTY TO THE LEASE CONTRACT.

19 (7) UNLESS OTHERWISE AGREED BY THE LESSOR AND THE LESSEE, A
20 DELEGATION OF PERFORMANCE DOES NOT RELIEVE THE TRANSFEROR AS
21 AGAINST THE OTHER PARTY OF ANY DUTY TO PERFORM OR OF ANY LIABIL-
22 ITY FOR DEFAULT.

23 (8) IN A CONSUMER LEASE, TO PROHIBIT THE TRANSFER OF AN
24 INTEREST OF A PARTY UNDER THE LEASE CONTRACT OR TO MAKE A TRANS-
25 FER AN EVENT OF DEFAULT, THE LANGUAGE MUST BE SPECIFIC, BY A
26 WRITING, AND CONSPICUOUS.

1 SEC. 2A304. (1) SUBJECT TO SECTION 2A303, A SUBSEQUENT
2 LESSEE FROM A LESSOR OF GOODS UNDER AN EXISTING LEASE CONTRACT
3 OBTAINS, TO THE EXTENT OF THE LEASEHOLD INTEREST TRANSFERRED, THE
4 LEASEHOLD INTEREST IN THE GOODS THAT THE LESSOR HAD OR HAD POWER
5 TO TRANSFER, AND EXCEPT AS PROVIDED IN SUBSECTION (2) AND SECTION
6 2A527(4), TAKES SUBJECT TO THE EXISTING LEASE CONTRACT. A LESSOR
7 WITH VOIDABLE TITLE HAS POWER TO TRANSFER A GOOD LEASEHOLD INTER-
8 EST TO A GOOD FAITH SUBSEQUENT LESSEE FOR VALUE, BUT ONLY TO THE
9 EXTENT SET FORTH IN THE PRECEDING SENTENCE. IF GOODS HAVE BEEN
10 DELIVERED UNDER A TRANSACTION OF PURCHASE, THE LESSOR HAS THAT
11 POWER EVEN THOUGH ANY OF THE FOLLOWING APPLY:

12 (A) THE LESSOR'S TRANSFEROR WAS DECEIVED AS TO THE IDENTITY
13 OF THE LESSOR.

14 (B) THE DELIVERY WAS IN EXCHANGE FOR A CHECK WHICH IS LATER
15 DISHONORED.

16 (C) IT WAS AGREED THAT THE TRANSACTION WAS TO BE A "CASH
17 SALE".

18 (D) THE DELIVERY WAS PROCURED THROUGH FRAUD PUNISHABLE AS
19 LARCENOUS UNDER THE CRIMINAL LAW.

20 (2) A SUBSEQUENT LESSEE IN THE ORDINARY COURSE OF BUSINESS
21 FROM A LESSOR WHO IS A MERCHANT DEALING IN GOODS OF THAT KIND TO
22 WHOM THE GOODS WERE ENTRUSTED BY THE EXISTING LESSEE OF THAT
23 LESSOR BEFORE THE INTEREST OF THE SUBSEQUENT LESSEE BECAME
24 ENFORCEABLE AGAINST THAT LESSOR OBTAINS, TO THE EXTENT OF THE
25 LEASEHOLD INTEREST TRANSFERRED, ALL OF THAT LESSOR'S AND THE
26 EXISTING LESSEE'S RIGHTS TO THE GOODS, AND TAKES FREE OF THE
27 EXISTING LEASE CONTRACT.

1 (3) A SUBSEQUENT LESSEE FROM THE LESSOR OF GOODS THAT ARE
2 SUBJECT TO AN EXISTING LEASE CONTRACT AND ARE COVERED BY A CER-
3 TIFICATE OF TITLE ISSUED UNDER A STATUTE OF THIS STATE OR OF
4 ANOTHER JURISDICTION TAKES NO GREATER RIGHTS THAN THOSE PROVIDED
5 BOTH BY THIS SECTION AND BY THE CERTIFICATE OF TITLE STATUTE.

6 SEC. 2A305. (1) SUBJECT TO SECTION 2A303, A BUYER OR SUB-
7 LESSEE FROM THE LESSEE OF GOODS UNDER AN EXISTING LEASE CONTRACT
8 OBTAINS, TO THE EXTENT OF THE INTEREST TRANSFERRED, THE LEASEHOLD
9 INTEREST IN THE GOODS THAT THE LESSEE HAD OR HAD POWER TO TRANS-
10 FER, AND EXCEPT AS PROVIDED IN SUBSECTION (2) AND SECTION
11 2A511(4), TAKES SUBJECT TO THE EXISTING LEASE CONTRACT. A LESSEE
12 WITH A VOIDABLE LEASEHOLD INTEREST HAS POWER TO TRANSFER A GOOD
13 LEASEHOLD INTEREST TO A GOOD FAITH BUYER FOR VALUE OR A GOOD
14 FAITH SUBLESSEE FOR VALUE, BUT ONLY TO THE EXTENT SET FORTH IN
15 THE PRECEDING SENTENCE. WHEN GOODS HAVE BEEN DELIVERED UNDER A
16 TRANSACTION OF LEASE, THE LESSEE HAS THAT POWER EVEN THOUGH ANY
17 OF THE FOLLOWING APPLY:

18 (A) THE LESSOR WAS DECEIVED AS TO THE IDENTITY OF THE
19 LESSEE.

20 (B) THE DELIVERY WAS IN EXCHANGE FOR A CHECK WHICH IS LATER
21 DISHONORED.

22 (C) THE DELIVERY WAS PROCURED THROUGH FRAUD PUNISHABLE AS
23 LARCENOUS UNDER THE CRIMINAL LAW.

24 (2) A BUYER IN THE ORDINARY COURSE OF BUSINESS OR A SUBLES-
25 SEE IN THE ORDINARY COURSE OF BUSINESS FROM A LESSEE WHO IS A
26 MERCHANT DEALING IN GOODS OF THAT KIND TO WHOM THE GOODS WERE
27 ENTRUSTED BY THE LESSOR OBTAINS, TO THE EXTENT OF THE INTEREST

1 TRANSFERRED, ALL OF THE LESSOR'S AND LESSEE'S RIGHTS TO THE
2 GOODS, AND TAKES FREE OF THE EXISTING LEASE CONTRACT.

3 (3) A BUYER OR SUBLESSEE FROM THE LESSEE OF GOODS THAT ARE
4 SUBJECT TO AN EXISTING LEASE CONTRACT AND ARE COVERED BY A CER-
5 TIFICATE OF TITLE ISSUED UNDER A STATUTE OF THIS STATE OR OF
6 ANOTHER JURISDICTION TAKES NO GREATER RIGHTS THAN THOSE PROVIDED
7 BOTH BY THIS SECTION AND BY THE CERTIFICATE OF TITLE STATUTE.

8 SEC. 2A306. IF A PERSON IN THE ORDINARY COURSE OF HIS OR
9 HER BUSINESS FURNISHES SERVICES OR MATERIALS WITH RESPECT TO
10 GOODS SUBJECT TO A LEASE CONTRACT, A LIEN UPON THOSE GOODS IN THE
11 POSSESSION OF THAT PERSON GIVEN BY STATUTE OR RULE OF LAW FOR
12 THOSE MATERIALS OR SERVICES TAKES PRIORITY OVER ANY INTEREST OF
13 THE LESSOR OR LESSEE UNDER THE LEASE CONTRACT OR THIS ARTICLE
14 UNLESS THE LIEN IS CREATED BY STATUTE AND THE STATUTE PROVIDES
15 OTHERWISE OR UNLESS THE LIEN IS CREATED BY RULE OF LAW AND THE
16 RULE OF LAW PROVIDES OTHERWISE.

17 SEC. 2A307. (1) EXCEPT AS OTHERWISE PROVIDED IN SECTION
18 2A306, A CREDITOR OF A LESSEE TAKES SUBJECT TO THE LEASE
19 CONTRACT.

20 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (3) AND (4)
21 AND IN SECTIONS 2A306 AND 2A308, A CREDITOR OF A LESSOR TAKES
22 SUBJECT TO THE LEASE CONTRACT EXCEPT AS FOLLOWS:

23 (A) THE CREDITOR HOLDS A LIEN THAT ATTACHED TO THE GOODS
24 BEFORE THE LEASE CONTRACT BECAME ENFORCEABLE.

25 (B) THE CREDITOR HOLDS A SECURITY INTEREST IN THE GOODS AND
26 THE LESSEE DID NOT GIVE VALUE AND RECEIVE DELIVERY OF THE GOODS
27 WITHOUT KNOWLEDGE OF THE SECURITY INTEREST.

1 (C) THE CREDITOR HOLDS A SECURITY INTEREST IN THE GOODS
2 WHICH WAS PERFECTED BEFORE THE LEASE CONTRACT BECAME
3 ENFORCEABLE.

4 (3) A LESSEE IN THE ORDINARY COURSE OF BUSINESS TAKES THE
5 LEASEHOLD INTEREST FREE OF A SECURITY INTEREST IN THE GOODS CRE-
6 ATED BY THE LESSOR EVEN THOUGH THE SECURITY INTEREST IS PERFECTED
7 AND THE LESSEE KNOWS OF ITS EXISTENCE.

8 (4) A LESSEE OTHER THAN A LESSEE IN THE ORDINARY COURSE OF
9 BUSINESS TAKES THE LEASEHOLD INTEREST FREE OF A SECURITY INTEREST
10 TO THE EXTENT THAT IT SECURES FUTURE ADVANCES MADE AFTER THE
11 SECURED PARTY ACQUIRES KNOWLEDGE OF THE LEASE OR MORE THAN 45
12 DAYS AFTER THE LEASE CONTRACT BECOMES ENFORCEABLE, WHICHEVER
13 FIRST OCCURS, UNLESS THE FUTURE ADVANCES ARE MADE PURSUANT TO A
14 COMMITMENT ENTERED INTO WITHOUT KNOWLEDGE OF THE LEASE AND BEFORE
15 THE EXPIRATION OF THE 45-DAY PERIOD.

16 SEC. 2A308. (1) A CREDITOR OF A LESSOR IN POSSESSION OF
17 GOODS SUBJECT TO A LEASE CONTRACT MAY TREAT THE LEASE CONTRACT AS
18 VOID IF AS AGAINST THE CREDITOR RETENTION OF POSSESSION BY THE
19 LESSOR IS FRAUDULENT UNDER ANY STATUTE OR RULE OF LAW, BUT RETEN-
20 TION OF POSSESSION IN GOOD FAITH AND CURRENT COURSE OF TRADE BY
21 THE LESSOR FOR A COMMERCIALLY REASONABLE TIME AFTER THE LEASE
22 CONTRACT BECOMES ENFORCEABLE IS NOT FRAUDULENT.

23 (2) NOTHING IN THIS ARTICLE IMPAIRS THE RIGHTS OF CREDITORS
24 OF A LESSOR IF THE LEASE CONTRACT (i) BECOMES ENFORCEABLE, NOT IN
25 CURRENT COURSE OF TRADE BUT IN SATISFACTION OF OR AS SECURITY FOR
26 A PREEXISTING CLAIM FOR MONEY, SECURITY, OR THE LIKE, AND (ii) IS
27 MADE UNDER CIRCUMSTANCES WHICH UNDER ANY STATUTE OR RULE OF LAW

1 APART FROM THIS ARTICLE WOULD CONSTITUTE THE TRANSACTION A
2 FRAUDULENT TRANSFER OR VOIDABLE PREFERENCE.

3 (3) A CREDITOR OF A SELLER MAY TREAT A SALE OR AN IDENTIFI-
4 CATION OF GOODS TO A CONTRACT FOR SALE AS VOID IF AS AGAINST THE
5 CREDITOR RETENTION OF POSSESSION BY THE SELLER IS FRAUDULENT
6 UNDER ANY STATUTE OR RULE OF LAW, BUT RETENTION OF POSSESSION OF
7 THE GOODS PURSUANT TO A LEASE CONTRACT ENTERED INTO BY THE SELLER
8 AS LESSEE AND THE BUYER AS LESSOR IN CONNECTION WITH THE SALE OR
9 IDENTIFICATION OF THE GOODS IS NOT FRAUDULENT IF THE BUYER BOUGHT
10 FOR VALUE AND IN GOOD FAITH.

11 SEC. 2A309. (1) AS USED IN THIS SECTION:

12 (A) "GOODS" ARE "FIXTURES" WHEN THEY BECOME SO RELATED TO
13 PARTICULAR REAL ESTATE THAT AN INTEREST IN THEM ARISES UNDER REAL
14 ESTATE LAW.

15 (B) A "FIXTURE FILING" IS THE FILING, IN THE OFFICE WHERE A
16 MORTGAGE ON THE REAL ESTATE WOULD BE FILED OR RECORDED OR OF A
17 FINANCING STATEMENT COVERING GOODS THAT ARE OR ARE TO BECOME FIX-
18 TURES AND CONFORMING TO THE REQUIREMENTS OF SECTION 9402(5).

19 (C) A "LEASE" IS A "PURCHASE MONEY LEASE" UNLESS THE LESSEE
20 HAS POSSESSION OR USE OF THE GOODS OR THE RIGHT TO POSSESSION OR
21 USE OF THE GOODS BEFORE THE LEASE AGREEMENT IS ENFORCEABLE.

22 (D) A "MORTGAGE" IS A "CONSTRUCTION MORTGAGE" TO THE EXTENT
23 IT SECURES AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN
24 IMPROVEMENT ON LAND INCLUDING THE ACQUISITION COST OF THE LAND,
25 IF THE RECORDED WRITING SO INDICATES.

