

Jon Whitford Inc.

EQUIPMENT RENTAL AGREEMENT

THIS EQUIPMENT RENTAL AGREEMENT (the "Agreement") is by and between JON WHITFORD INC. (the "Company"), and, [_____] (the "Customer").

Agreement. Company agrees to rent to Customer certain grip and lighting equipment (the "Equipment") as more particularly identified on the Equipment Rental Quote, attached hereto as **Schedule A** (the "Rental Quote") for the Rental Term.

Rental Payment. Customer shall pay to Company rental payment ("Rental Payment") in the amounts set forth on the Rental Quote (Schedule A). Rental Payment shall be payable in advance of the applicable Rental Commencement Date for such items.

Prices. All prices are set forth on the face hereof. If no price is stated, the price is that specified in the Customer Catalog current at the time of order acceptance. Unless otherwise specified, prices for Equipment do not include applicable shipping, customs brokerage, insurance, duties, excise, sales, use or other taxes or similar charges, which shall be billed to and paid by Customer on a per order basis.

Return of Equipment. Upon the expiration of the Rental Term, the Equipment shall be returned, unencumbered, to Company at Customer's sole expense. Equipment returned to Company must meet all conditions specified in this Agreement.

Standard Terms and Conditions. In addition to the terms set forth herein, the parties shall be bound by the Standard Terms and Conditions set forth on **Schedule B** as though fully incorporated herein.

Title to Equipment. Customer acknowledges that Company has all rights and interest in and to the Equipment and Customer warrants that it shall keep the Equipment free of all liens, levies and encumbrances and further acknowledges that it shall be responsible for all taxes, transportation charges, duties, broker fees, bonds, fines, forfeitures, penalties, and all other costs imposed upon the rental or use of the Equipment. Customer will not pledge, mortgage, or encumber in any way the Equipment or Customer's rights hereunder, and any such attempted pledge, mortgage or encumbrance shall be null and void.

Assignment and Sublease. Customer may not rent or sublet any item of Equipment. Customer shall not assign this Agreement.

Default. If any default of Customer's payment or performance obligations set forth in this Agreement is not cured within ten (10) days of receiving notice thereof from Company, or upon the breach of any provision hereof, or if Customer suffers or initiates any act of insolvency or bankruptcy, or if a receiver is appointed to take possession of all, or substantially all, of Customer's assets, or if a general assignment for the benefit of creditors is made by Customer, or if any legal process of any kind is taken with regard to any item of Equipment or upon any use of Equipment, or in violation of Company's rights, title and interest in and to the Equipment, Company shall have the right without notice or demand to terminate this Agreement. If, upon any termination of this Agreement, Customer fails or refuses to promptly deliver the Equipment, Company shall have the right to enter Customer's premises, or any other premises where the Equipment may be found, and to take possession of and remove the Equipment without legal process and without any liability for the damages caused by such entry and without prejudice to Company's rights to receive the rent due pursuant to this Agreement. Company may also pursue any other remedies under law to which it otherwise might be entitled.

Indemnity. Customer shall indemnify, defend and hold harmless Company, and Company's agents, employees, stockholders, directors, officers, attorneys, and assigns (collectively, "Indemnitees"), from and against any and all claims, demands, actions, lawsuits, causes of action, liabilities, losses, costs, damages and expenses (including, without limitation, reasonable attorneys' fees) (collectively, the "Claims") which are made against any Indemnitee or are suffered,

sustained, incurred or paid by any Indemnatee and which arise out of or relate in any manner to this Agreement, the Equipment or its use, maintenance, or possession; provided, however, that the Customer shall have no obligation to indemnify any Indemnatee for any Claim to the extent that the Claim arises out of or relates to the gross negligence or willful misconduct of the Company.

Warranties. The parties represent and warrant that they have the full power and authority to execute and deliver this Agreement and to perform their obligations hereunder.

Force Majeure. Company may suspend its performance if it is delayed, hindered or prevented because of any act of God, *force majeure*, war, terrorism, governmental regulation, labor dispute, shortage of necessary supplies or personnel, or other matters beyond control, including without limitation, failure or delay of delivery by common carrier for any reason whatsoever ("Force Majeure Event"). If Company is prevented from performance hereunder due to a Force Majeure Event, Company, in its sole discretion, may terminate this Agreement without any liability whatsoever to Customer for any reason except that Customer shall be entitled to *apro rata* refund or credit for any Equipment not delivered to Customer and/or services and labor not provided by Company.

