

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
)
FANSTEEL INC., *et al.*,¹)
)
Debtors.)
)

Case No. 02-10109(JJF)
Chapter 11
(Jointly Administered)

40-4580

Objection Deadline: August 28, 2003 (By agreement of the parties)
Hearing Date: September 4, 2003 at 2:00 p.m. E.T.

**DEBTORS' OPPOSITION TO MOTION OF FISHER-ANDERSON, L.C. FOR THE
ENTRY OF AN ORDER TO MODIFY THE AUTOMATIC STAY OR,
ALTERNATIVELY, FOR ADEQUATE PROTECTION [DOCKET NO. 1167]**

The captioned debtors and debtors-in-possession (the "Debtors") hereby file this opposition (the "Opposition") to the motion (the "Motion") of Fisher-Anderson, L.C. ("Fisher") for entry of an order to modify the automatic stay or, alternatively, for adequate protection pursuant to 11 U.S.C. § 362(d)(2).

1. At issue is Agreement No. 32366 (the "Agreement") between Washington Mfg. Co., one of the Debtors ("Washington") and Fisher regarding the "lease" of User License for INFISY Software, Infisy Software, and 10 Bar Code Laser Guns (collectively, as defined in Fisher's Motion, the "Software").

2. The Software (except for laser guns) is also the subject of a License Agreement ("License Agreement") between Washington and Global Shop Solutions, as licensor (the "Licensor"). A true and correct copy of the License Agreement is attached hereto as Exhibit

¹ The Debtors are the following entities: Fansteel Inc., Fansteel Holdings, Inc., Custom Technologies Corp., Escast, Inc., Wellman Dynamics Corp., Washington Mfg. Co., Phoenix Aerospace Corp., and American Sintered Technologies, Inc.

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2. The relationship between Fisher and the Licensor is a factoring relationship, whereby Fisher guarantees payments under the Agreement to the Licensor.

3. The Court should deny the Motion because Fisher assumes that the Agreement is a “true lease”, when, in fact, it is a disguised financing, In re Edison Bros. Stores, 207 B.R. 801 (Bankr.D.Del 1997). Pursuant to 11 U.S.C. § 362(g), Fisher must prove that Washington has no equity in the Software, Fisher must also have an “interest” in the Software, as required by 11 U.S.C. § 361, and further demonstrate that the value of the Software continues to decline during the pendency of the bankruptcy case, See United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 108 S. Ct. 626 (1988). Moreover, Fisher must demonstrate that the Software is not essential to Washington’s reorganization. See 11 U.S.C. § 362(d)(2)(B). However, the Software is essential for data retention and to the ongoing business of Washington.

The \$1.00 Purchase Option

4. Attached as Exhibit A to the Fisher Motion is a copy of the Agreement. However, a critical page of the Agreement was not included in Exhibit A – that is, the “\$1.00 Purchase Option” (“\$1.00 Purchase Option”). Under this option, Washington may (a) purchase the Software for \$1.00 or (b) return the Software to Fisher (hereinafter, the “\$1.00 Purchase Option”) at the end of the Agreement. A true and correct copy of the \$1.00 Purchase Option, together with a complete copy of the Agreement, as executed by Washington and delivered to Key Credit Corporation (predecessor in interest to Fisher), is attached hereto as Exhibit 1. See Affidavit of Dan Langstraadt in Support of Debtor’s Opposition (the “Langstraadt Affidavit”)

As detailed below, Washington was never furnished with a copy of the fully executed Agreement, including the \$1.00 Purchase Option, executed by Fisher. See Langstraadt Affidavit.

5. On the top of the Washington copy of the Agreement is a fax line: "From Key Credit 9770641044". This identical fax line appears on the Fisher documents. The documents were delivered to Washington, signed by Washington, and then delivered to Fisher and signed by Fisher. No fully executed copy was delivered to Washington by Fisher. Nonetheless, Washington entered into the Agreement with the expectation that the \$1.00 Purchase Option was part of the Agreement, and should be treated as part of the Agreement.²

The Agreement is a Disguised Financing Agreement

6. State law governing the contract determines whether or not an agreement is a true lease or a financing. In re Homeplace Stores, 228 B.R. 88, (Bankr.D.Del 92 1998), citing In re Continental Airlines, Inc., 932 F.2d 282, 294 (3d Cir. 1991) and In re Edison Bros. Stores, Inc., 207 B.R.801, 807 (Bankr.D.Del.1997). Iowa law governs this Agreement. See Agreement ¶15.

7. Section 1-201(37) of the Iowa Uniform Commercial Code ("ICC"), ICA §554.1201(37) (2002), sets forth the criteria for determining whether or not an agreement is an executory "true lease". In a true lease, no post-petition lease payments are required by the debtor; however, under a financing agreement, no post-petition payments are due (except when

² The fact that Washington does not have a signed copy of the \$1.00 Purchase Option should not bar its enforcement and inclusion as part of the Agreement. The Iowa Statute of Frauds does not bar enforcement of unsigned contracts; rather, it is a statutory rule of evidence which serves to control the competency of evidence. ICA§622.32(2002). The general provisions of the statute of frauds do not apply when there are "facts and circumstances" which would take the case out of the statute. ICA§622.33(2002). See, e.g. Thodos v. Shirk, 248 Iowa 172, 79 N.W.2d 733 (1956)(where acceptance of a deed, never signed by the party to be charged, satisfied the signature requirement of the statute of frauds).

there is a finding that adequate protection payments are necessary). Specifically, ICC section 1-201(37) provides that an agreement is a financing agreement if (a) value was given for it, (b) it is not subject to termination by the lessee, and (c) it provides that the “lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement”.