1 (E) "ENCUMBRANCE" INCLUDES REAL ESTATE MORTGAGES AND OTHER
2 LIENS ON REAL ESTATE AND ALL OTHER RIGHTS IN REAL ESTATE THAT ARE
3 NOT OWNERSHIP INTERESTS.

4 (2) UNDER THIS ARTICLE A LEASE MAY BE OF GOODS THAT ARE FIX-
5 TURES OR MAY CONTINUE IN GOODS THAT BECOME FIXTURES, BUT NO LEASE
6 EXISTS UNDER THIS ARTICLE OF ORDINARY BUILDING MATERIALS INCORPO-
7 RATED INTO AN IMPROVEMENT ON LAND.

8 (3) THIS ARTICLE DOES NOT PREVENT CREATION OF A LEASE OF
9 FIXTURES PURSUANT TO REAL ESTATE LAW.

10 (4) THE PERFECTED INTEREST OF A LESSOR OF FIXTURES HAS PRI-
11 ORITY OVER A CONFLICTING INTEREST OF AN ENCUMBRANCER OR OWNER OF
12 THE REAL ESTATE IF EITHER OF THE FOLLOWING APPLIES:

13 (A) THE LEASE IS A PURCHASE MONEY LEASE, THE CONFLICTING
14 INTEREST OF THE ENCUMBRANCER OR OWNER ARISES BEFORE THE GOODS
15 BECOME FIXTURES, THE INTEREST OF THE LESSOR IS PERFECTED BY A
16 FIXTURE FILING BEFORE THE GOODS BECOME FIXTURES OR WITHIN 10 DAYS
17 THEREAFTER, AND THE LESSEE HAS AN INTEREST OF RECORD IN THE REAL
18 ESTATE OR IS IN POSSESSION OF THE REAL ESTATE.

19 (B) THE INTEREST OF THE LESSOR IS PERFECTED BY A FIXTURE
20 FILING BEFORE THE INTEREST OF THE ENCUMBRANCER OR OWNER IS OF
21 RECORD, THE LESSOR'S INTEREST HAS PRIORITY OVER ANY CONFLICTING
22 INTEREST OF A PREDECESSOR IN TITLE OF THE ENCUMBRANCER OR OWNER,
23 AND THE LESSEE HAS AN INTEREST OF RECORD IN THE REAL ESTATE OR IS
24 IN POSSESSION OF THE REAL ESTATE.

25 (5) THE INTEREST OF A LESSOR OF FIXTURES, WHETHER OR NOT
26 PERFECTED, HAS PRIORITY OVER THE CONFLICTING INTEREST OF AN

1 ENCUMBRANCER OR OWNER OF THE REAL ESTATE IF ANY OF THE FOLLOWING
2 APPLY:

3 (A) THE FIXTURES ARE READILY REMOVABLE FACTORY OR OFFICE
4 MACHINES, READILY REMOVABLE EQUIPMENT THAT IS NOT PRIMARILY USED
5 OR LEASED FOR USE IN THE OPERATION OF THE REAL ESTATE, OR READILY
6 REMOVABLE REPLACEMENTS OF DOMESTIC APPLIANCES THAT ARE GOODS
7 SUBJECT TO A CONSUMER LEASE, AND BEFORE THE GOODS BECOME FIX-
8 TURES, THE LEASE CONTRACT IS ENFORCEABLE.

9 (B) THE CONFLICTING INTEREST IS A LIEN ON THE REAL ESTATE
10 OBTAINED BY LEGAL OR EQUITABLE PROCEEDINGS AFTER THE LEASE CON-
11 TRACT IS ENFORCEABLE.

12 (C) THE ENCUMBRANCER OR OWNER HAS CONSENTED IN WRITING TO
13 THE LEASE OR HAS DISCLAIMED AN INTEREST IN THE GOODS AS
14 FIXTURES.

15 (D) THE LESSEE HAS A RIGHT TO REMOVE THE GOODS AS AGAINST
16 THE ENCUMBRANCER OR OWNER. IF THE LESSEE'S RIGHT TO REMOVE TER-
17 MINATES, THE PRIORITY OF THE INTEREST OF THE LESSOR CONTINUES FOR
18 A REASONABLE TIME.

19 (6) NOTWITHSTANDING SUBSECTION (4) (A) BUT OTHERWISE SUBJECT
20 TO SUBSECTIONS (4) AND (5), THE INTEREST OF A LESSOR OF FIXTURES,
21 INCLUDING THE LESSOR'S RESIDUAL INTEREST, IS SUBORDINATE TO THE
22 CONFLICTING INTEREST OF AN ENCUMBRANCER OF THE REAL ESTATE UNDER
23 A CONSTRUCTION MORTGAGE RECORDED BEFORE THE GOODS BECOME FIXTURES
24 IF THE GOODS BECOME FIXTURES BEFORE THE COMPLETION OF THE
25 CONSTRUCTION. TO THE EXTENT GIVEN TO REFINANCE A CONSTRUCTION
26 MORTGAGE, THE CONFLICTING INTEREST OF AN ENCUMBRANCER OF THE REAL
27 ESTATE UNDER A MORTGAGE HAS THIS PRIORITY TO THE SAME EXTENT AS

1 THE ENCUMBRANCER OF THE REAL ESTATE UNDER THE CONSTRUCTION
2 MORTGAGE.

3 (7) IN CASES NOT WITHIN THE PRECEDING SUBSECTIONS, PRIORITY
4 BETWEEN THE INTEREST OF A LESSOR OF FIXTURES, INCLUDING THE
5 LESSOR'S RESIDUAL INTEREST, AND THE CONFLICTING INTEREST OF AN
6 ENCUMBRANCER OR OWNER OF THE REAL ESTATE WHO IS NOT THE LESSEE IS
7 DETERMINED BY THE PRIORITY RULES GOVERNING CONFLICTING INTERESTS
8 IN REAL ESTATE.

9 (8) IF THE INTEREST OF A LESSOR OF FIXTURES, INCLUDING THE
10 LESSOR'S RESIDUAL INTEREST, HAS PRIORITY OVER ALL CONFLICTING
11 INTERESTS OF ALL OWNERS AND ENCUMBRANCERS OF THE REAL ESTATE, THE
12 LESSOR OR THE LESSEE MAY (i) ON DEFAULT, EXPIRATION, TERMINATION,
13 OR CANCELLATION OF THE LEASE AGREEMENT BUT SUBJECT TO THE LEASE
14 AGREEMENT AND THIS ARTICLE, OR (ii) IF NECESSARY TO ENFORCE OTHER
15 RIGHTS AND REMEDIES OF THE LESSOR OR LESSEE UNDER THIS ARTICLE,
16 REMOVE THE GOODS FROM THE REAL ESTATE, FREE AND CLEAR OF ALL CON-
17 FFLICTING INTERESTS OF ALL OWNERS AND ENCUMBRANCERS OF THE REAL
18 ESTATE, BUT OF THE LESSOR OR LESSEE MUST REIMBURSE ANY ENCUM-
19 BRANCER OR OWNER OF THE REAL ESTATE WHO IS NOT THE LESSEE AND WHO
20 HAS NOT OTHERWISE AGREED FOR THE COST OF REPAIR OF ANY PHYSICAL
21 INJURY, BUT NOT FOR ANY DIMINUTION IN VALUE OF THE REAL ESTATE
22 CAUSED BY THE ABSENCE OF THE GOODS REMOVED OR BY ANY NECESSITY OF
23 REPLACING THEM. A PERSON ENTITLED TO REIMBURSEMENT MAY REFUSE
24 PERMISSION TO REMOVE UNTIL THE PARTY SEEKING REMOVAL GIVES ADE-
25 QUATE SECURITY FOR THE PERFORMANCE OF THIS OBLIGATION.

26 (9) EVEN THOUGH THE LEASE AGREEMENT DOES NOT CREATE A
27 SECURITY INTEREST, THE INTEREST OF A LESSOR OF FIXTURES,

1 INCLUDING THE LESSOR'S RESIDUAL INTEREST, IS PERFECTED BY FILING
2 A FINANCING STATEMENT AS A FIXTURE FILING FOR LEASED GOODS THAT
3 ARE OR ARE TO BECOME FIXTURES IN ACCORDANCE WITH THE RELEVANT
4 PROVISIONS OF ARTICLE 9.

5 SEC. 2A310. (1) GOODS ARE ACCESSIONS WHEN THEY ARE
6 INSTALLED IN OR AFFIXED TO OTHER GOODS.

7 (2) THE INTEREST OF A LESSOR OR A LESSEE UNDER A LEASE CON-
8 TRACT ENTERED INTO BEFORE THE GOODS BECAME ACCESSIONS IS SUPERIOR
9 TO ALL INTERESTS IN THE WHOLE EXCEPT AS STATED IN SUBSECTION
10 (4).

11 (3) THE INTEREST OF A LESSOR OR A LESSEE UNDER A LEASE CON-
12 TRACT ENTERED INTO AT THE TIME OR AFTER THE GOODS BECAME ACCES-
13 SIONS IS SUPERIOR TO ALL SUBSEQUENTLY ACQUIRED INTERESTS IN THE
14 WHOLE EXCEPT AS STATED IN SUBSECTION (4) BUT IS SUBORDINATE TO
15 INTERESTS IN THE WHOLE EXISTING AT THE TIME THE LEASE CONTRACT
16 WAS MADE UNLESS THE HOLDERS OF SUCH INTERESTS IN THE WHOLE HAVE
17 IN WRITING CONSENTED TO THE LEASE OR DISCLAIMED AN INTEREST IN
18 THE GOODS AS PART OF THE WHOLE.

19 (4) THE INTEREST OF A LESSOR OR A LESSEE UNDER A LEASE CON-
20 TRACT DESCRIBED IN SUBSECTION (2) OR (3) IS SUBORDINATE TO THE
21 INTEREST OF EITHER OF THE FOLLOWING:

22 (A) A BUYER IN THE ORDINARY COURSE OF BUSINESS OR A LESSEE
23 IN THE ORDINARY COURSE OF BUSINESS OF ANY INTEREST IN THE WHOLE
24 ACQUIRED AFTER THE GOODS BECAME ACCESSIONS.

25 (B) A CREDITOR WITH A SECURITY INTEREST IN THE WHOLE PERFEC-
26 TED BEFORE THE LEASE CONTRACT WAS MADE TO THE EXTENT THAT THE

1 CREDITOR MAKES SUBSEQUENT ADVANCES WITHOUT KNOWLEDGE OF THE LEASE
2 CONTRACT.

3 (5) WHEN UNDER SUBSECTIONS (2) OR (3) AND (4) A LESSOR OR A
4 LESSEE OF ACCESSIONS HOLDS AN INTEREST THAT IS SUPERIOR TO ALL
5 INTERESTS IN THE WHOLE, THE LESSOR OR THE LESSEE MAY (i) ON
6 DEFAULT, EXPIRATION, TERMINATION, OR CANCELLATION OF THE LEASE
7 CONTRACT BY THE OTHER PARTY BUT SUBJECT TO THE PROVISIONS OF THE
8 LEASE CONTRACT AND THIS ARTICLE, OR (ii) IF NECESSARY TO ENFORCE
9 HIS OR HER OTHER RIGHTS AND REMEDIES UNDER THIS ARTICLE, REMOVE
10 THE GOODS FROM THE WHOLE, FREE AND CLEAR OF ALL INTERESTS IN THE
11 WHOLE, BUT HE OR SHE MUST REIMBURSE ANY HOLDER OF AN INTEREST IN
12 THE WHOLE WHO IS NOT THE LESSEE AND WHO HAS NOT OTHERWISE AGREED
13 FOR THE COST OF REPAIR OF ANY PHYSICAL INJURY BUT NOT FOR ANY
14 DIMINUTION IN VALUE OF THE WHOLE CAUSED BY THE ABSENCE OF THE
15 GOODS REMOVED OR BY ANY NECESSITY FOR REPLACING THEM. A PERSON
16 ENTITLED TO REIMBURSEMENT MAY REFUSE PERMISSION TO REMOVE UNTIL
17 THE PARTY SEEKING REMOVAL GIVES ADEQUATE SECURITY FOR THE PER-
18 FORMANCE OF THIS OBLIGATION.

19 SEC. 2A311. NOTHING IN THIS ARTICLE PREVENTS SUBORDINATION
20 BY AGREEMENT BY ANY PERSON ENTITLED TO PRIORITY.

21 PART 4. PERFORMANCE OF LEASE CONTRACT:
22 REPUDIATED, SUBSTITUTED, AND EXCUSED

23 SEC. 2A401. (1) A LEASE CONTRACT IMPOSES AN OBLIGATION ON
24 EACH PARTY THAT THE OTHER'S EXPECTATION OF RECEIVING DUE PER-
25 FORMANCE WILL NOT BE IMPAIRED.

26 (2) IF REASONABLE GROUNDS FOR INSECURITY ARISE WITH RESPECT
27 TO THE PERFORMANCE OF EITHER PARTY, THE INSECURE PARTY MAY DEMAND

1 IN WRITING ADEQUATE ASSURANCE OF DUE PERFORMANCE. UNTIL THE
2 INSECURE PARTY RECEIVES THAT ASSURANCE, IF COMMERCIALY REASON-
3 ABLE THE INSECURE PARTY MAY SUSPEND ANY PERFORMANCE FOR WHICH HE
4 OR SHE HAS NOT ALREADY RECEIVED THE AGREED RETURN.