Misc. The waiver by Company of any breach of any term or condition herein shall not be deemed a waiver of any other breach of the same or any other term or condition. This Agreement, including any schedules and other documents and writings referred to herein or delivered pursuant hereto, all of which form a part hereof, contains the entire understanding of the parties with respect to its subject matter. It merges and supersedes all prior and/or contemporaneous agreements and understandings between the parties, written or oral, all of which are hereby declared to be void and without further effect, with respect to its subject matter; there are no restrictions, agreements, promises, warranties, covenants or undertakings between the parties with respect to the subject matter hereof other than those expressly set forth herein. This Agreement may be amended only by a written instrument duly executed by all parties or their respective heirs, successors, assigns or legal personal representatives. If any provision of this Agreement is declared illegal or unenforceable, the remaining provisions shall continue in full force and effect. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. This Agreement and its subject matter have substantial contacts with Florida, and all actions, suits, or other proceedings with respect to this Agreement shall be brought only in a court of competent jurisdiction sitting in Duval County, Florida, or in the United States District Court having jurisdiction over that County. In any such action, suit, or proceeding, such court shall have personal jurisdiction of all of the parties hereto.

COMPANY:

Print: JON WHITFORD INC

Sign: 

Its: Authorized Agent

Title: President

Company Address:

3869 Valencia Rd. Jacksonville, FL 32205

CUSTOMER:

Print: _____

Sign: _____

Its: Authorized Agent

Title: _____

Customer Address:

SCHEDULE B**STANDARD TERMS AND CONDITIONS**

Acceptance of Equipment. Upon delivery, Customer shall inspect the condition of the Equipment. Customer acknowledges that the Equipment is in good working condition and that the Equipment has been accepted by Customer for all purposes under this Agreement. Company shall have no responsibility for delay in filling the order for, or delivery of, the Equipment.

Use, Maintenance, and Return. If Company does not furnish labor to operate the Equipment, only duly qualified employees and/or agents of Customer shall use the Equipment. Customer will take reasonable precautions in regard to the use of the Equipment to protect all persons and property from injury or damage. Customer shall use the Equipment in strict accordance with all applicable laws, according to the Equipment's prescribed operating procedure, and only for the purpose of production contemplated and set forth in connection with this Agreement. Customer shall keep the Equipment in its sole custody and control. Customer agrees to, at its own expense, keep each item of Equipment in good repair and in good, operating condition, normal wear and tear and obsolescence excepted, making from time to time all repairs thereto and renewals and replacements thereof as Customer, in its reasonable discretion, shall determine to be necessary or appropriate. Customer agrees to return the Equipment in the same condition as received and at the time and place specified herein.

Drivers. Any and all drivers who drive the vehicles you are renting/leasing from Company shall be determined by Customer to be duly licensed, trained and qualified to drive vehicles of this type. Although Company may, from time to time, recommend drivers, Company does not supply drivers. You must supply and employ any driver who drive the vehicles (even if the driver is the registered owner of the vehicle or owner of a company that owns the vehicle) and that driver shall be deemed to be Customer's employee for all purposes and shall be covered as an additional insured on all of your applicable insurance policies.

Liens. Customer shall maintain the Equipment free and clear of all liens, claims, levies, and other encumbrances, and Customer shall not allow any execution, attachment, or other legal process to be levied against the Equipment.

Disclaimer of Warranties. Customer accepts the Equipment "AS IS." Customer understands that the Equipment and any and all services or labor to be provided pursuant hereto, are rented or provided without warranty or guaranty of any kind, express or implied. Customer further understands that except as otherwise set forth herein, Company assumes no responsibility or liability of any nature whatsoever to any person, firm, corporation or any other type of entity for any claim, injury, damage or loss arising out of, relating to or resulting from: (a) the Equipment; (b) Customer's use of such Equipment; or (c) labor or services furnished pursuant to this Agreement. Customer hereby waives any and all claims it may have against Company with regard to any of the foregoing. Anything to the contrary notwithstanding, if any Equipment becomes inoperable or fails to perform as contemplated hereunder through no fault of Customer during the Rental Term, Customer shall return for repairs or for exchange or replacement of the Equipment to Company during Company's regular business hours at its place of business, and if Company does not repair the Equipment or does not provide replacement for the Equipment, Customer's sole right shall be to receive a pro-rata refund or credit from Company.