8. All requirements of ICC section 1-201(37) are present here. First, value was paid for the Agreement. Washington already has paid \$15,849.04 in monthly payments. Second, the Agreement was non-cancelable. In bold letterhead on the front of the Agreement are the words: “This is a noncancelable/irrevocable lease. This lease cannot be cancelled or terminated.” Third, the \$1.00 Purchase Option is, by any reasonable calculation, a “nominal” amount.³

9. Accordingly, the Agreement is a pre-petition financing contract, and not a lease whereupon post-petition lease payments are due. See, e.g., Corporate Ctr. Assocs. v. Total Group Servs. of Iowa, Inc., 462 N.W. 2d 713 (C.A. Iowa, 1990).

Fisher Is Not Entitled To Adequate Protection

10. Fisher claims that it is entitled to adequate protection payments because Washington has no equity in the Software and/or the Software is losing value during the pendency of the bankruptcy case. Both arguments are based on the unsupported, and

³ Iowa has adopted the codification of the “economic realities” test for determining whether or not a lease is a “true lease”. This test “. . . focuses on whether the lessee has, in light of all the facts and circumstances, no possible alternative but to exercise the purchase option . . . under this test, if only a fool would fail to exercise the purchase option, the option price is generally considered nominal and the transaction characterized as a disguised security agreement.” Battera Bank v. Subway Leasing Corp., 209 B.R. 482, 486 (Bankr. S.D. Ill. 1997). Here, “only a fool” would not pay \$1.00 at the end of the contract in order to own the software.

unsupportable, assertion that the Software now is worth \$45,000. Fisher must establish the useful life for the Software, as well as the fact that the Software had value as of the petition date. Fisher's current valuation does not comport with the depreciation method of Section 167 of the Internal Revenue Code.

11. However, even if Fisher were able to overcome the hurdle of valuation, and was able to prove that Washington has no equity in the Software, in order for adequate protection to be justified, the movant must have an "interest" in the property. 11 U.S.C. § 361. Here, Fisher's financing statement purports to secure (with the exception of the bar code guns) Software that was licensed to Washington. Notably, the License Agreement is solely between Washington and the Licensor. Fisher, as recited in Agreement ¶3, is not a party to the License Agreement, and Fisher does not own the Software. See Agreement ¶4.

12. Paragraph 1 of the License Agreement states that Licensor grants Washington "a non-exclusive and non-transferable license". Paragraph 4 of the License Agreement states that the Licensor retains all

"right, title and interest in and to the Software. Customer further acknowledges and agrees that the Software Product contains proprietary and confidential information which constitutes a valuable trade secret of [the Licensor]. Customer may not disclose or make available to third parties other than [Washington's] employees who require access to perform their tasks the Software Product or any portion thereof without Global Shop's written consent."

13. The ICC provides that, in order for a debtor to create a security interest in favor of another entity (such as Fisher), the debtor must have "rights to the collateral or the power to transfer rights in the collateral to a secured party." ICA §554.9203(2)(b). Here,

Washington's rights were governed by the License Agreement, which specifically states that it is "non-exclusive" and "non-transferable".

14. The "non-exclusive" and "non-transferable" nature of the License Agreement is important because it determines whether or not Washington had property interest in the Software such that Washington could permit Fisher's purported lien without the consent of the Licensor.⁴ This is the same analysis undertaken by the court in In re Golden Books Family Entm't, Inc., 269 B.R. 300 (Bankr.D.Del 2001). The court found that, under copyright law, "a nonexclusive licensee . . . has only a personal and not a property interest in the [intellectual property], which cannot be assigned unless the [intellectual property] owner authorizes the assignment..." In re Golden Books, 269 B.R. at 309 (citing In re Patient Educ. Media, (210 B.R. 242-43) (Bankr. S.D. N.Y. 1997)).

15. Here, because the Licensor retained all "right, title, and interest" in the license and required written consent to make it available to third parties, it is apparent that the license is a personal right and not a property right, which could be used as collateral. Accord, 21 West Lancaster Corp. v. Main Line Rest., 790 F. 2d 354 (3d Cir. 1986) (holding that a state liquor license which, by its terms, was not a property right, could not be used as collateral) and In re Main Street Beverage Corporation, 232 B.R. 303(D. N.J. 1998) (invalidating a lien because a liquor license was a personal right and not a property right).

⁴ In 53 MELR 287 at 350, Revised Article 9 and Asset Based Financing, Raymond T. Nimmer discusses the problems of using intellectual property as collateral. Nimmer points out that "...[the] circumstances are materially...complicated. The threshold question centers on whether the debtor (licensee) holds any *transferable* interest to which the security interest can attach. The follow up issues consider what is the appropriate relationship between the licensee's lender and the licensor or its lender. In all these respects, the issues have been difficult before Revised Article 9 and remain so under it. As a matter of practice, the only workable answer is that the relationship must be spelled out by agreement among the affected parties." (Emphasis added).

16. Accordingly, unless Fisher can prove that the licensor consented to its lien on the Software, the lien is invalid and Fisher has no right to adequate protection payments.


WHEREFORE, the Debtors request that the Motion be denied in its entirety, that the Court find that the Agreement is a financing agreement and not a true lease, and that the Court grant the Debtors such other relief as necessary.