5 (3) A REPUDIATION OF THE LEASE CONTRACT OCCURS IF ASSURANCE
6 OF DUE PERFORMANCE ADEQUATE UNDER THE CIRCUMSTANCES OF THE PAR-
7 TICULAR CASE IS NOT PROVIDED TO THE INSECURE PARTY WITHIN A REA-
8 SONABLE TIME, NOT TO EXCEED 30 DAYS AFTER RECEIPT OF A DEMAND BY
9 THE OTHER PARTY.

10 (4) BETWEEN MERCHANTS, THE REASONABLENESS OF GROUNDS FOR
11 INSECURITY AND THE ADEQUACY OF ANY ASSURANCE OFFERED MUST BE
12 DETERMINED ACCORDING TO COMMERCIAL STANDARDS.

13 (5) ACCEPTANCE OF ANY NONCONFORMING DELIVERY OR PAYMENT DOES
14 NOT PREJUDICE THE AGGRIEVED PARTY'S RIGHT TO DEMAND ADEQUATE
15 ASSURANCE OF FUTURE PERFORMANCE.

16 SEC. 2A402. IF EITHER PARTY REPUDIATES A LEASE CONTRACT
17 WITH RESPECT TO A PERFORMANCE NOT YET DUE UNDER THE LEASE CON-
18 TRACT, THE LOSS OF WHICH PERFORMANCE WILL SUBSTANTIALLY IMPAIR
19 THE VALUE OF THE LEASE CONTRACT TO THE OTHER, THE AGGRIEVED PARTY
20 MAY DO ANY OF THE FOLLOWING:

21 (A) FOR A COMMERCIALY REASONABLE TIME, AWAIT RETRACTION OF
22 REPUDIATION AND PERFORMANCE BY THE REPUDIATING PARTY.

23 (B) MAKE DEMAND PURSUANT TO SECTION 2A401 AND AWAIT ASSUR-
24 ANCE OF FUTURE PERFORMANCE ADEQUATE UNDER THE CIRCUMSTANCES OF
25 THE PARTICULAR CASE.

26 (C) RESORT TO ANY RIGHT OR REMEDY UPON DEFAULT UNDER THE
27 LEASE CONTRACT OR THIS ARTICLE, EVEN THOUGH THE AGGRIEVED PARTY

1 HAS NOTIFIED THE REPUDIATING PARTY THAT THE AGGRIEVED PARTY WOULD
2 AWAIT THE REPUDIATING PARTY'S PERFORMANCE AND ASSURANCE AND HAS
3 URGED RETRACTION. IN ADDITION, WHETHER OR NOT THE AGGRIEVED
4 PARTY IS PURSUING 1 OF THE FOREGOING REMEDIES, THE AGGRIEVED
5 PARTY MAY SUSPEND PERFORMANCE OR, IF THE AGGRIEVED PARTY IS THE
6 LESSOR, PROCEED IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE
7 ON THE LESSOR'S RIGHT TO IDENTIFY GOODS TO THE LEASE CONTRACT
8 NOTWITHSTANDING DEFAULT OR TO SALVAGE UNFINISHED GOODS (SECTION
9 2A524).

10 SEC. 2A403. (1) UNTIL THE REPUDIATING PARTY'S NEXT PER-
11 FORMANCE IS DUE, THE REPUDIATING PARTY CAN RETRACT THE REPUDIA-
12 TION UNLESS, SINCE THE REPUDIATION, THE AGGRIEVED PARTY HAS
13 CANCELED THE LEASE CONTRACT OR MATERIALLY CHANGED THE AGGRIEVED
14 PARTY'S POSITION OR OTHERWISE INDICATED THAT THE AGGRIEVED PARTY
15 CONSIDERS THE REPUDIATION FINAL.

16 (2) RETRACTION MAY BE BY ANY METHOD THAT CLEARLY INDICATES
17 TO THE AGGRIEVED PARTY THAT THE REPUDIATING PARTY INTENDS TO PER-
18 FORM UNDER THE LEASE CONTRACT AND INCLUDES ANY ASSURANCE DEMANDED
19 UNDER SECTION 2A401.

20 (3) RETRACTION REINSTATES A REPUDIATING PARTY'S RIGHTS UNDER
21 A LEASE CONTRACT WITH DUE EXCUSE AND ALLOWANCE TO THE AGGRIEVED
22 PARTY FOR ANY DELAY OCCASIONED BY THE REPUDIATION.

23 SEC. 2A404. (1) IF WITHOUT FAULT OF THE LESSEE, THE LESSOR
24 AND THE SUPPLIER, THE AGREED BERTHING, LOADING, OR UNLOADING
25 FACILITIES FAIL OR THE AGREED TYPE OF CARRIER BECOMES UNAVAILABLE
26 OR THE AGREED MANNER OF DELIVERY OTHERWISE BECOMES COMMERCIALY
27 IMPRACTICABLE, BUT A COMMERCIALY REASONABLE SUBSTITUTE IS

1 AVAILABLE, THE SUBSTITUTE PERFORMANCE MUST BE TENDERED AND
2 ACCEPTED.

3 (2) IF THE AGREED MEANS OR MANNER OF PAYMENT FAILS BECAUSE
4 OF DOMESTIC OR FOREIGN GOVERNMENTAL REGULATION, THEN THE FOLLOW-
5 ING APPLY:

6 (A) THE LESSOR MAY WITHHOLD OR STOP DELIVERY OR CAUSE THE
7 SUPPLIER TO WITHHOLD OR STOP DELIVERY UNLESS THE LESSEE PROVIDES
8 A MEANS OR MANNER OF PAYMENT THAT IS COMMERCIALY A SUBSTANTIAL
9 EQUIVALENT.

10 (B) IF DELIVERY HAS ALREADY BEEN TAKEN, PAYMENT BY THE MEANS
11 OR IN THE MANNER PROVIDED BY THE REGULATION DISCHARGES THE
12 LESSEE'S OBLIGATION UNLESS THE REGULATION IS DISCRIMINATORY,
13 OPPRESSIVE, OR PREDATORY.

14 SEC. 2A405. SUBJECT TO SECTION 2A404 ON SUBSTITUTED PER-
15 FORMANCE, THE FOLLOWING RULES APPLY:

16 (A) DELAY IN DELIVERY OR NONDELIVERY IN WHOLE OR IN PART BY
17 A LESSOR OR A SUPPLIER WHO COMPLIES WITH SUBDIVISIONS (B) AND (C)
18 IS NOT A DEFAULT UNDER THE LEASE CONTRACT IF PERFORMANCE AS
19 AGREED HAS BEEN MADE IMPRACTICABLE BY THE OCCURRENCE OF A CONTIN-
20 GENCY THE NONOCCURRENCE OF WHICH WAS A BASIC ASSUMPTION ON WHICH
21 THE LEASE CONTRACT WAS MADE OR BY COMPLIANCE IN GOOD FAITH WITH
22 ANY APPLICABLE FOREIGN OR DOMESTIC GOVERNMENTAL REGULATION OR
23 ORDER, WHETHER OR NOT THE REGULATION OR ORDER LATER PROVES TO BE
24 INVALID.

25 (B) IF THE CAUSES MENTIONED IN SUBDIVISION (A) AFFECT ONLY
26 PART OF THE LESSOR'S OR THE SUPPLIER'S CAPACITY TO PERFORM, HE OR
27 SHE SHALL ALLOCATE PRODUCTION AND DELIVERIES AMONG HIS OR HER

1 CUSTOMERS BUT AT HIS OR HER OPTION MAY INCLUDE REGULAR CUSTOMERS
2 NOT THEN UNDER CONTRACT FOR SALE OR LEASE AS WELL AS HIS OR HER
3 OWN REQUIREMENTS FOR FURTHER MANUFACTURE. HE OR SHE MAY SO ALLO-
4 CATE IN ANY MANNER THAT IS FAIR AND REASONABLE.

5 (C) THE LESSOR SEASONABLY SHALL NOTIFY THE LESSEE AND IN THE
6 CASE OF A FINANCE LEASE THE SUPPLIER SEASONABLY SHALL NOTIFY THE
7 LESSOR AND THE LESSEE, IF KNOWN, THAT THERE WILL BE DELAY OR NON-
8 DELIVERY AND, IF ALLOCATION IS REQUIRED UNDER SUBDIVISION (B), OF
9 THE ESTIMATED QUOTA THUS MADE AVAILABLE FOR THE LESSEE.

10 SEC. 2A406. (1) IF THE LESSEE RECEIVES NOTIFICATION OF A
11 MATERIAL OR INDEFINITE DELAY OR AN ALLOCATION JUSTIFIED UNDER
12 SECTION 2A405, THE LESSEE MAY BY WRITTEN NOTIFICATION TO THE
13 LESSOR AS TO ANY GOODS INVOLVED, AND WITH RESPECT TO ALL OF THE
14 GOODS IF UNDER AN INSTALLMENT LEASE CONTRACT THE VALUE OF THE
15 WHOLE LEASE CONTRACT IS SUBSTANTIALLY IMPAIRED (SECTION 2A510)
16 MAY DO EITHER OF THE FOLLOWING:

17 (A) TERMINATE THE LEASE CONTRACT (SECTION 2A505(2)).

18 (B) EXCEPT IN A FINANCE LEASE THAT IS NOT A CONSUMER LEASE,
19 MODIFY THE LEASE CONTRACT BY ACCEPTING THE AVAILABLE QUOTA IN
20 SUBSTITUTION, WITH DUE ALLOWANCE FROM THE RENT PAYABLE FOR THE
21 BALANCE OF THE LEASE TERM FOR THE DEFICIENCY BUT WITHOUT FURTHER
22 RIGHT AGAINST THE LESSOR.

23 (2) IF, AFTER RECEIPT OF A NOTIFICATION FROM THE LESSOR
24 UNDER SECTION 2A405, THE LESSEE FAILS SO TO MODIFY THE LEASE
25 AGREEMENT WITHIN A REASONABLE TIME NOT EXCEEDING 30 DAYS, THE
26 LEASE CONTRACT LAPSES WITH RESPECT TO ANY DELIVERIES AFFECTED.

1 SEC. 2A407. (1) IN THE CASE OF A FINANCE LEASE THAT IS NOT
2 A CONSUMER LEASE, THE LESSEE'S PROMISES UNDER THE LEASE CONTRACT
3 BECOME IRREVOCABLE AND INDEPENDENT UPON THE LESSEE'S ACCEPTANCE
4 OF THE GOODS.

5 (2) A PROMISE THAT HAS BECOME IRREVOCABLE AND INDEPENDENT
6 UNDER SUBSECTION (1) IS (i) EFFECTIVE AND ENFORCEABLE BETWEEN THE
7 PARTIES, AND BY OR AGAINST THIRD PARTIES INCLUDING ASSIGNEES OF
8 THE PARTIES, AND (ii) NOT SUBJECT TO CANCELLATION, TERMINATION,
9 MODIFICATION, REPUDIATION, EXCUSE, OR SUBSTITUTION WITHOUT THE
10 CONSENT OF THE PARTY TO WHOM THE PROMISE RUNS.

11 (3) THIS SECTION DOES NOT AFFECT THE VALIDITY UNDER ANY
12 OTHER LAW OF A COVENANT IN ANY LEASE CONTRACT MAKING THE LESSEE'S
13 PROMISES IRREVOCABLE AND INDEPENDENT UPON THE LESSEE'S ACCEPTANCE
14 OF THE GOODS.

15 PART 5. DEFAULT

16 A. IN GENERAL

17 SEC. 2A501. (1) WHETHER THE LESSOR OR THE LESSEE IS IN
18 DEFAULT UNDER A LEASE CONTRACT IS DETERMINED BY THE LEASE AGREE-
19 MENT AND THIS ARTICLE.

20 (2) IF THE LESSOR OR THE LESSEE IS IN DEFAULT UNDER THE
21 LEASE CONTRACT, THE PARTY SEEKING ENFORCEMENT HAS RIGHTS AND REM-
22 EDIES AS PROVIDED IN THIS ARTICLE AND, EXCEPT AS LIMITED BY THIS
23 ARTICLE, AS PROVIDED IN THE LEASE AGREEMENT.

24 (3) IF THE LESSOR OR THE LESSEE IS IN DEFAULT UNDER THE
25 LEASE CONTRACT, THE PARTY SEEKING ENFORCEMENT MAY REDUCE THE
26 PARTY'S CLAIM TO JUDGMENT, OR OTHERWISE ENFORCE THE LEASE
27 CONTRACT BY SELF-HELP OR ANY AVAILABLE JUDICIAL PROCEDURE OR

1 NONJUDICIAL PROCEDURE, INCLUDING ADMINISTRATIVE PROCEEDING,
2 ARBITRATION, OR THE LIKE, IN ACCORDANCE WITH THIS ARTICLE.

3 (4) EXCEPT AS OTHERWISE PROVIDED IN SECTION 1106(1) OR THIS
4 ARTICLE OR THE LEASE AGREEMENT, THE RIGHTS AND REMEDIES REFERRED
5 TO IN SUBSECTIONS (2) AND (3) ARE CUMULATIVE.

6 (5) IF THE LEASE AGREEMENT COVERS BOTH REAL PROPERTY AND
7 GOODS, THE PARTY SEEKING ENFORCEMENT MAY PROCEED UNDER THIS PART
8 AS TO THE GOODS, OR UNDER OTHER APPLICABLE LAW AS TO BOTH THE
9 REAL PROPERTY AND THE GOODS IN ACCORDANCE WITH THAT PARTY'S
10 RIGHTS AND REMEDIES IN RESPECT OF THE REAL PROPERTY, IN WHICH
11 CASE THIS PART DOES NOT APPLY.