CUSTOMER REPRESENTS IT HAS SELECTED THE EQUIPMENT RENTED HEREUNDER AND CUSTOMER AGREES THAT THE COMPANY HAS MADE AND MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE SUITABILITY OF SUCH EQUIPMENT, ITS DURABILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, ITS MERCHANTABILITY, ITS CONDITION, AND/OR ITS QUALITY. CUSTOMER RENTS THE EQUIPMENT FROM COMPANY ON AN "AS IS", "WHERE IS" BASIS. COMPANY AND COMPANY'S ASSIGNEE SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED DIRECTLY OR INDIRECTLY BY ANY EQUIPMENT RENTED HEREUNDER OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIRS, SERVICE OR ADJUSTMENT THERETO, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY THEREOF, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS OR DAMAGE

WHATSOEVER AND HOWSOEVER CAUSED. NO REPRESENTATION OR WARRANTY, UNLESS EXPLICITLY STATED HEREIN, AS TO THE EQUIPMENT OR ANY OTHER MATTER SHALL BE BINDING ON THE COMPANY NOR SHALL THE BREACH OF SUCH RELIEVE CUSTOMER OF, OR IN ANY WAY AFFECT, ANY OF CUSTOMER'S OBLIGATIONS TO THE COMPANY AS SET FORTH HEREIN.

Return. All Equipment must be returned by 10:00 a.m. on the Rental Termination Date, and if the Equipment is not so returned, an additional day's rental will be charged for each additional day. A late fee of five percent (5%) shall be charged to Customer for all sums owed by Customer which are thirty (30) days past due, and such overdue amounts shall also bear interest at the rate of one and one-half (1½%) per month (18% per annum) (or, if less, at the highest interest rate allowed by law) and Customer agrees to pay reasonable attorney's fees and court costs arising from or relating to collection of any balance which is thirty (30) days or more overdue. Sums owed by Customer hereunder shall not be subject to any abatement or offset.

Responsibility For and During Shipment. Unless otherwise specified herein, all costs of shipment to and from Customer shall be Customer's responsibility. Customer shall be responsible for any loss, damage or destruction of the Equipment from any cause whatsoever occurring from the time the Equipment is picked up by Customer or shipper at Company's place of business, placed upon a common carrier for forwarding to Customer or loaded upon Company's conveyance for delivery to Customer as applicable, until the Equipment is returned to and accepted by Company. Acceptance by Company of the return of the Equipment shall not be a waiver of any claims that Company may have against Customer arising hereunder or a waiver of claims for latent or patent damage to the Equipment prior to such return.

Risk of Loss. Customer hereby assumes and shall bear the entire risk of loss, theft, damage or destruction of the Equipment from any and every cause whatsoever, whether or not insured. No loss, theft, damage or destruction of the Equipment or any part thereof shall impair any obligation of Customer under this Agreement (including the obligation to make timely Rental Payments) which shall continue in full force and effect. If, after delivery to Customer, any item of Equipment is lost, damaged or destroyed, regardless of the cause, Customer shall pay to Company an amount equal to the total of: (i) any accrued but unpaid Rental Payments and any other amounts due and owing under this Agreement; plus (ii) the greater of (A) the replacement value of the Equipment (as determined by Company) as of the date of loss; or (B) the insurance proceeds received on account of the loss; provided, however, that if any item is returned in a condition which Company in its sole discretion, deems a repairable one, Customer shall pay Company the actual or estimated cost of such repairs as determined by Company. Customer shall also be responsible for and shall fully compensate Company for the loss of use of the Equipment during the time it is being repaired or replaced, as applicable. Loss of use shall be calculated with reference to the actual rental price of the applicable Equipment, without reference to whether or not the applicable Equipment would actually have been rented but for the damage or destruction.