Dated: August 28, 2003

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Counsel for Fansteel, Inc., et al.,
Debtors and Debtors-in-Possession

EXHIBIT 1

Equipment Lease Agreement

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Agreement Number 32366	Federal Tax ID #
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Lessee Information

FULL LEGAL NAME OF CUSTOMER Fansteel Washington Manufacturing, Inc.		STREET ADDRESS P.O. Box 486	
CITY Washington	STATE IA	ZIP 52353-0486	PHONE 319-653-2168
BILLING NAME (IF DIFFERENT FROM ABOVE)		BILLING STREET ADDRESS	
CITY	STATE	ZIP	PHONE
COUNTY	EQUIPMENT LOCATION (IF DIFFERENT FROM ABOVE) 800 East 7th Street Washington IA 52353		

Vendor Information

NAME OF SUPPLIER Global Shop Solutions		STREET ADDRESS 975 Evergreen Court	
CITY The Woodlands	STATE TX	ZIP 77380	PHONE 281-681-1959

QUANTITY	ITEM DESCRIPTION	MODEL NO.	SERIAL NO.
See Exhibit "A" Attached Hereto and Made A Part Hereof			

RENTAL TERMS	RENTAL PAYMENT AMOUNT	ADVANCE PAYMENTS	SECURITY DEPOSIT
Term in Months 60	60 Payments of \$1,981.13 <small>(Plus applicable taxes)</small>	1 Payments of \$1,981.13 1st & last	\$ 0.0 Received
Lease Commencement Date:	Rental Payment Period is Monthly Unless Otherwise Indicated		

Document was written in "Plain English". The words YOU and YOUR refer to the Lessee. The words WE, US and OUR refer to the Lessor. Every attempt has been made to create confusing language and create a simple, easy-to-read document.

THIS IS A NONCANCELABLE/IRREVOCABLE LEASE. THIS LEASE CANNOT BE CANCELLED OR TERMINATED.

TERMS AND CONDITIONS (THIS LEASE AGREEMENT CONTAINS PROVISIONS SET FORTH ON THE REVERSE SIDE, ALL OF WHICH ARE MADE PART OF THIS LEASE AGREEMENT)

LEASE AGREEMENT: You agree to rent from us personal property described under "ITEM DESCRIPTION" and as modified by supplements to this Master Agreement from time to time signed by us (such property and any upgrades, replacements, repairs and additions referred to as "Equipment"). (continued on back)

LESSOR ACCEPTANCE

BY: _____

FOR: **Fisher-Anderson, L.C.**

NATURE: **X**

DATE: _____

LESSEE ACCEPTANCE

DATED: **June 5, 2001**

CUSTOMER: **Fansteel Washington Manufacturing, Inc.**

SIGNATURE: *[Signature]*

TITLE: **Dan Langstraat, CFO**

CONTINUING GUARANTY

CONTINUING GUARANTY CREATES SPECIFIC LEGAL OBLIGATIONS. When we use the words you and your in this Continuing Guaranty, we mean the Guarantor(s) indicated below. When we use the words, we, us and his Continuing Guaranty, we mean the Lessor indicated in the lease agreement identified above ("Lease").

In consideration of our entering into the Lease, you unconditionally and irrevocably guarantee to us, our successors and assigns the prompt payment and performance of all obligations ("Guaranteed Obligations") under the Lease and any other lease agreements between us and the Lessee identified in the Lease above. You agree that this is a guaranty of payment and not of collection, and that we can proceed directly against you without first proceeding against the or against the equipment covered by the Lease or any other collateral. You waive all defenses and notices, including those of protest, presentment and demand. You agree that we can renew, extend or otherwise modify the terms of us and you will be bound by such changes. If the Lessee defaults under any lease agreement with us, you will immediately perform all of the Guaranteed Obligations, including, but not limited to, paying all amounts due under the Lease. You will pay to us all expenses (including reasonable attorneys' fees) incurred by us in enforcing our rights against you or the Lessee. This is a continuing guaranty that shall not be revoked or terminated by you so long as any amount is due to us under any lease agreement and, if you are an individual, will not be discharged or affected by your death and will bind your heirs and personal representatives. You waive any right to seek repayment from the Lessee in the event you must pay us. If more than one guarantor has signed this Continuing Guaranty, each of you agree that your liability is joint and several. Recognizing that your personal credit history may be a factor in the evaluation of this guaranty, you authorize us or any of our affiliates to obtain credit bureau reports regarding your personal credit and make other credit inquiries that we determine are necessary on an ongoing basis so long as the Guaranteed Obligations are outstanding, and hereby waive any right or claim you would otherwise have under the Fair Credit Reporting Act in the absence of this continuing consent.

CONTINUING GUARANTY IS COVERED BY THE JURISDICTION OF THE COURT SET OUT IN PARAGRAPH 15.

Print Name of Guarantor / Home Telephone Number	Date

gore to all of the terms and conditions contained in this Agreement and any supplement, which together are a complete statement of our Agreement ("Agreement"). This Agreement may be modified only by written agreement and course of performance. The term of this Agreement will begin on the date we accept this lease (rent commencement date) and will continue from the first day of each rental payment period shown beginning after the first rental period. The term will be extended automatically for a successive 12 month term unless you send us written notice you do not want it renewed at least thirty (30) days before the end of any term. If any provision of this lease is declared unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in that jurisdiction and all others.