12 SEC. 2A502. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE OR
13 THE LEASE AGREEMENT, THE LESSOR OR LESSEE IN DEFAULT UNDER THE
14 LEASE CONTRACT IS NOT ENTITLED TO NOTICE OF DEFAULT OR NOTICE OF
15 ENFORCEMENT FROM THE OTHER PARTY TO THE LEASE AGREEMENT.

16 SEC. 2A503. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS ARTI-
17 CLE, THE LEASE AGREEMENT MAY INCLUDE RIGHTS AND REMEDIES FOR
18 DEFAULT IN ADDITION TO OR IN SUBSTITUTION FOR THOSE PROVIDED IN
19 THIS ARTICLE AND MAY LIMIT OR ALTER THE MEASURE OF DAMAGES RECOV-
20 ERABLE UNDER THIS ARTICLE.

21 (2) RESORT TO A REMEDY PROVIDED UNDER THIS ARTICLE OR IN THE
22 LEASE AGREEMENT IS OPTIONAL UNLESS THE REMEDY IS EXPRESSLY AGREED
23 TO BE EXCLUSIVE. IF CIRCUMSTANCES CAUSE AN EXCLUSIVE OR LIMITED
24 REMEDY TO FAIL OF ITS ESSENTIAL PURPOSE, OR PROVISION FOR AN
25 EXCLUSIVE REMEDY IS UNCONSCIONABLE, REMEDY MAY BE HAD AS PROVIDED
26 IN THIS ARTICLE.

1 (3) CONSEQUENTIAL DAMAGES MAY BE LIQUIDATED UNDER SECTION
2 2A504, OR MAY OTHERWISE BE LIMITED, ALTERED, OR EXCLUDED UNLESS
3 THE LIMITATION, ALTERATION, OR EXCLUSION IS UNCONSCIONABLE.
4 LIMITATION, ALTERATION, OR EXCLUSION OF CONSEQUENTIAL DAMAGES FOR
5 INJURY TO THE PERSON IN THE CASE OF CONSUMER GOODS IS PRIMA FACIE
6 UNCONSCIONABLE BUT LIMITATION, ALTERATION, OR EXCLUSION OF DAM-
7 AGES WHERE THE LOSS IS COMMERCIAL IS NOT PRIMA FACIE
8 UNCONSCIONABLE.

9 (4) RIGHTS AND REMEDIES ON DEFAULT BY THE LESSOR OR THE
10 LESSEE WITH RESPECT TO ANY OBLIGATION OR PROMISE COLLATERAL OR
11 ANCILLARY TO THE LEASE CONTRACT ARE NOT IMPAIRED BY THIS ARTICLE.

12 SEC. 2A504. (1) DAMAGES PAYABLE BY EITHER PARTY FOR
13 DEFAULT, OR ANY OTHER ACT OR OMISSION, INCLUDING INDEMNITY FOR
14 LOSS OR DIMINUTION OF ANTICIPATED TAX BENEFITS OR LOSS OR DAMAGE
15 TO LESSOR'S RESIDUAL INTEREST, MAY BE LIQUIDATED IN THE LEASE
16 AGREEMENT BUT ONLY AT AN AMOUNT OR BY A FORMULA THAT IS REASON-
17 ABLE IN LIGHT OF THE THEN ANTICIPATED HARM CAUSED BY THE DEFAULT
18 OR OTHER ACT OR OMISSION.

19 (2) IF THE LEASE AGREEMENT PROVIDES FOR LIQUIDATION OF DAM-
20 AGES, AND SUCH PROVISION DOES NOT COMPLY WITH SUBSECTION (1), OR
21 SUCH PROVISION IS AN EXCLUSIVE OR LIMITED REMEDY THAT CIRCUM-
22 STANCES CAUSE TO FAIL OF ITS ESSENTIAL PURPOSE, REMEDY MAY BE HAD
23 AS PROVIDED IN THIS ARTICLE.

24 (3) IF THE LESSOR JUSTIFIABLY WITHHOLDS OR STOPS DELIVERY OF
25 GOODS BECAUSE OF THE LESSEE'S DEFAULT OR INSOLVENCY, THE LESSEE
26 IS ENTITLED TO RESTITUTION OF ANY AMOUNT BY WHICH THE SUM OF HIS
27 OR HER PAYMENTS EXCEEDS EITHER OF THE FOLLOWING:

1 (A) THE AMOUNT TO WHICH THE LESSOR IS ENTITLED BY VIRTUE OF
2 TERMS LIQUIDATING THE LESSOR'S DAMAGES IN ACCORDANCE WITH SUBSEC-
3 TION (1).

4 (B) IN THE ABSENCE OF THOSE TERMS, 20% OF THE THEN PRESENT
5 VALUE OF THE TOTAL RENT THE LESSEE WAS OBLIGATED TO PAY FOR THE
6 BALANCE OF THE LEASE TERM, OR, IN THE CASE OF A CONSUMER LEASE,
7 THE LESSER OF SUCH AMOUNT OR \$500.00.

8 (4) A LESSEE'S RIGHT TO RESTITUTION UNDER SUBSECTION (3) IS
9 SUBJECT TO OFFSET TO THE EXTENT THE LESSOR ESTABLISHES ANY OF THE
10 FOLLOWING:

11 (A) A RIGHT TO RECOVER DAMAGES UNDER THE PROVISIONS OF THIS
12 ARTICLE OTHER THAN SUBSECTION (1).

13 (B) THE AMOUNT OR VALUE OF ANY BENEFITS RECEIVED BY THE
14 LESSEE DIRECTLY OR INDIRECTLY BY REASON OF THE LEASE CONTRACT.

15 SEC. 2A505. (1) ON CANCELLATION OF THE LEASE CONTRACT, ALL
16 OBLIGATIONS THAT ARE STILL EXECUTORY ON BOTH SIDES ARE DIS-
17 CHARGED, BUT ANY RIGHT BASED ON PRIOR DEFAULT OR PERFORMANCE SUR-
18 VIVES, AND THE CANCELLING PARTY ALSO RETAINS ANY REMEDY FOR
19 DEFAULT OF THE WHOLE LEASE CONTRACT OR ANY UNPERFORMED BALANCE.

20 (2) ON TERMINATION OF THE LEASE CONTRACT, ALL OBLIGATIONS
21 THAT ARE STILL EXECUTORY ON BOTH SIDES ARE DISCHARGED BUT ANY
22 RIGHT BASED ON PRIOR DEFAULT OR PERFORMANCE SURVIVES.

23 (3) UNLESS THE CONTRARY INTENTION CLEARLY APPEARS, EXPRES-
24 SIONS OF "CANCELLATION," "RESCISSION," OR THE LIKE OF THE LEASE
25 CONTRACT MAY NOT BE CONSTRUED AS A RENUNCIATION OR DISCHARGE OF
26 ANY CLAIM IN DAMAGES FOR AN ANTECEDENT DEFAULT.

1 (4) RIGHTS AND REMEDIES FOR MATERIAL MISREPRESENTATION OR
2 FRAUD INCLUDE ALL RIGHTS AND REMEDIES AVAILABLE UNDER THIS
3 ARTICLE FOR DEFAULT.

4 (5) NEITHER RESCISSION NOR A CLAIM FOR RESCISSION OF THE
5 LEASE CONTRACT NOR REJECTION OR RETURN OF THE GOODS MAY BAR OR BE
6 DEEMED INCONSISTENT WITH A CLAIM FOR DAMAGES OR OTHER RIGHT OR
7 REMEDY.

8 SEC. 2A506. (1) AN ACTION FOR DEFAULT UNDER A LEASE CON-
9 TRACT, INCLUDING BREACH OF WARRANTY OR INDEMNITY, MUST BE COM-
10 MENCED WITHIN 4 YEARS AFTER THE CAUSE OF ACTION ACCRUED. BY THE
11 ORIGINAL LEASE CONTRACT THE PARTIES MAY REDUCE THE PERIOD OF LIM-
12 ITATION TO NOT LESS THAN 1 YEAR.

13 (2) A CAUSE OF ACTION FOR DEFAULT ACCRUES WHEN THE ACT OR
14 OMISSION ON WHICH THE DEFAULT OR BREACH OF WARRANTY IS BASED IS
15 OR SHOULD HAVE BEEN DISCOVERED BY THE AGGRIEVED PARTY, OR WHEN
16 THE DEFAULT OCCURS, WHICHEVER IS LATER. A CAUSE OF ACTION FOR
17 INDEMNITY ACCRUES WHEN THE ACT OR OMISSION ON WHICH THE CLAIM FOR
18 INDEMNITY IS BASED IS OR SHOULD HAVE BEEN DISCOVERED BY THE
19 INDEMNIFIED PARTY, WHICHEVER IS LATER.

20 (3) IF AN ACTION COMMENCED WITHIN THE TIME LIMITED BY SUB-
21 SECTION (1) IS SO TERMINATED AS TO LEAVE AVAILABLE A REMEDY BY
22 ANOTHER ACTION FOR THE SAME DEFAULT OR BREACH OF WARRANTY OR
23 INDEMNITY, THE OTHER ACTION MAY BE COMMENCED AFTER THE EXPIRATION
24 OF THE TIME LIMITED AND WITHIN 6 MONTHS AFTER THE TERMINATION OF
25 THE FIRST ACTION UNLESS THE TERMINATION RESULTED FROM VOLUNTARY
26 DISCONTINUANCE OR FROM DISMISSAL FOR FAILURE OR NEGLECT TO
27 PROSECUTE.

1 (4) THIS SECTION DOES NOT ALTER THE LAW ON TOLLING OF THE
2 STATUTE OF LIMITATIONS NOR DOES IT APPLY TO CAUSES OF ACTION THAT
3 HAVE ACCRUED BEFORE THIS ARTICLE BECOMES EFFECTIVE.

4 SEC. 2A507. (1) DAMAGES BASED ON MARKET RENT (SECTION 2A519
5 OR 2A528) ARE DETERMINED ACCORDING TO THE RENT FOR THE USE OF THE
6 GOODS CONCERNED FOR A LEASE TERM IDENTICAL TO THE REMAINING LEASE
7 TERM OF THE ORIGINAL LEASE AGREEMENT AND PREVAILING AT THE TIME
8 OF THE DEFAULT.

9 (2) IF EVIDENCE OF RENT FOR THE USE OF THE GOODS CONCERNED
10 FOR A LEASE TERM IDENTICAL TO THE REMAINING LEASE TERM OF THE
11 ORIGINAL LEASE AGREEMENT AND PREVAILING AT THE TIMES OR PLACES
12 DESCRIBED IN THIS ARTICLE IS NOT READILY AVAILABLE, THE RENT PRE-
13 VAILING WITHIN ANY REASONABLE TIME BEFORE OR AFTER THE TIME
14 DESCRIBED OR AT ANY OTHER PLACE OR FOR A DIFFERENT LEASE TERM
15 WHICH IN COMMERCIAL JUDGMENT OR UNDER USAGE OF TRADE WOULD SERVE
16 AS A REASONABLE SUBSTITUTE FOR THE ONE DESCRIBED MAY BE USED,
17 MAKING ANY PROPER ALLOWANCE FOR THE DIFFERENCE, INCLUDING THE
18 COST OF TRANSPORTING THE GOODS TO OR FROM THE OTHER PLACE.

19 (3) EVIDENCE OF A RELEVANT RENT PREVAILING AT A TIME OR
20 PLACE OR FOR A LEASE TERM OTHER THAN THE ONE DESCRIBED IN THIS
21 ARTICLE OFFERED BY 1 PARTY IS NOT ADMISSIBLE UNLESS AND UNTIL HE
22 OR SHE HAS GIVEN THE OTHER PARTY NOTICE THE COURT FINDS SUFFI-
23 CIENT TO PREVENT UNFAIR SURPRISE.

24 (4) IF THE PREVAILING RENT OR VALUE OF ANY GOODS REGULARLY
25 LEASED IN ANY ESTABLISHED MARKET IS IN ISSUE, REPORTS IN OFFICIAL
26 PUBLICATIONS OR TRADE JOURNALS OR IN NEWSPAPERS OR PERIODICALS OF
27 GENERAL CIRCULATION PUBLISHED AS THE REPORTS OF THAT MARKET ARE

1 ADMISSIBLE IN EVIDENCE. THE CIRCUMSTANCES OF THE PREPARATION OF
2 THE REPORT MAY BE SHOWN TO AFFECT ITS WEIGHT BUT NOT ITS
3 ADMISSIBILITY.

4 SEC. 2A508. (1) IF A LESSOR FAILS TO DELIVER THE GOODS IN
5 CONFORMITY TO THE LEASE CONTRACT (SECTION 2A509) OR REPUDIATES
6 THE LEASE CONTRACT (SECTION 2A402), OR A LESSEE RIGHTFULLY
7 REJECTS THE GOODS (SECTION 2A509) OR JUSTIFIABLY REVOKES ACCEP-
8 TANCE OF THE GOODS (SECTION 2A517), THEN WITH RESPECT TO ANY
9 GOODS INVOLVED, AND WITH RESPECT TO ALL OF THE GOODS IF UNDER AN
10 INSTALLMENT LEASE CONTRACT THE VALUE OF THE WHOLE LEASE CONTRACT
11 IS SUBSTANTIALLY IMPAIRED (SECTION 2A510), THE LESSOR IS IN
12 DEFAULT UNDER THE LEASE CONTRACT AND THE LESSEE MAY DO ANY OR ALL
13 OF THE FOLLOWING:

14 (A) CANCEL THE LEASE CONTRACT (SECTION 2A505(1)).

15 (B) RECOVER SO MUCH OF THE RENT AND SECURITY AS HAS BEEN
16 PAID AND IS JUST UNDER THE CIRCUMSTANCES.

17 (C) COVER AND RECOVER DAMAGES AS TO ALL GOODS AFFECTED
18 WHETHER OR NOT THEY HAVE BEEN IDENTIFIED TO THE LEASE CONTRACT
19 (SECTION 2A518 OR 2A520), OR RECOVER DAMAGES FOR NONDELIVERY
20 (SECTION 2A519 OR 2A520).

21 (D) EXERCISE ANY OTHER RIGHTS OR PURSUE ANY OTHER REMEDIES
22 PROVIDED IN THE LEASE CONTRACT.

23 (2) IF A LESSOR FAILS TO DELIVER THE GOODS IN CONFORMITY TO
24 THE LEASE CONTRACT OR REPUDIATES THE LEASE CONTRACT, THE LESSEE
25 MAY ALSO DO EITHER OF THE FOLLOWING:

26 (A) IF THE GOODS HAVE BEEN IDENTIFIED, RECOVER THEM (SECTION
27 2A522).

1 (B) IN A PROPER CASE, OBTAIN SPECIFIC PERFORMANCE OR REPLEVY
2 THE GOODS (SECTION 2A521).

3 (3) IF A LESSOR IS OTHERWISE IN DEFAULT UNDER A LEASE CON-
4 TRACT, THE LESSEE MAY EXERCISE THE RIGHTS AND PURSUE THE REMEDIES
5 PROVIDED IN THE LEASE CONTRACT, WHICH MAY INCLUDE THE RIGHT TO
6 CANCEL THE LEASE, AND IN SECTION 2A519(3).

7 (4) IF A LESSOR HAS BREACHED A WARRANTY, WHETHER EXPRESS OR
8 IMPLIED, THE LESSEE MAY RECOVER DAMAGES (SECTION 2A519(4)).

9 (5) ON RIGHTFUL REJECTION OR JUSTIFIABLE REVOCATION OF
10 ACCEPTANCE, A LESSEE HAS A SECURITY INTEREST IN GOODS IN THE
11 LESSEE'S POSSESSION OR CONTROL FOR ANY RENT AND SECURITY THAT HAS
12 BEEN PAID AND ANY EXPENSES REASONABLY INCURRED IN THEIR INSPEC-
13 TION, RECEIPT, TRANSPORTATION, AND CARE AND CUSTODY AND MAY HOLD
14 THOSE GOODS AND DISPOSE OF THEM IN GOOD FAITH AND IN A COMMER-
15 CIALY REASONABLE MANNER, SUBJECT TO SECTION 2A527(5).

16 (6) SUBJECT TO THE PROVISIONS OF SECTION 2A407, A LESSEE, ON
17 NOTIFYING THE LESSOR OF THE LESSEE'S INTENTION TO DO SO, MAY
18 DEDUCT ALL OR ANY PART OF THE DAMAGES RESULTING FROM ANY DEFAULT
19 UNDER THE LEASE CONTRACT FROM ANY PART OF THE RENT STILL DUE
20 UNDER THE SAME LEASE CONTRACT.

21 SEC. 2A509. (1) SUBJECT TO THE PROVISIONS OF SECTION 2A510
22 ON DEFAULT IN INSTALLMENT LEASE CONTRACTS, IF THE GOODS OR THE
23 TENDER OR DELIVERY FAIL IN ANY RESPECT TO CONFORM TO THE LEASE
24 CONTRACT, THE LESSEE MAY REJECT OR ACCEPT THE GOODS OR ACCEPT ANY
25 COMMERCIAL UNIT OR UNITS AND REJECT THE REST OF THE GOODS.

1 (2) REJECTION OF GOODS IS INEFFECTIVE UNLESS IT IS WITHIN A
2 REASONABLE TIME AFTER TENDER OR DELIVERY OF THE GOODS AND THE
3 LESSEE SEASONABLY NOTIFIES THE LESSOR.

4 SEC. 2A510. (1) UNDER AN INSTALLMENT LEASE CONTRACT A
5 LESSEE MAY REJECT ANY DELIVERY THAT IS NONCONFORMING IF THE NON-
6 CONFORMITY SUBSTANTIALLY IMPAIRS THE VALUE OF THAT DELIVERY AND
7 CANNOT BE CURED OR THE NONCONFORMITY IS A DEFECT IN THE REQUIRED
8 DOCUMENTS; BUT IF THE NONCONFORMITY DOES NOT FALL WITHIN SUBSEC-
9 TION (2) AND THE LESSOR OR THE SUPPLIER GIVES ADEQUATE ASSURANCE
10 OF ITS CURE, THE LESSEE MUST ACCEPT THAT DELIVERY.

11 (2) WHENEVER NONCONFORMITY OR DEFAULT WITH RESPECT TO 1 OR
12 MORE DELIVERIES SUBSTANTIALLY IMPAIRS THE VALUE OF THE INSTALL-
13 MENT LEASE CONTRACT AS A WHOLE THERE IS A DEFAULT WITH RESPECT TO
14 THE WHOLE. BUT, THE AGGRIEVED PARTY REINSTATES THE INSTALLMENT
15 LEASE CONTRACT AS A WHOLE IF THE AGGRIEVED PARTY ACCEPTS A NON-
16 CONFORMING DELIVERY WITHOUT SEASONABLY NOTIFYING OF CANCELLATION
17 OR BRINGS AN ACTION WITH RESPECT ONLY TO PAST DELIVERIES OR
18 DEMANDS PERFORMANCE AS TO FUTURE DELIVERIES.

19 SEC. 2A511. (1) SUBJECT TO ANY SECURITY INTEREST OF A
20 LESSEE (SECTION 2A508(5)), IF A LESSOR OR A SUPPLIER HAS NO AGENT
21 OR PLACE OF BUSINESS AT THE MARKET OF REJECTION, A MERCHANT
22 LESSEE, AFTER REJECTION OF GOODS IN HIS OR HER POSSESSION OR CON-
23 TROL, SHALL FOLLOW ANY REASONABLE INSTRUCTIONS RECEIVED FROM THE
24 LESSOR OR THE SUPPLIER WITH RESPECT TO THE GOODS. IN THE ABSENCE
25 OF THOSE INSTRUCTIONS, A MERCHANT LESSEE SHALL MAKE REASONABLE
26 EFFORTS TO SELL, LEASE, OR OTHERWISE DISPOSE OF THE GOODS FOR THE
27 LESSOR'S ACCOUNT IF THEY THREATEN TO DECLINE IN VALUE SPEEDILY.

1 INSTRUCTIONS ARE NOT REASONABLE IF ON DEMAND INDEMNITY FOR
2 EXPENSES IS NOT FORTHCOMING.

3 (2) IF A MERCHANT LESSEE OR ANY OTHER LESSEE (SECTION 2A512)
4 DISPOSES OF GOODS, HE OR SHE IS ENTITLED TO REIMBURSEMENT EITHER
5 FROM THE LESSOR OR THE SUPPLIER OR OUT OF THE PROCEEDS FOR REA-
6 SONABLE EXPENSES OF CARING FOR AND DISPOSING OF THE GOODS AND, IF
7 THE EXPENSES INCLUDE NO DISPOSITION COMMISSION, TO SUCH COMMIS-
8 SION AS IS USUAL IN THE TRADE, OR IF THERE IS NONE, TO A REASON-
9 ABLE SUM NOT EXCEEDING 10% OF THE GROSS PROCEEDS.

10 (3) IN COMPLYING WITH THIS SECTION OR SECTION 2A512, THE
11 LESSEE IS HELD ONLY TO GOOD FAITH. GOOD FAITH CONDUCT HEREUNDER
12 IS NEITHER ACCEPTANCE OR CONVERSION NOR THE BASIS OF AN ACTION
13 FOR DAMAGES.

14 (4) A PURCHASER WHO PURCHASES IN GOOD FAITH FROM A LESSEE
15 PURSUANT TO THIS SECTION OR SECTION 2A512 TAKES THE GOODS FREE OF
16 ANY RIGHTS OF THE LESSOR AND THE SUPPLIER EVEN THOUGH THE LESSEE
17 FAILS TO COMPLY WITH 1 OR MORE OF THE REQUIREMENTS OF THIS
18 ARTICLE.

19 SEC. 2A512. (1) EXCEPT AS OTHERWISE PROVIDED WITH RESPECT
20 TO GOODS THAT THREATEN TO DECLINE IN VALUE SPEEDILY AND SUBJECT
21 TO ANY SECURITY INTEREST OF A LESSEE THE FOLLOWING RULES APPLY:

22 (A) THE LESSEE, AFTER REJECTION OF GOODS IN THE LESSEE'S
23 POSSESSION, SHALL HOLD THEM WITH REASONABLE CARE AT THE LESSOR'S
24 OR THE SUPPLIER'S DISPOSITION FOR A REASONABLE TIME AFTER THE
25 LESSEE'S SEASONABLE NOTIFICATION OF REJECTION.

26 (B) IF THE LESSOR OR THE SUPPLIER GIVES NO INSTRUCTIONS
27 WITHIN A REASONABLE TIME AFTER NOTIFICATION OF REJECTION, THE

1 LESSEE MAY STORE THE REJECTED GOODS FOR THE LESSOR'S OR THE
2 SUPPLIER'S ACCOUNT OR SHIP THEM TO THE LESSOR OR THE SUPPLIER OR
3 DISPOSE OF THEM FOR THE LESSOR'S OR THE SUPPLIER'S ACCOUNT WITH
4 REIMBURSEMENT IN THE MANNER PROVIDED IN SECTION 2A511.

5 (C) EXCEPT AS OTHERWISE PROVIDED BY THIS SECTION, THE LESSEE
6 HAS NO FURTHER OBLIGATIONS WITH REGARD TO GOODS RIGHTFULLY
7 REJECTED.

8 (2) ACTION BY THE LESSEE PURSUANT TO SUBSECTION (1) IS NOT
9 ACCEPTANCE OR CONVERSION.

10 SEC. 2A513. (1) IF ANY TENDER OR DELIVERY BY THE LESSOR OR
11 THE SUPPLIER IS REJECTED BECAUSE NONCONFORMING AND THE TIME FOR
12 PERFORMANCE HAS NOT YET EXPIRED, THE LESSOR OR THE SUPPLIER MAY
13 SEASONABLY NOTIFY THE LESSEE OF THE LESSOR'S OR THE SUPPLIER'S
14 INTENTION TO CURE AND MAY THEN MAKE A CONFORMING DELIVERY WITHIN
15 THE TIME PROVIDED IN THE LEASE CONTRACT.

16 (2) IF THE LESSEE REJECTS A NONCONFORMING TENDER THAT THE
17 LESSOR OR THE SUPPLIER HAD REASONABLE GROUNDS TO BELIEVE WOULD BE
18 ACCEPTABLE WITH OR WITHOUT MONEY ALLOWANCE, THE LESSOR OR THE
19 SUPPLIER MAY HAVE A FURTHER REASONABLE TIME TO SUBSTITUTE A CON-
20 FORMING TENDER IF HE OR SHE SEASONABLY NOTIFIES THE LESSEE.

21 SEC. 2A514. (1) IN REJECTING GOODS, A LESSEE'S FAILURE TO
22 STATE A PARTICULAR DEFECT THAT IS ASCERTAINABLE BY REASONABLE
23 INSPECTION PRECLUDES THE LESSEE FROM RELYING ON THE DEFECT TO
24 JUSTIFY REJECTION OR TO ESTABLISH DEFAULT (i) IF, STATED SEASON-
25 ABLY, THE LESSOR OR THE SUPPLIER COULD HAVE CURED IT, OR (ii)
26 BETWEEN MERCHANTS IF THE LESSOR OR THE SUPPLIER AFTER REJECTION

1 HAS MADE A REQUEST IN WRITING FOR A FULL AND FINAL WRITTEN
2 STATEMENT OF ALL DEFECTS ON WHICH THE LESSEE PROPOSES TO RELY.

3 (2) A LESSEE'S FAILURE TO RESERVE RIGHTS WHEN PAYING RENT OR
4 OTHER CONSIDERATION AGAINST DOCUMENTS PRECLUDES RECOVERY OF THE
5 PAYMENT FOR DEFECTS APPARENT ON THE FACE OF THE DOCUMENTS.

6 SEC. 2A515. (1) ACCEPTANCE OF GOODS OCCURS AFTER THE LESSEE
7 HAS HAD A REASONABLE OPPORTUNITY TO INSPECT THE GOODS AND EITHER
8 OF THE FOLLOWING APPLIES:

9 (A) THE LESSEE SIGNIFIES OR ACTS WITH RESPECT TO THE GOODS
10 IN A MANNER THAT SIGNIFIES TO THE LESSOR OR THE SUPPLIER THAT THE
11 GOODS ARE CONFORMING OR THAT THE LESSEE WILL TAKE OR RETAIN THEM
12 IN SPITE OF THEIR NONCONFORMITY.

13 (B) THE LESSEE FAILS TO MAKE AN EFFECTIVE REJECTION OF THE
14 GOODS (SECTION 2A509(2)).

15 (2) ACCEPTANCE OF A PART OF ANY COMMERCIAL UNIT IS ACCEP-
16 TANCE OF THAT ENTIRE UNIT.

17 SEC. 2A516. (1) A LESSEE MUST PAY RENT FOR ANY GOODS
18 ACCEPTED IN ACCORDANCE WITH THE LEASE CONTRACT, WITH DUE ALLOW-
19 ANCE FOR GOODS RIGHTFULLY REJECTED OR NOT DELIVERED.