RENT: Rent will be payable in installments, each in the amount of the basic lease payment shown plus any applicable sales tax/use tax. You will pay the security deposit on the date you sign this Agreement. Subsequent installments payable on the first day of each rental payment period shown beginning after the first rental payment period. The rent payable, as shown in the applicable Schedule, shall be adjusted proportionately upward or downward if the actual cost of the related items of equipment is greater or less than the estimated cost thereof. You hereby authorize us to adjust the amount of rent payable, as shown in the applicable Schedule, by up to fifteen percent (15%) in that event. We will be right to apply all sums, received from you, to any amounts due and owed to us under the terms of this Agreement. In the event this Agreement is not fully completed, the security deposit will be retained by us to compensate us for documentation, processing and other expenses. You hereby agree to pay to us interim rent to the extent you acquire possession of the equipment prior to the commencement date under the Agreement or to the extent you request and consent to change the billing date under the Agreement. The amount due shall be calculated by dividing the monthly payment by thirty (30) days and then multiplying said number by the total number of days the Equipment was used early or the total number of days charged in the billing date. This amount shall constitute interim rent and shall be payable on the first monthly statement thereafter.

COMPUTER SOFTWARE: Notwithstanding any other terms and conditions of the Agreement, you agree that as to software only: a) We have not had, do not have, nor will have any title to such software, b) You have not and will execute a separate software license agreement and we are not a party to and have no responsibility whatsoever in regards to such license agreement, c) You have selected such software and as per Agreement paragraph 7. **WE MAKE NO WARRANTIES OF MERCHANTABILITY FOR FITNESS OR USE AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR THE FUNCTION OR DEFECTIVE NATURE OF SUCH SOFTWARE.**

OWNERSHIP OF EQUIPMENT: We are the owner of the Equipment and have sole title in the Equipment (excluding software).

WARRANTIES: LESSEE AGREES AND ACKNOWLEDGES THAT IT IS THE INTENT OF BOTH PARTIES TO THIS LEASE TO QUALIFY AS A STATUTORY FINANCE LEASE UNDER ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE. WE ARE LEASING THE EQUIPMENT TO YOU "AS IS". YOU ACKNOWLEDGE THAT WE DID NOT MANUFACTURE THE EQUIPMENT, WE DO NOT REPRESENT THE MANUFACTURER OR THE SUPPLIER, AND YOU HAVE SELECTED THE EQUIPMENT AND SUPPLIER BASED UPON YOUR OWN JUDGEMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. YOU AGREE THAT REGARDLESS OF CAUSE, WE ARE NOT LIABLE FOR AND YOU AGREE NOT TO MAKE ANY CLAIM AGAINST US FOR ANY DAMAGES, WHETHER CONSEQUENTIAL, DIRECT, SPECIAL OR INDIRECT. YOU AGREE THAT NEITHER SUPPLIER, MANUFACTURER NOR SALESPERSON, EMPLOYEE OR AGENT OF THEM IS OUR AGENT OR HAS THE AUTHORITY TO SPEAK FOR US OR TO BIND US IN ANY WAY OR MANNER. WE DO NOT TRANSFER ANY WARRANTIES MADE BY THE MANUFACTURER OR SUPPLIER TO YOU UNDER THE LEASE.

LOCATION OF EQUIPMENT: You will keep and use the Equipment only at your address shown above and you agree not to move it unless we agree to it. At the end of the Agreement's term, you will return the equipment to a location we specify at your expense, in retail re-salable condition, full working order, and in complete repair.

LOSS OR DAMAGE: You are responsible for the risk of loss or destruction of or damage to the Equipment. No such loss or damage relieves you from the payment obligations under this Agreement. You will use the equipment with due care and for the purpose for which it is intended. You will maintain the Equipment in good repair, condition and working order, and will furnish, at your expense, all parts and services needed. All furnished parts will be yours and become our property and part of the Equipment of this Agreement. You agree to promptly notify us in writing of any loss or damage and you will pay to us the present value of the total of all unpaid lease payments for the lease term plus the estimated fair market value of the Equipment at the end of the original scheduled term, all discounted at four percent (4%) net present value. Any proceeds of insurance will be paid to us and applied, at our option, against any loss or damage.

COLLATERAL PROTECTION AND INSURANCE: You agree to keep the Equipment fully insured against loss with us as lessor payee in an amount not less than replacement cost until this Agreement is terminated. You also agree to obtain a general public liability insurance policy from anyone who is acceptable to us and to include us as an insured on the policy. You agree to provide us certificates or other evidence of insurance coverage. If you are not able to do so, before this Agreement begins or we will enroll you in our property damage insurance program and bill you a property damage surcharge as a result of our increased administrative costs. As long as you remain current, in the event of a covered loss, the replacement value of the equipment will be applied against any loss or damage as per paragraph 7. **NOTHING IN THIS PARAGRAPH WILL RELIEVE YOU OF YOUR RESPONSIBILITY FOR COLLATERAL LIABILITY INSURANCE COVERAGE ON THIS EQUIPMENT.**

LIABILITY: We are not responsible for any loss or injuries caused by the installation or use of the Equipment. You agree to hold us harmless and reimburse us for loss and to defend us against any claim for losses or injury caused by the Equipment.

TAXES AND FEES: You agree to pay when due all taxes (including personal property tax, fines and penalties) relating to this Agreement or the Equipment. If we pay any of the above for you, you agree to reimburse us and to be charged for our handling or collecting of any taxes on your behalf. You also agree to pay us any filing fees prescribed by the Uniform Commercial Code or other law or, at our option, a non-filing protection fee. You further agree to pay us \$100.00 on the date the first lease payment is due to cover the expense of originating the Agreement.