20 (2) A LESSEE'S ACCEPTANCE OF GOODS PRECLUDES REJECTION OF
21 THE GOODS ACCEPTED. IN THE CASE OF A FINANCE LEASE, IF MADE WITH
22 KNOWLEDGE OF A NONCONFORMITY, ACCEPTANCE CANNOT BE REVOKED
23 BECAUSE OF IT. IN ANY OTHER CASE, IF MADE WITH KNOWLEDGE OF A
24 NONCONFORMITY, ACCEPTANCE CANNOT BE REVOKED BECAUSE OF IT UNLESS
25 THE ACCEPTANCE WAS ON THE REASONABLE ASSUMPTION THAT THE NONCON-
26 FORMITY WOULD BE SEASONABLY CURED. ACCEPTANCE DOES NOT OF ITSELF

1 IMPAIR ANY OTHER REMEDY PROVIDED BY THIS ARTICLE OR THE LEASE
2 AGREEMENT FOR NONCONFORMITY.

3 (3) IF A TENDER HAS BEEN ACCEPTED:

4 (A) WITHIN A REASONABLE TIME AFTER THE LESSEE DISCOVERS OR
5 SHOULD HAVE DISCOVERED ANY DEFAULT, THE LESSEE SHALL NOTIFY THE
6 LESSOR AND THE SUPPLIER, IF ANY, OR BE BARRED FROM ANY REMEDY
7 AGAINST THE PARTY NOT NOTIFIED.

8 (B) EXCEPT IN THE CASE OF A CONSUMER LEASE, WITHIN A REASON-
9 ABLE TIME AFTER THE LESSEE RECEIVES NOTICE OF LITIGATION FOR
10 INFRINGEMENT OR THE LIKE (SECTION 2A211), THE LESSEE SHALL NOTIFY
11 THE LESSOR OR BE BARRED FROM ANY REMEDY OVER FOR LIABILITY ESTAB-
12 LISHED BY THE LITIGATION.

13 (C) THE BURDEN IS ON THE LESSEE TO ESTABLISH ANY DEFAULT.

14 (4) IF A LESSEE IS SUED FOR BREACH OF A WARRANTY OR OTHER
15 OBLIGATION FOR WHICH A LESSOR OR A SUPPLIER IS ANSWERABLE OVER
16 THE FOLLOWING APPLY:

17 (A) THE LESSEE MAY GIVE THE LESSOR OR THE SUPPLIER, OR BOTH,
18 WRITTEN NOTICE OF THE LITIGATION. IF THE NOTICE STATES THAT THE
19 PERSON NOTIFIED MAY COME IN AND DEFEND AND THAT IF THE PERSON
20 NOTIFIED DOES NOT DO SO THAT PERSON WILL BE BOUND IN ANY ACTION
21 AGAINST THAT PERSON BY THE LESSEE BY ANY DETERMINATION OF FACT
22 COMMON TO THE 2 LITIGATIONS, THEN UNLESS THE PERSON NOTIFIED
23 AFTER SEASONABLE RECEIPT OF THE NOTICE DOES COME IN AND DEFEND
24 THAT PERSON IS SO BOUND.

25 (B) THE LESSOR OR THE SUPPLIER MAY DEMAND IN WRITING THAT
26 THE LESSEE TURN OVER CONTROL OF THE LITIGATION INCLUDING
27 SETTLEMENT IF THE CLAIM IS ONE FOR INFRINGEMENT OR THE LIKE

1 (SECTION 2A211) OR ELSE BE BARRED FROM ANY REMEDY OVER. IF THE
2 DEMAND STATES THAT THE LESSOR OR THE SUPPLIER AGREES TO BEAR ALL
3 EXPENSE AND TO SATISFY ANY ADVERSE JUDGMENT, THEN UNLESS THE
4 LESSEE AFTER SEASONABLE RECEIPT OF THE DEMAND DOES TURN OVER CON-
5 TROL THE LESSEE IS SO BARRED.

6 (5) SUBSECTIONS (3) AND (4) APPLY TO ANY OBLIGATION OF A
7 LESSEE TO HOLD THE LESSOR OR THE SUPPLIER HARMLESS AGAINST
8 INFRINGEMENT OR THE LIKE (SECTION 2A211).

9 SEC. 2A517. (1) A LESSEE MAY REVOKE ACCEPTANCE OF A LOT OR
10 COMMERCIAL UNIT WHOSE NONCONFORMITY SUBSTANTIALLY IMPAIRS ITS
11 VALUE TO THE LESSEE IF THE LESSEE HAS ACCEPTED IT EITHER OF THE
12 FOLLOWING APPLIES:

13 (A) EXCEPT IN THE CASE OF A FINANCE LEASE, ON THE REASONABLE
14 ASSUMPTION THAT ITS NONCONFORMITY WOULD BE CURED AND IT HAS NOT
15 BEEN SEASONABLY CURED.

16 (B) WITHOUT DISCOVERY OF THE NONCONFORMITY IF THE LESSEE'S
17 ACCEPTANCE WAS REASONABLY INDUCED EITHER BY THE LESSOR'S ASSUR-
18 ANCES OR, EXCEPT IN THE CASE OF A FINANCE LEASE, BY THE DIFFI-
19 CULTY OF DISCOVERY BEFORE ACCEPTANCE.

20 (2) EXCEPT IN THE CASE OF A FINANCE LEASE THAT IS NOT A CON-
21 SUMER LEASE, A LESSEE MAY REVOKE ACCEPTANCE OF A LOT OR COMMER-
22 CIAL UNIT IF THE LESSOR DEFAULTS UNDER THE LEASE CONTRACT AND THE
23 DEFAULT SUBSTANTIALLY IMPAIRS THE VALUE OF THAT LOT OR COMMERCIAL
24 UNIT TO THE LESSEE.

25 (3) IF THE LEASE AGREEMENT SO PROVIDES, THE LESSEE MAY
26 REVOKE ACCEPTANCE OF A LOT OR COMMERCIAL UNIT BECAUSE OF OTHER
27 DEFAULTS BY THE LESSOR.

1 (4) REVOCATION OF ACCEPTANCE MUST OCCUR WITHIN A REASONABLE
2 TIME AFTER THE LESSEE DISCOVERS OR SHOULD HAVE DISCOVERED THE
3 GROUND FOR IT AND BEFORE ANY SUBSTANTIAL CHANGE IN CONDITION OF
4 THE GOODS WHICH IS NOT CAUSED BY THE NONCONFORMITY. REVOCATION
5 IS NOT EFFECTIVE UNTIL THE LESSEE NOTIFIES THE LESSOR.

6 (5) A LESSEE WHO SO REVOKES HAS THE SAME RIGHTS AND DUTIES
7 WITH REGARD TO THE GOODS INVOLVED AS IF THE LESSEE HAD REJECTED
8 THEM.

9 SEC. 2A518. (1) AFTER DEFAULT BY A LESSOR UNDER THE LEASE
10 CONTRACT OF THE TYPE DESCRIBED IN SECTION 2A508(1) OR, IF AGREED,
11 AFTER OTHER DEFAULT BY THE LESSOR, THE LESSEE MAY COVER BY MAKING
12 ANY PURCHASE OR LEASE OF OR CONTRACT TO PURCHASE OR LEASE GOODS
13 IN SUBSTITUTION FOR THOSE DUE FROM THE LESSOR.

14 (2) EXCEPT AS OTHERWISE PROVIDED WITH RESPECT TO DAMAGES
15 LIQUIDATED IN THE LEASE AGREEMENT (SECTION 2A504) OR OTHERWISE
16 DETERMINED PURSUANT TO AGREEMENT OF THE PARTIES (SECTION
17 1102(3)), IF A LESSEE'S COVER IS BY A LEASE AGREEMENT SUBSTAN-
18 Tially SIMILAR TO THE ORIGINAL LEASE AGREEMENT AND THE LEASE
19 AGREEMENT IS MADE IN GOOD FAITH AND IN A COMMERCIALY REASONABLE
20 MANNER, THE LESSEE MAY RECOVER FROM THE LESSOR AS DAMAGES (i) THE
21 PRESENT VALUE, AS OF THE DATE OF THE COMMENCEMENT OF THE TERM OF
22 THE NEW LEASE AGREEMENT, OF THE RENT UNDER THE NEW LEASE AGREE-
23 MENT APPLICABLE TO THAT PERIOD OF THE NEW LEASE TERM WHICH IS
24 COMPARABLE TO THE THEN REMAINING TERM OF THE ORIGINAL LEASE
25 AGREEMENT MINUS THE PRESENT VALUE AS OF THE SAME DATE OF THE
26 TOTAL RENT FOR THE THEN REMAINING LEASE TERM OF THE ORIGINAL

1 LEASE AGREEMENT AND (ii) ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES
2 LESS EXPENSES SAVED IN CONSEQUENCE OF THE LESSOR'S DEFAULT.

3 (3) IF A LESSEE'S COVER IS BY LEASE AGREEMENT THAT FOR ANY
4 REASON DOES NOT QUALIFY FOR TREATMENT UNDER SUBSECTION (2), OR IS
5 BY PURCHASE OR OTHERWISE, THE LESSEE MAY RECOVER FROM THE LESSOR
6 AS IF THE LESSEE HAD ELECTED NOT TO COVER AND SECTION 2A519
7 GOVERNS.

8 SEC. 2A519. (1) EXCEPT AS OTHERWISE PROVIDED WITH RESPECT
9 TO DAMAGES LIQUIDATED IN THE LEASE AGREEMENT (SECTION 2A504) OR
10 OTHERWISE DETERMINED PURSUANT TO AGREEMENT OF THE PARTIES
11 (SECTION 1102(3)), IF A LESSEE ELECTS NOT TO COVER OR A LESSEE
12 ELECTS TO COVER AND THE COVER IS BY LEASE AGREEMENT THAT FOR ANY
13 REASON DOES NOT QUALIFY FOR TREATMENT UNDER SECTION 2A518(2), OR
14 IS BY PURCHASE OR OTHERWISE, THE MEASURE OF DAMAGES FOR NONDELIV-
15 ERY OR REPUDIATION BY THE LESSOR OR FOR REJECTION OR REVOCATION
16 OF ACCEPTANCE BY THE LESSEE IS THE PRESENT VALUE, AS OF THE DATE
17 OF THE DEFAULT, MINUS THE PRESENT VALUE AS OF THE SAME DATE OF
18 THE THEN MARKET RENT, THE ORIGINAL RENT, COMPUTED FOR THE REMAIN-
19 ING LEASE TERM OF THE ORIGINAL LEASE AGREEMENT TOGETHER WITH
20 INCIDENTAL AND CONSEQUENTIAL DAMAGES, LESS EXPENSES SAVED IN CON-
21 SEQUENCE OF THE LESSOR'S DEFAULT.

22 (2) MARKET RENT IS TO BE DETERMINED AS OF THE PLACE FOR
23 TENDER OR, IN CASES OF REJECTION AFTER ARRIVAL OR REVOCATION OF
24 ACCEPTANCE, AS OF THE PLACE OF ARRIVAL.

25 (3) EXCEPT AS OTHERWISE AGREED, IF THE LESSEE HAS ACCEPTED
26 GOODS AND GIVEN NOTIFICATION (SECTION 2A516(3)), THE MEASURE OF
27 DAMAGES FOR NONCONFORMING TENDER OR DELIVERY OR OTHER DEFAULT BY

1 A LESSOR IS THE LOSS RESULTING IN THE ORDINARY COURSE OF EVENTS
2 FROM THE LESSOR'S DEFAULT AS DETERMINED IN ANY MANNER THAT IS
3 REASONABLE TOGETHER WITH INCIDENTAL AND CONSEQUENTIAL DAMAGES,
4 LESS EXPENSES SAVED IN CONSEQUENCE OF THE LESSOR'S DEFAULT.

5 (4) EXCEPT AS OTHERWISE AGREED, THE MEASURE OF DAMAGES FOR
6 BREACH OF WARRANTY IS THE PRESENT VALUE AT THE TIME AND PLACE OF
7 ACCEPTANCE OF THE DIFFERENCE BETWEEN THE VALUE OF THE USE OF THE
8 GOODS ACCEPTED AND THE VALUE IF THEY HAD BEEN AS WARRANTED FOR
9 THE LEASE TERM, UNLESS SPECIAL CIRCUMSTANCES SHOW PROXIMATE DAM-
10 AGES OF A DIFFERENT AMOUNT, TOGETHER WITH INCIDENTAL AND CONSE-
11 QUENTIAL DAMAGES, LESS EXPENSES SAVED IN CONSEQUENCE OF THE
12 LESSOR'S DEFAULT OR BREACH OF WARRANTY.

13 SEC. 2A520. (1) INCIDENTAL DAMAGES RESULTING FROM A
14 LESSOR'S DEFAULT INCLUDE EXPENSES REASONABLY INCURRED IN INSPEC-
15 TION, RECEIPT, TRANSPORTATION, AND CARE AND CUSTODY OF GOODS
16 RIGHTFULLY REJECTED OR GOODS THE ACCEPTANCE OF WHICH IS JUSTIFI-
17 ABLY REVOKED, ANY COMMERCIALY REASONABLE CHARGES, EXPENSES, OR
18 COMMISSIONS IN CONNECTION WITH EFFECTING COVER, AND ANY OTHER
19 REASONABLE EXPENSE INCIDENT TO THE DEFAULT.

20 (2) CONSEQUENTIAL DAMAGES RESULTING FROM A LESSOR'S DEFAULT
21 INCLUDE THE FOLLOWING:

22 (A) ANY LOSS RESULTING FROM GENERAL OR PARTICULAR REQUIRE-
23 MENTS AND NEEDS OF WHICH THE LESSOR AT THE TIME OF CONTRACTING
24 HAD REASON TO KNOW AND WHICH COULD NOT REASONABLY BE PREVENTED BY
25 COVER OR OTHERWISE.

26 (B) INJURY TO PERSON OR PROPERTY PROXIMATELY RESULTING FROM
27 ANY BREACH OF WARRANTY.

1 SEC. 2A521. (1) SPECIFIC PERFORMANCE MAY BE DECREED IF THE
2 GOODS ARE UNIQUE OR IN OTHER PROPER CIRCUMSTANCES.

3 (2) A DECREE FOR SPECIFIC PERFORMANCE MAY INCLUDE ANY TERMS
4 AND CONDITIONS AS TO PAYMENT OF THE RENT, DAMAGES, OR OTHER
5 RELIEF THAT THE COURT DEEMS JUST.

6 (3) A LESSEE HAS A RIGHT OF REPLEVIN, DETINUE, SEQUESTRA-
7 TION, CLAIM AND DELIVERY, OR THE LIKE FOR GOODS IDENTIFIED TO THE
8 LEASE CONTRACT IF AFTER REASONABLE EFFORT THE LESSEE IS UNABLE TO
9 EFFECT COVER FOR THOSE GOODS OR THE CIRCUMSTANCES REASONABLY
10 INDICATE THAT THE EFFORT WILL BE UNAVAILING.

11 SEC. 2A522. (1) SUBJECT TO SUBSECTION (2) AND EVEN THOUGH
12 THE GOODS HAVE NOT BEEN SHIPPED, A LESSEE WHO HAS PAID A PART OR
13 ALL OF THE RENT AND SECURITY FOR GOODS IDENTIFIED TO A LEASE CON-
14 TRACT (SECTION 2A217) ON MAKING AND KEEPING GOOD A TENDER OF ANY
15 UNPAID PORTION OF THE RENT AND SECURITY DUE UNDER THE LEASE CON-
16 TRACT MAY RECOVER THE GOODS IDENTIFIED FROM THE LESSOR IF THE
17 LESSOR BECOMES INSOLVENT WITHIN 10 DAYS AFTER RECEIPT OF THE
18 FIRST INSTALLMENT OF RENT AND SECURITY.

19 (2) A LESSEE ACQUIRES THE RIGHT TO RECOVER GOODS IDENTIFIED
20 TO A LEASE CONTRACT ONLY IF THEY CONFORM TO THE LEASE CONTRACT.

21 SEC. 2A523. (1) IF A LESSEE WRONGFULLY REJECTS OR REVOKES
22 ACCEPTANCE OF GOODS OR FAILS TO MAKE A PAYMENT WHEN DUE OR REPU-
23 DIATES WITH RESPECT TO A PART OR THE WHOLE, THEN, WITH RESPECT TO
24 ANY GOODS INVOLVED, AND WITH RESPECT TO ALL OF THE GOODS IF UNDER
25 AN INSTALLMENT LEASE CONTRACT THE VALUE OF THE WHOLE LEASE CON-
26 TRACT IS SUBSTANTIALLY IMPAIRED (SECTION 2A510), THE LESSEE IS IN

1 DEFAULT UNDER THE LEASE CONTRACT AND THE LESSOR MAY DO ANY OF THE
2 FOLLOWING:

3 (A) CANCEL THE LEASE CONTRACT (SECTION 2A505(1)).

4 (B) PROCEED RESPECTING GOODS NOT IDENTIFIED TO THE LEASE
5 CONTRACT (SECTION 2A524).

6 (C) WITHHOLD DELIVERY OF THE GOODS AND TAKE POSSESSION OF
7 GOODS PREVIOUSLY DELIVERED (SECTION 2A525).

8 (D) STOP DELIVERY OF THE GOODS BY ANY BAILEE (SECTION
9 2A526).

10 (E) DISPOSE OF THE GOODS AND RECOVER DAMAGES (SECTION
11 2A527), RETAIN THE GOODS AND RECOVER DAMAGES (SECTION 2A528), OR,
12 IN A PROPER CASE, RECOVER RENT (SECTION 2A529).

13 (F) EXERCISE ANY OTHER RIGHTS OR PURSUE ANY OTHER REMEDIES
14 PROVIDED IN THE LEASE CONTRACT.

15 (2) IF A LESSOR DOES NOT FULLY EXERCISE A RIGHT OR OBTAIN A
16 REMEDY TO WHICH THE LESSOR IS ENTITLED UNDER SUBSECTION (1), THE
17 LESSOR MAY RECOVER THE LOSS RESULTING IN THE ORDINARY COURSE OF
18 EVENTS FROM THE LESSEE'S DEFAULT AS DETERMINED IN ANY REASONABLE
19 MANNER, TOGETHER WITH INCIDENTAL DAMAGES, LESS EXPENSES SAVED IN
20 CONSEQUENCES OF THE LESSEE'S DEFAULT.

21 (3) IF A LESSEE IS OTHERWISE IN DEFAULT UNDER A LEASE CON-
22 TRACT, THE LESSOR MAY EXERCISE THE RIGHTS AND PURSUE THE REMEDIES
23 PROVIDED IN THE LEASE CONTRACT, WHICH MAY INCLUDE A RIGHT TO
24 CANCEL THE LEASE. IN ADDITION, UNLESS OTHERWISE PROVIDED IN THE
25 LEASE CONTRACT, IF THE DEFAULT SUBSTANTIALLY IMPAIRS THE VALUE OF
26 THE LEASE CONTRACT TO THE LESSOR, THE LESSOR MAY EXERCISE THE
27 RIGHTS AND PURSUE THE REMEDIES PROVIDED IN SUBSECTION (1) OR (2),

1 OR IF THE DEFAULT DOES NOT SUBSTANTIALLY IMPAIR THE VALUE OF THE
2 LEASE CONTRACT TO THE LESSOR, THE LESSOR MAY RECOVER AS PROVIDED
3 IN SUBSECTION (2).

4 SEC. 2A524. (1) A LESSOR AGGRIEVED UNDER SECTION 2A523(1)
5 MAY DO ANY OF THE FOLLOWING:

6 (A) IDENTIFY TO THE LEASE CONTRACT CONFORMING GOODS NOT
7 ALREADY IDENTIFIED IF AT THE TIME THE LESSOR LEARNED OF THE
8 DEFAULT THEY WERE IN THE LESSOR'S OR THE SUPPLIER'S POSSESSION OR
9 CONTROL.

10 (B) DISPOSE OF GOODS (SECTION 2A527(1)) THAT DEMONSTRABLY
11 HAVE BEEN INTENDED FOR THE PARTICULAR LEASE CONTRACT EVEN THOUGH
12 THOSE GOODS ARE UNFINISHED.

13 (2) IF THE GOODS ARE UNFINISHED, IN THE EXERCISE OF REASON-
14 ABLE COMMERCIAL JUDGMENT FOR THE PURPOSES OF AVOIDING LOSS AND OF
15 EFFECTIVE REALIZATION, AN AGGRIEVED LESSOR OR THE SUPPLIER MAY
16 EITHER COMPLETE MANUFACTURE AND WHOLLY IDENTIFY THE GOODS TO THE
17 LEASE CONTRACT OR CEASE MANUFACTURE AND LEASE, SELL, OR OTHERWISE
18 DISPOSE OF THE GOODS FOR SCRAP OR SALVAGE VALUE OR PROCEED IN ANY
19 OTHER REASONABLE MANNER.

20 SEC. 2A525. (1) IF A LESSOR DISCOVERS THE LESSEE TO BE
21 INSOLVENT, THE LESSOR MAY REFUSE TO DELIVER THE GOODS.

22 (2) AFTER A DEFAULT BY THE LESSEE UNDER THE LEASE CONTRACT
23 OF THE TYPE DESCRIBED IN SECTION 2A523(1) OR 2A523(3)(A) OR, IF
24 AGREED, AFTER OTHER DEFAULT BY THE LESSEE, THE LESSEE HAS THE
25 RIGHT TO TAKE POSSESSION OF THE GOODS. IF THE LEASE CONTRACT SO
26 PROVIDES, THE LESSOR MAY REQUIRE THE LESSEE TO ASSEMBLE THE GOODS
27 AND MAKE THEM AVAILABLE TO THE LESSOR AT A PLACE TO BE DESIGNATED

1 BY THE LESSOR WHICH IS REASONABLY CONVENIENT TO BOTH PARTIES.
2 WITHOUT REMOVAL, THE LESSOR MAY RENDER UNUSABLE ANY GOODS
3 EMPLOYED IN TRADE OR BUSINESS, AND MAY DISPOSE OF GOODS ON THE
4 LESSEE'S PREMISES (SECTION 2A527).

5 (3) THE LESSOR MAY PROCEED UNDER SUBSECTION (2) WITHOUT
6 JUDICIAL PROCESS IF THAT CAN BE DONE WITHOUT BREACH OF THE PEACE
7 OR THE LESSOR MAY PROCEED BY ACTION.

8 SEC. 2A526. (1) A LESSOR MAY STOP DELIVERY OF GOODS IN THE
9 POSSESSION OF A CARRIER OR OTHER BAILEE IF THE LESSOR DISCOVERS
10 THE LESSEE TO BE INSOLVENT AND MAY STOP DELIVERY OF CARLOAD,
11 TRUCKLOAD, PLANELOAD, OR LARGER SHIPMENTS OF EXPRESS OR FREIGHT
12 IF THE LESSEE REPUDIATES OR FAILS TO MAKE A PAYMENT DUE BEFORE
13 DELIVERY, WHETHER FOR RENT, SECURITY, OR OTHERWISE UNDER THE
14 LEASE CONTRACT, OR FOR ANY OTHER REASON THE LESSOR HAS A RIGHT TO
15 WITHHOLD OR TAKE POSSESSION OF THE GOODS.

16 (2) IN PURSUING ITS REMEDIES UNDER SUBSECTION (1), THE
17 LESSOR MAY STOP DELIVERY UNTIL 1 OF THE FOLLOWING:

18 (A) RECEIPT OF THE GOODS BY THE LESSEE.

19 (B) ACKNOWLEDGMENT TO THE LESSEE BY ANY BAILEE OF THE GOODS,
20 EXCEPT A CARRIER, THAT THE BAILEE HOLDS THE GOODS FOR THE
21 LESSEE.

22 (C) AN ACKNOWLEDGMENT TO THE LESSEE BY A CARRIER VIA RESHIP-
23 MENT OR AS WAREHOUSEPERSON.

24 (3) TO STOP DELIVERY, A LESSOR SHALL SO NOTIFY AS TO ENABLE
25 THE BAILEE BY REASONABLE DILIGENCE TO PREVENT DELIVERY OF THE
26 GOODS.

1 (4) AFTER NOTIFICATION, THE BAILEE SHALL HOLD AND DELIVER
2 THE GOODS ACCORDING TO THE DIRECTIONS OF THE LESSOR, BUT THE
3 LESSOR IS LIABLE TO THE BAILEE FOR ANY ENSUING CHARGES OR
4 DAMAGES.

5 (5) A CARRIER WHO HAS ISSUED A NONNEGOTIABLE BILL OF LADING
6 IS NOT OBLIGED TO OBEY A NOTIFICATION TO STOP RECEIVED FROM A
7 PERSON OTHER THAN THE CONSIGNOR.

8 SEC. 2A527. (1) AFTER A DEFAULT BY A LESSEE UNDER THE LEASE
9 CONTRACT OF THE TYPE DESCRIBED IN SECTION 2A523(1) OR
10 2A523(3)(A), OR AFTER THE LESSOR REFUSES TO DELIVER OR TAKES POS-
11 SESSION OF GOODS, OR, IF AGREED, AFTER OTHER DEFAULT BY A LESSEE,
12 THE LESSOR MAY DISPOSE OF THE GOODS CONCERNED OR THE UNDELIVERED
13 BALANCE THEREOF BY LEASE, SALE, OR OTHERWISE.

14 (2) EXCEPT AS OTHERWISE PROVIDED WITH RESPECT TO DAMAGES
15 LIQUIDATED IN THE LEASE AGREEMENT (SECTION 2A504) OR OTHERWISE
16 DETERMINED PURSUANT TO AGREEMENT OF THE PARTIES (SECTION
17 1102(3)), IF THE DISPOSITION IS BY LEASE AGREEMENT SUBSTANTIALLY
18 SIMILAR TO THE ORIGINAL LEASE AGREEMENT AND THE NEW LEASE AGREE-
19 MENT IS MADE IN GOOD FAITH AND IN A COMMERCIALY REASONABLE
20 MANNER, THE LESSOR MAY RECOVER FROM THE LESSEE AS DAMAGES (i)
21 ACCRUED AND UNPAID RENT AS OF THE DATE OF THE COMMENCEMENT OF THE
22 TERM OF THE NEW LEASE AGREEMENT, (ii) THE PRESENT VALUE, AS OF
23 THE SAME DATE, OF THE TOTAL RENT FOR THE THEN REMAINING LEASE
24 TERM OF THE ORIGINAL LEASE AGREEMENT MINUS THE PRESENT VALUE, AS
25 OF THE SAME DATE, OF THE RENT UNDER THE NEW LEASE AGREEMENT
26 APPLICABLE TO THAT PERIOD OF THE NEW LEASE TERM WHICH IS
27 COMPARABLE TO THE THEN REMAINING TERM OF THE ORIGINAL LEASE

1 AGREEMENT, AND (iii) ANY INCIDENTAL DAMAGES ALLOWED UNDER
2 SECTION 2A530, LESS EXPENSES SAVED IN CONSEQUENCE OF THE LESSEE'S
3 DEFAULT.