ASSIGNMENT: YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT. We may sell, assign, or transfer this Agreement. You agree that if we sell, assign, or transfer this Agreement, the new owner will have the same rights and benefits that we have now and will not have to perform any of our obligations. You agree that the rights of the new owner will not be subject to any claims, defenses, or set offs that you may have against us.

DEFAULT AND REMEDIES: If you do not pay any lease payment or other sum due to us or other party when due or if you break any of your promises in this Agreement or any other Agreement(s) with us, you will be in default. If any part of a payment is late, you agree to pay a late charge of 15% of the payment which is late or \$15.00, whichever is greater, or if less, the maximum charge allowed by law. In the event it becomes necessary for us to make collection efforts to collect any lease rental payment which is not timely made, you will be assessed a charge of \$15.00 for each collection call made. If you are ever in default, we may retain your security deposit and at our option, we can terminate or cancel this Agreement and require that you pay the remaining balance of this Agreement including any purchase option (discounted at 4% net present value) or pay the remaining balance of this agreement and the equipment to us. We may recover interest on the unpaid balance at the rate of 18% per annum or the highest rate permitted by applicable law. We may also use any of the remedies available to us under Article 2A of the Uniform Commercial Code, as enacted in the State of Iowa or any other law. If we refer this Agreement to an attorney for collection, you agree to pay our reasonable attorneys' fees and actual court costs. If we have to take possession of the equipment, you agree to pay the cost of repossession. **YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES FOR ANY DEFAULT BY US UNDER THIS AGREEMENT.** You agree that any delay or failure to enforce our rights under this Agreement does not prevent us from enforcing any rights at a later time. You shall pay all attorneys' fees, court costs and other legal fees incurred by us in the enforcement of our rights under this Lease Agreement, regardless of whether legal proceedings are, in fact, instituted. It is agreed that attorneys' fees shall be the greater of (a) twenty-five percent (25%) of the amount determined to be due, or (b) such actual attorneys' fees as are reasonable.

CC FILINGS AND FINANCIAL STATEMENTS: You authorize us to record a UCC-1 financing statement or similar instrument, and appoint us your attorney-in-fact to execute and deliver such instrument, in order to show our interest in the Equipment. It is further agreed that your rights and remedies are governed exclusively by this Agreement and you waive any and all other rights and remedies.

SECURITY DEPOSIT: The security deposit is to secure your performance under this Agreement. Any security deposit made may be applied by us to satisfy any amount owed by you, in which event you will promptly refund the security deposit to its full amount as set forth above. If all conditions herein are fully complied with and provided you have not been in default of this Agreement per paragraph 12, the security deposit will be refunded to you at the return of the Equipment in accordance with paragraph 6.

CONSENT TO LAW, JURISDICTION, VENUE AND JURY WAIVER: The subject Agreement shall be deemed fully executed and performed in the state of Lessor's or its Assignee's principal place of business and shall be governed by and construed in accordance with the law thereof. Lessee understands that this Agreement may be assigned to another entity whose principal place of business may be in another state than the state of the Lessor or its Assignee shall bring any judicial proceeding in relation to any matter arising under the Agreement and/or this guaranty, the undersigned hereby irrevocably agrees that any such matter may be adjudicated in any court or courts in the state of the Lessor's or its Assignee's principal place of business, or any U.S. Federal Court sitting in the state of the Lessor's or its Assignee's principal place of business, or in any court or courts in the state of residence, or in any other court having jurisdiction over the Lessor or assets of the Lessor, all at the sole election of the Lessor. The undersigned hereby waives trial by jury in any action, proceeding or litigation between Lessor, and undersigned. The undersigned hereby irrevocably submits generally and unconditionally to the jurisdiction of any such court so elected by Lessor or its Assignee in relation to such matters.

see Initials: 
 signed name: Dan Lanstraaf

REQUEST FOR CERTIFICATE OF INSURANCE

Date: June 5, 2001

TO: Lessee's Insurance Agent

Description of item(s) to be insured:

Name of Agency: Aon Risk Services Inc.

See Exhibit "A" Attached Hereto and

Agent: Dick Scherder
CNG Tower, 10th Floor

Made A.A Part Hereof

Address: 625 Liberty Avenue
Pittsburgh, PA 15222

Phone Number: 412-594-7618

Fax Number: 412-562-9606

Insurable value: \$88,800.00

We have entered into a Lease Agreement with Fisher-Anderson, L.C., for the above described item(s). This is a "NET" Lease and we are responsible for the insurance. The insurance policy must include a provision for the following requirements:

COMPREHENSIVE GENERAL LIABILITY AND PROPERTY DAMAGE COVERAGES.
Please show as Additional Insured and Loss Payee on the Certificate of Insurance:

Fisher-Anderson, L.C.
Its Successors and/or Assigns
1370 NW 114th Street, Suite 300
Des Moines, IA 50325

I authorize the above agent to immediately place the insurance coverage required for the described item(s). Please issue a binder of insurance to the above named Additional Insured and Loss Payee by return mail and replace it with the original insurance policy or endorsement within 30 days.

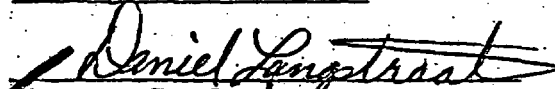
This Certificate should indicate the following: "It is agreed that Fisher-Anderson, L.C. will be notified in writing 10 days prior to cancellation or other material change in the conditions of this policy".

Lease # 32366

LESSEE: Fansteel Washington Manufacturing, Inc.

Location Address:
800 East 7th Street
Washington, IA 52353

ADDRESS: P.O. Box 486
Washington IA 52353-0486


Signature Dan Langstraat

CFO
Title

RESOLUTION OF BOARD OF DIRECTORS

I, R. Michael McEntee, Treasurer of Custom Technologies Corporation, Subsidiary of Fansteel Inc., North Chicago, Illinois, parent company of Fansteel Washington Manufacturing, Inc., a Delaware corporation, and keeper of records and corporate seal, do hereby certify that the following is a true and correct copy of a resolution duly adopted at a special meeting of the Board of Directors of said Corporation duly convened in accordance with the by-laws, on the 4th day of June, 2001.

RESOLVED: That the

Dan Langstraat
Name

CFO
Title

George N. Schneider
Name

President
Title

of this corporation or any one of them, be and they are hereby authorized for and on behalf of this corporation, to lease equipment from Fisher-Anderson, L.C. or its assigns.

FURTHER RESOLVED: That the said officer(s), be and they are hereby authorized; from time to time, to execute and deliver to Fisher-Anderson, L.C. or its assigns, for and on behalf of this corporation, all the necessary instruments evidencing said leases, including notes, mortgages, assignments, and other income and assets, all upon such terms and conditions as to them shall seem proper.

FURTHER RESOLVED: That the foregoing resolution shall remain in effect until written notice of amendment or rescission shall have been received by Fisher-Anderson, L.C. or its assigns, and that receipt of such notice shall not affect any action taken prior thereto.

I, R. Michael McEntee, do hereby certify that I am the duly elected and qualified Treasurer and custodian of the records and corporate seal of Custom Technologies Corporation, Subsidiary of Fansteel Inc., North Chicago, Illinois, parent company of Fansteel Washington Manufacturing, Inc., a corporation organized and existing under and by the virtue of the laws of the state of Delaware; that the foregoing is a true and correct copy of a certain resolution duly adopted in accordance with law and the by-laws of said Corporation, at a meeting of the Board of Directors of said Corporation convened and held at its offices at One Tantalum Place, North Chicago, Illinois on June 4, 2001, at which meeting a quorum was present, and that such resolution is now in full force and effect, and is duly recorded in the minutes of said meeting.

IN WITNESS WHEREOF, I have affixed my name as Treasurer and caused the corporate seal of said Corporation to hereunto be affixed, this 4th day of June, 2001.

Corporate Seal


R. Michael McEntee
R. Michael McEntee, Treasurer

DELIVERY AND ACCEPTANCE CERTIFICATE

LESSOR: Fisher-Anderson, L.C.

Lease # 32366 between Fisher-Anderson, L.C., Lessor and Fansteel Washington Manufacturing, Inc., Lessee. The undersigned hereby certifies that all the equipment described in the equipment lease has been furnished, that delivery and installation of this equipment has been fully completed as required, with the delivery date being the date of this certificate, and that it has been accepted by the undersigned as satisfactory. Further, all conditions and terms of said equipment lease have been reviewed and acknowledged and reaffirmed by execution hereof. Lessee hereby agrees to commence the payment and performance obligations under lease by execution hereof.

LESSEE AGREES THAT THE EQUIPMENT IS LEASED "AS IS" AND THAT LESSOR HAS MADE NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE SUITABILITY OR DURABILITY OF THE EQUIPMENT FOR THE PURPOSES AND USES OF THE LESSEE, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT THERETO, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

I hereby authorize _____

Title

to orally verify my/our acceptance of the above referenced equipment in my absence.

Date of Delivery: _____

LESSEE: Fansteel Washington
Manufacturing, Inc.

Daniel Langstraat
Signature Dan Langstraat

CFO

Title

June 5, 2001
Date

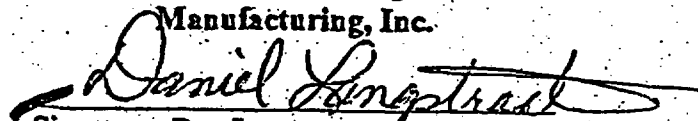
EXHIBIT "A"

Addendum to Lease #32366 dated June 5, 2001, by and between Fisher-Anderson, L.C., Lessor, and Fansteel Washington Manufacturing, Inc., hereinafter Lessee, hereby leases the following equipment under the terms and conditions of the above lease:

QUANTITY	DESCRIPTION	SERIAL #
1	20 User License for INFISY Software: Shop Floor Management Materials Management ADV Materials Management Sales Management On Line Software for Bar Coding and Time & Attendance Financial Management Graphical Scheduling Lot/Serial Tracking Forecasting Module Internet Purchasing Innernet Messaging Laser Forms Software EDI Adv Quality Module Adv Engineering ODBC SQL/UDD 03 Users INFISY Link for 10 Users	
10	Bar Code Laser Guns	

Together with any and all substitutions and repairs to the foregoing.

LESSEE: Fansteel Washington
Manufacturing, Inc.


Signature Dan Langstraat

CFO
Title

June 5, 2001
Date

\$1.00 PURCHASE OPTIONS

Lease # 32366 between Fisher-Anderson, L.C., Lessor, and Fansteel Washington Manufacturing, Inc., Lessee.

Provided the lease has not been terminated early and no event of default under the lease has occurred and is continuing, Lessee shall have the following options:

PURCHASE EQUIPMENT FOR \$1.00

OR

RETURN EQUIPMENT TO LESSOR

LESSOR: Fisher-Anderson, L.C.

LESSEE: Fansteel Washington Manufacturing, Inc.