4 (3) IF THE LESSOR'S DISPOSITION IS BY LEASE AGREEMENT THAT
5 FOR ANY REASON DOES NOT QUALIFY FOR TREATMENT UNDER
6 SUBSECTION (2), OR IS BY SALE OR OTHERWISE, THE LESSOR MAY
7 RECOVER FROM THE LESSEE AS IF THE LESSOR HAD ELECTED NOT TO DIS-
8 POSE OF THE GOODS AND SECTION 2A528 GOVERNS.

9 (4) A SUBSEQUENT BUYER OR LESSEE WHO BUYS OR LEASES FROM THE
10 LESSOR IN GOOD FAITH FOR VALUE AS A RESULT OF A DISPOSITION UNDER
11 THIS SECTION TAKES THE GOODS FREE OF THE ORIGINAL LEASE CONTRACT
12 AND ANY RIGHTS OF THE ORIGINAL LESSEE EVEN THOUGH THE LESSOR
13 FAILS TO COMPLY WITH 1 OR MORE OF THE REQUIREMENTS OF THIS
14 ARTICLE.

15 (5) THE LESSOR IS NOT ACCOUNTABLE TO THE LESSEE FOR ANY
16 PROFIT MADE ON ANY DISPOSITION. A LESSEE WHO HAS RIGHTFULLY
17 REJECTED OR JUSTIFIABLY REVOKED ACCEPTANCE SHALL ACCOUNT TO THE
18 LESSOR FOR ANY EXCESS OVER THE AMOUNT OF THE LESSEE'S SECURITY
19 INTEREST (SECTION 2A508(5)).

20 SEC. 2A528. (1) EXCEPT AS OTHERWISE PROVIDED WITH RESPECT
21 TO DAMAGES LIQUIDATED IN THE LEASE AGREEMENT (SECTION 2A504) OR
22 OTHERWISE DETERMINED PURSUANT TO AGREEMENT OF THE PARTIES
23 (SECTION 1102(3)), IF A LESSOR ELECTS TO RETAIN THE GOODS OR A
24 LESSOR ELECTS TO DISPOSE OF THE GOODS AND DISPOSITION IS BY LEASE
25 AGREEMENT THAT FOR ANY REASON DOES NOT QUALIFY FOR TREATMENT
26 UNDER SECTION 2A527(2), OR IS BY SALE OR OTHERWISE, THE LESSOR
27 MAY RECOVER FROM THE LESSEE AS DAMAGES FOR A DEFAULT OF THE TYPE

1 DESCRIBED IN SECTION 2A523(1) OR 2A523(3)(A), OR, IF AGREED, FOR
2 OTHER DEFAULT OF THE LESSEE, (i) ACCRUED AND UNPAID RENT AS OF
3 THE DATE OF DEFAULT IF THE LESSEE HAS NEVER TAKEN POSSESSION OF
4 THE GOODS, OR, IF THE LESSEE HAS TAKEN POSSESSION OF THE GOODS,
5 AS OF THE DATE THE LESSOR REPOSSESSES THE GOODS OR AN EARLIER
6 DATE ON WHICH THE LESSEE MAKES A TENDER OF THE GOODS TO THE
7 LESSOR, (ii) THE PRESENT VALUE AS OF THE DATE DETERMINED UNDER
8 THIS SUBSECTION OF THE TOTAL RENT FOR THE THEN REMAINING LEASE
9 TERM OF THE ORIGINAL LEASE AGREEMENT MINUS THE PRESENT VALUE AS
10 OF THE SAME DATE OF THE MARKET RENT AT THE PLACE WHERE THE GOODS
11 ARE LOCATED COMPUTED FOR THE SAME LEASE TERM, AND ANY INCIDENTAL
12 DAMAGES ALLOWED UNDER SECTION 2A530, LESS EXPENSES SAVED IN CON-
13 SEQUENCE OF THE LESSEE'S DEFAULT.

14 (2) IF THE MEASURE OF DAMAGES PROVIDED IN SUBSECTION (1) IS
15 INADEQUATE TO PUT A LESSOR IN AS GOOD A POSITION AS PERFORMANCE
16 WOULD HAVE, THE MEASURE OF DAMAGES IS THE PRESENT VALUE OF THE
17 PROFIT, INCLUDING REASONABLE OVERHEAD, THE LESSOR WOULD HAVE MADE
18 FROM FULL PERFORMANCE BY THE LESSEE, TOGETHER WITH ANY INCIDENTAL
19 DAMAGES ALLOWED UNDER SECTION 2A530, DUE ALLOWANCE FOR COSTS REA-
20 SONABLY INCURRED AND DUE CREDIT FOR PAYMENTS OR PROCEEDS OF
21 DISPOSITION.

22 SEC. 2A529. (1) AFTER DEFAULT BY THE LESSEE UNDER THE LEASE
23 CONTRACT OF THE TYPE DESCRIBED IN SECTION 2A523(1) OR 2A523(3)(A)
24 OR, IF AGREED, AFTER OTHER DEFAULT BY THE LESSEE, IF THE LESSOR
25 COMPLIES WITH SUBSECTION (2), THE LESSOR MAY RECOVER FROM THE
26 LESSEE AS DAMAGES THE FOLLOWING:

1 (A) FOR GOODS ACCEPTED BY THE LESSEE AND NOT REPOSSESSED BY
2 OR TENDERED TO THE LESSOR, AND FOR CONFORMING GOODS LOST OR
3 DAMAGED WITHIN A COMMERCIALY REASONABLE TIME AFTER RISK OF LOSS
4 PASSES TO THE LESSEE (SECTION 2A219), (i) ACCRUED AND UNPAID RENT
5 AS OF THE DATE OF ENTRY OF JUDGMENT IN FAVOR OF THE LESSOR, (ii)
6 THE PRESENT VALUE AS OF THE DATE OF DEFAULT OF THE RENT FOR THE
7 THEN REMAINING LEASE TERM OF THE LEASE AGREEMENT, AND (iii) ANY
8 INCIDENTAL DAMAGES ALLOWED UNDER SECTION 2A530, LESS EXPENSES
9 SAVED IN CONSEQUENCE OF THE LESSEE'S DEFAULT.

10 (B) FOR GOODS IDENTIFIED TO THE LEASE CONTRACT IF THE LESSOR
11 IS UNABLE AFTER REASONABLE EFFORT TO DISPOSE OF THEM AT A REASON-
12 ABLE PRICE OR THE CIRCUMSTANCES REASONABLY INDICATE THAT EFFORT
13 WILL BE UNAVAILING, (i) ACCRUED AND UNPAID RENT AS OF THE DATE OF
14 ENTRY OF JUDGMENT IN FAVOR OF THE LESSOR, (ii) THE PRESENT VALUE
15 AS OF THE SAME DATE OF THE RENT FOR THE THEN REMAINING LEASE TERM
16 OF THE LEASE AGREEMENT, AND (iii) ANY INCIDENTAL DAMAGES ALLOWED
17 UNDER SECTION 2A530, LESS EXPENSES SAVED IN CONSEQUENCE OF THE
18 LESSEE'S DEFAULT.

19 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), THE LESSOR SHALL
20 HOLD FOR THE LESSEE FOR THE REMAINING LEASE TERM OF THE LEASE
21 AGREEMENT ANY GOODS THAT HAVE BEEN IDENTIFIED TO THE LEASE CON-
22 TRACT AND ARE IN THE LESSOR'S CONTROL.

23 (3) THE LESSOR MAY DISPOSE OF THE GOODS AT ANY TIME BEFORE
24 COLLECTION OF THE JUDGMENT FOR DAMAGES OBTAINED PURSUANT TO
25 SUBSECTION (1). IF THE DISPOSITION IS BEFORE THE END OF THE
26 REMAINING LEASE TERM OF THE LEASE AGREEMENT, THE LESSOR'S
27 RECOVERY AGAINST THE LESSEE FOR DAMAGES IS GOVERNED BY

1 SECTION 2A527 OR 2A528, AND THE LESSOR WILL CAUSE AN APPROPRIATE
2 CREDIT TO BE PROVIDED AGAINST A JUDGMENT FOR DAMAGES TO THE
3 EXTENT THAT THE AMOUNT OF THE JUDGMENT EXCEEDS THE RECOVERY
4 AVAILABLE PURSUANT TO SECTION 2A527 OR 2A528.

5 (4) PAYMENT OF THE JUDGMENT FOR DAMAGES OBTAINED PURSUANT TO
6 SUBSECTION (1) ENTITLES THE LESSEE TO USE AND POSSESSION OF THE
7 GOODS NOT THEN DISPOSED OF FOR THE REMAINING LEASE TERM OF AND IN
8 ACCORDANCE WITH THE LEASE AGREEMENT.

9 (5) AFTER A LESSEE HAS WRONGFULLY REJECTED OR REVOKED ACCEP-
10 TANCE OF GOODS, HAS FAILED TO PAY RENT THEN DUE, OR HAS REPUDI-
11 ATED (SECTION 2A402), A LESSOR WHO IS HELD NOT ENTITLED TO RENT
12 UNDER THIS SECTION MUST NEVERTHELESS BE AWARDED DAMAGES FOR NON-
13 ACCEPTANCE UNDER SECTION 2A527 OR 2A528.

14 SEC. 2A530. INCIDENTAL DAMAGES TO AN AGGRIEVED LESSOR
15 INCLUDE ANY COMMERCIALY REASONABLE CHARGES, EXPENSES, OR COMMIS-
16 SIONS INCURRED IN STOPPING DELIVERY, IN THE TRANSPORTATION, CARE
17 AND CUSTODY OF GOODS AFTER THE LESSEE'S DEFAULT, IN CONNECTION
18 WITH RETURN OR DISPOSITION OF THE GOODS, OR OTHERWISE RESULTING
19 FROM THE DEFAULT.

20 SEC. 2A531. (1) IF A THIRD PARTY SO DEALS WITH GOODS THAT
21 HAVE BEEN IDENTIFIED TO A LEASE CONTRACT AS TO CAUSE ACTIONABLE
22 INJURY TO A PARTY TO THE LEASE CONTRACT, (i) THE LESSOR HAS A
23 RIGHT OF ACTION AGAINST THE THIRD PARTY, AND (ii) THE LESSEE ALSO
24 HAS A RIGHT OF ACTION AGAINST THE THIRD PARTY IF ANY OF THE FOL-
25 LOWING APPLY TO THE LESSEE:

26 (A) HAS A SECURITY INTEREST IN THE GOODS.

1 (B) HAS AN INSURABLE INTEREST IN THE GOODS.

2 (C) BEARS THE RISK OF LOSS UNDER THE LEASE CONTRACT OR HAS
3 SINCE THE INJURY ASSUMED THAT RISK AS AGAINST THE LESSOR AND THE
4 GOODS HAVE BEEN CONVERTED OR DESTROYED.

5 (2) IF AT THE TIME OF THE INJURY THE PARTY PLAINTIFF DID NOT
6 BEAR THE RISK OF LOSS AS AGAINST THE OTHER PARTY TO THE LEASE
7 CONTRACT AND THERE IS NO ARRANGEMENT BETWEEN THEM FOR DISPOSITION
8 OF THE RECOVERY, HIS OR HER SUIT OR SETTLEMENT, SUBJECT TO HIS OR
9 HER OWN INTEREST, IS AS A FIDUCIARY FOR THE OTHER PARTY TO THE
10 LEASE CONTRACT.

11 (3) EITHER PARTY WITH THE CONSENT OF THE OTHER MAY SUE FOR
12 THE BENEFIT OF WHOM IT MAY CONCERN.

13 SEC. 2A532. IN ADDITION TO ANY OTHER RECOVERY PERMITTED BY
14 THIS ARTICLE OR OTHER LAW, THE LESSOR MAY RECOVER FROM THE LESSEE
15 AN AMOUNT THAT WILL FULLY COMPENSATE THE LESSOR FOR ANY LOSS OF
16 OR DAMAGE TO THE LESSOR'S RESIDUAL INTEREST IN THE GOODS CAUSED
17 BY THE DEFAULT OF THE LESSEE.

18 Sec. 9113. A security interest arising solely under the
19 article on sales (article 2) OR THE ARTICLE ON LEASES
20 (ARTICLE 2A) is subject to the provisions of this article except
21 that to the extent that and so long as the debtor does not have
22 or does not lawfully obtain possession of the goods AND THE FOL-
23 LOWING RULES APPLY:

24 (a) ~~no~~ NO security agreement is necessary to make the
25 security interest enforceable. ~~—/and—~~

26 (b) ~~no~~ NO filing is required to perfect the security
27 interest. ~~—/and—~~

1 (c) ~~the rights of the secured party on default by the~~
2 ~~debtor are governed by the article on sales (article 2)~~ THE
3 RIGHTS OF THE SECURED PARTY ON DEFAULT BY THE DEBTOR ARE GOVERNED
4 BY THE ARTICLE ON SALES (ARTICLE 2) IN THE CASE OF A SECURITY
5 INTEREST ARISING SOLELY UNDER THAT ARTICLE OR BY THE ARTICLE ON
6 LEASES (ARTICLE 2A) IN THE CASE OF A SECURITY INTEREST ARISING
7 SOLELY UNDER THAT ARTICLE.