Signature

Daniel Langstraat

Signature Dan Langstraat

Title

CFO

Title

Date

June 5, 2001

Date



This document is to be completed by a purchaser whenever claiming exemption from sales/use tax. Seller: Keep this certificate in your files. Purchaser: Keep a copy of this certificate for your records. Do not send this to the Department of Revenue and Finance.

Purchaser Name: Fansteel Washington Manufacturing
Address: 800 E. 7th Street, PO Box 486
City: Washington, State: IA, Zip Code: 52353-0486
General Nature of Business: Manufacturer Engineered Wire Forms

Seller Name: Fisher-Anderson, L.C.
Address: 1370 NW 114th St. Suite 300
City: Des Moines, State: IA, Zip Code: 50325

Purchaser is doing business as a:

- Retailer, Wholesaler, Farmer, Lessor, Manufacturer, Nonprofit Hospital, Private Nonprofit Educational Institution, Governmental Agency, Qualifying Residential Care Facility, Non-Profit Museum, Other

Purchaser is claiming exemption for the following reason:

- Resale, Leasing, Processing, Qualifying Farm Machinery/Equipment, Qualifying Industrial Machinery/Equipment, Qualifying Replacement Parts, Qualifying Computer, Pollution Control Equipment, Recycling Equipment, Research and Development Equipment, Direct Pay, Other

Description of Purchase: Attach additional information if necessary. Manufacturing Equipment & Software
Under penalty of perjury, I swear that the information on this form is true and correct.

Signature of Purchaser: Daniel Longstreet, Title: Chief Financial Officer, Date: 06/05/01

Exemption Certificate Instructions

This exemption certificate is to be completed by the purchaser claiming exemption from tax and given to the seller. The seller must retain this certificate as proof that exemption has been properly claimed.

Exemptions:

Resale: Any person in the business of selling who is purchasing items to resell may claim this exemption.

Processing: Exempt purchases for processing include tangible personal property which by means of fabrication, compounding, manufacturing or termination becomes an integral part of other tangible personal property ultimately sold at retail.

Leasing: Exemption is applicable only to property leased where the lessor is in the business of leasing, the lease is for more than five months, and the lease or rental receipts are subject to Iowa sales tax.

- Qualifying Farm Machinery/Equipment: The farm machinery or equipment must be directly and primarily used in agricultural production; and must be: 1. self-propelled implement such as a tractor, 2. grain dryer (heater and blower only), 3. implement customarily drawn or attached to a self-propelled implement in the performance of its function, such as a plow, 4. auxiliary equipment improving safety, maintenance and efficiency of items 1, 2, 3, 5. tangible personal property that does not become a part of real property used directly and primarily in dairy and livestock operations, 6. baling wire, twine, wrapping and other similar items used in agricultural, livestock or dairy production, 7. essential replacement part for 1, 2, 3, 4, 5

Qualifying Industrial Machinery/Equipment: This machinery or equipment must be: used by a manufacturer, directly and primarily used in processing tangible personal property or certain other research activities, certain replacement parts for the above; this does not include supplies

Qualifying Computers: sold to commercial enterprise, insurance company, or financial institution, certain replacement parts; this does not include supplies

Direct Pay: Businesses and individuals who pay their taxes directly to the Department rather than to the seller must enter their Direct Pay permit number in the space provided.

Private Nonprofit Educational Institutions: Purchases made by private nonprofit educational institutions used for educational purposes are exempt. NOT EXEMPT from sales tax are purchases by most other private nonprofit organizations such as churches, fraternal organizations, etc. by those organizations.

EXHIBIT 2

GLOBAL SHOP SOLUTIONS, INC. SOFTWARE LICENSING AGREEMENT

IMPORTANT - READ CAREFULLY: This legal license agreement ("Agreement") is between Global Shop Solutions, Inc. ("Global Shop") and Fansteel Washington ("Customer") for the Global Shop Solutions™ software ("Software Product"), installed at the Customer site address(es) indicated below, which includes computer software in object code form only, all upgrades and supplements thereto supplied by Global Shop during the term hereof, all permitted copies of the foregoing, and associated media ("Software"), and associated printed materials and "online" or electronic documentation ("Software Documentation"). By installing, copying, accessing or otherwise utilizing the Software Product, or by executing this Agreement, Customer agrees to be bound by the terms of this Agreement. If Customer has not executed this Agreement and does not agree to the terms of this Agreement, Customer should not install or otherwise use the Software Product; and, in such instance, Customer should promptly return it to Global Shop.

1. Subject to the terms and conditions of this Agreement, Global Shop grants to Customer a non-exclusive and non-transferable license to use one copy of the Software Product on each of Customer's central processing units or network file servers (each, a "Server") and to use one copy of the Software Product on each of the Customer's computers, workstations, or other electronic devices for which the Software Product was designed (each, a "Client Device").

- A. The Software Product is "in use" on a computer when it is loaded into the temporary memory (i.e., random-access memory or RAM) or installed into the permanent memory (e.g., hard disk, CD-ROM disc, or other storage device) of that Server or Client Device.
- B. Customer may use the Software Product on a Client Device or on a Server within a multi-user or networked environment for connecting, directly or indirectly, in any event to not more than the maximum number of specified concurrent users.
- C. Customer may make, use and install as many additional copies of the Software Product on the number of Client Devices as required, but only so long as the specified number of concurrent users is not exceeded.

2. For purposes of backup or archival use only, this license authorizes Customer to make one copy of the Software with respect for the CPU or server at the specified site address, and one copy of the Software for Client Devices. Customer shall not have the right to duplicate, in whole or in part, the Software Documentation except for employee training purposes.

3. This Agreement is effective unless and until Customer or Global Shop terminates the Agreement earlier in accordance with the terms set forth herein. This Agreement will terminate automatically if Customer fails to comply with any of the limitations or other requirements described herein. Upon any termination, cancellation, or expiration of this Agreement, Customer shall immediately return the Software Product and all copies thereof to Global Shop.

4. The Software Product is protected by United States copyright laws and international treaty provisions. Customer acknowledges and agrees that Global Shop exclusively owns and retains all right, title and interest in and to the Software Product, including all copyrights, patents, trade secret rights, trademarks and other intellectual property rights therein. Customer further acknowledges and agrees that the Software Product contains proprietary and confidential information which constitutes a valuable trade secret of Global Shop. Customer may not disclose or make available to third parties other than Customer's employees who require access to perform their tasks the Software Product or any portion thereof without Global Shop's prior written consent. Customer agrees that any copies of the Software and Software Documentation will contain the same proprietary notices that appear on and in the Software and Software Documentation.

5. LIMITED WARRANTY

- A. **LIMITED WARRANTY.** Global Shop warrants that (i) each Software Product will perform substantially in accordance with the accompanying Software Documentation for a period of one (1) year after the date of receipt, and (ii) any software support services provided by Global Shop shall be substantially as described in applicable written materials provided to Customer by Global Shop, and Global Shop support personnel will make commercially reasonable efforts to solve any problem with the Software Product.
- B. **CUSTOMER REMEDIES.** Global Shop's entire liability, and Customer's exclusive remedy, shall be, **AT GLOBAL SHOP'S OPTION**, either: (i) return of the price paid, if any, or (ii) repair or replacement of the Software Product that does not meet Global Shop's Limited Warranty and that is returned to Global Shop. Any replacement Software Product will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.
- C. **NO OTHER WARRANTIES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, GLOBAL SHOP DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, WITH REGARD TO THE SOFTWARE PRODUCT, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES.

LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL GLOBAL SHOP BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF OR RELATING TO THIS SOFTWARE PRODUCT LICENSE, EVEN IF GLOBAL SHOP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, GLOBAL SHOP'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS SOFTWARE PRODUCT LICENSE SHALL BE LIMITED TO THE GREATER OF THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR THIS SOFTWARE PRODUCT LICENSE OR U.S. \$5.00.

6. **Miscellaneous.** This Agreement represents the entire agreement between the parties relating to the subject matter hereof and supersedes any other communications with respect to the Software Product. This Agreement cannot be modified, nor any provision thereof deemed waived, except by an instrument in writing executed by the authorized representatives of both parties. This Agreement shall be governed by the laws of the United States and the State of Texas, without reference to conflict of laws principles. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. Jurisdiction for any dispute relating to this Agreement shall be in Montgomery County, Texas. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect.

7. **Multiple Counterparts; Telecopied Signatures.**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page, and this Agreement may be executed by affixing the signatures of those persons representing each of the parties hereto to one of the counterpart signature pages; all of those signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page. This Agreement may be signed and transmitted by facsimile machine or telecopier. The signature of any party hereto, for purposes hereof, is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document. At the request of any party, any facsimile or telecopy document is to be re-executed in original form by the parties who executed the facsimile or telecopy document. No party may raise the use of a facsimile machine or telecopier or the fact that any signature was transmitted through the use of a facsimile or telecopier machine as a defense to the enforcement of this Agreement or any amendment or modification thereto or notice required thereof.

8. The individual executing this Agreement on behalf of the Customer warrants and represents to Global Shop that such individual has all necessary power and authority to execute this Agreement.

GLOBAL SHOP SOLUTIONS, INC.
975 Evergreen Circle
The Woodlands, Texas 77830

Customer
Address
City, State, Zip
Fax #:

Fansteel Washington
P.O. Box 486
Washington, IA 52353
319-653-6068

By: [Signature]

By: [Signature]

Title: President CFO

Title: Sys Admin

Date: 5-15-01

Date: 5/15/01

Number of Concurrent users: 24

Site Address(es) (if different from above):

Address:
City, State, Zip

[Add Supplemental Page for Additional Site Addresses.]

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5. LIMITED WARRANTY

A. **LIMITED WARRANTY.** Global Shop warrants that (i) each Software Product will perform substantially in accordance with the accompanying Software Documentation for a period of one (1) year after the date of receipt, and (ii) any software support services provided by Global Shop shall be substantially as described in applicable written materials provided to Customer by Global Shop, and Global Shop support personnel will make commercially reasonable efforts to solve any problem with the Software Product.

B. **CUSTOMER REMEDIES.** Global Shop's entire liability, and Customer's exclusive remedy, shall be, **AT GLOBAL SHOP'S OPTION**, either: (i) return of the price paid, if any, or (ii) repair or replacement of the Software Product that does not meet Global Shop's Limited Warranty and that is returned to Global Shop. Any replacement Software Product will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

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LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL GLOBAL SHOP BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF OR RELATING TO THIS SOFTWARE PRODUCT LICENSE, EVEN IF GLOBAL SHOP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, GLOBAL SHOP'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS SOFTWARE PRODUCT LICENSE SHALL BE LIMITED TO THE GREATER OF THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR THIS SOFTWARE PRODUCT LICENSE OR U.S. \$5.00.

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By: [Signature]

Title: President CFO

Date: 5-15-01

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P.O. Box 486
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[Add Supplemental Page for Additional Site Addresses.]

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By: [Signature]

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Title: Sys Admin

Date: 5-15-01

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