Limited Liability. In the event of claim by Customer relating to, arising out of, or resulting from this Agreement, Company's liability will be limited to the aggregate of the Rental Payments then actually received by Company for that specific Rental Term. Without limiting the generality of the foregoing, in no event shall Company or any of its affiliates be liable to the Customer or any other person or entity for (a) any act or omission of any employee of Company, Company's employees, agents or assignees, except to the extent arising from the gross negligence or willful misconduct of Company; (b) any amount for which Customer carries insurance or is obligated hereunder to carry insurance; (c) any amount for which Company or any of its affiliates carries insurance which benefits Customer; or (d) any amount other than foreseeable compensatory damages. Company shall not be liable for any punitive, exemplary, special, indirect, or consequential damages, or lost profits of all kinds, whether such damages and lost profits arise in contract, tort (including negligence, whether active, passive, joint or concurrent), strict liability, or under another theory of liability.

Insurance.

(a) Equipment. Customer agrees to maintain at all times during the Term of this Agreement, at its own expense, all risk perils property insurance ("Property Insurance") covering the Equipment for all risks of loss (i.e., Equipment Rental Floater or Production Package Policy) including coverage for, without limitation,

(i) theft by force (ii) theft by fraudulent scheme and/or "voluntary parting" (iii) mysterious disappearance; (iv) loss in transit; and (iv) loss of use of the Equipment, with coverage to be applicable from the time the Equipment is picked up by Customer or shipper at Company's place of business or placed upon a common carrier for forwarding to Customer, as applicable, until the Equipment is returned to and accepted by Company. The Property Insurance shall be on a worldwide basis and shall name Company as an additional insured and as the loss payee with respect to the Equipment. The Property Insurance shall be sufficient to cover the Equipment at its replacement value but shall, in no event, be less than \$1,000,000. The Property Insurance shall be primary and non-contributory coverage to Company's insurance.

(b) Business Automobile. Customer agrees to maintain during the Rental Term, at its own expense, business liability insurance, including coverage for loading and unloading Equipment, and hired auto physical damage insurance, covering owned, non-owned, hired and rented vehicles. Coverage for damage shall include "comprehensive" and "collision." Company shall be named as an additional insured respecting the policy's liability coverage and as Loss Payee on the hired auto physical damage, comprehensive and collision coverage. Such insurance shall provide coverage of no less than \$1,000,000 in combined single limits, and actual cash value for physical damage on comprehensive and collision coverage. The Business Automobile Insurance shall be primary and non-contributory coverage to Company's insurance.

(c) Worker's Compensation. Customer agrees to maintain, at its own expense, worker's compensation/employers liability insurance during the duration of the Rental Term with minimum limits of \$1,000,000.

(d) Commercial General Liability. Customer agrees to maintain, at its own expense, commercial general liability insurance including coverage for independent contractors and contractual liability, specifically referring to this Agreement. Such insurance shall name Company as an additional insured and provide that such insurance is primary and non-contributory coverage with respect to all insureds, the limits of which must be exhausted before any obligation arises under Company's insurance. Such insurance shall remain in effect during the Term of the Agreement and shall include the following coverages: Broad Form Contractual Liability; Personal Injury Liability; Completed Operations; and Products Liability. Such insurance shall provide general aggregate limits of not less than \$2,000,000, personal injury and advertising injury limits of not less than \$2,000,000, and per occurrence limits of not less than \$2,000,000.

(e) Insurer. All insurance maintained by Customer pursuant to the foregoing provisions shall be issued by an insurance carrier authorized to do business in Florida or as applicable, with a BEST rating of A- or better, and shall be deemed the primary insurance, issued on a noncontributory basis. **(f) Notice.** Customer shall provide Company with thirty (30) days written notice prior to the effective date of any cancellation or material change to any insurance maintained by Customer pursuant to this Agreement.

(g) Certificate of Insurance. Before obtaining possession of the Equipment, Customer shall provide Company a Certificate of Insurance and applicable endorsements, including additional insured and loss payee endorsements confirming each of the coverages specified herein. An authorized agent of the insurance carrier must sign all Certificates of Insurance.

(h) Generally. Customer shall hold Company harmless from and shall bear the expense of any applicable deductible amounts and self-insured retentions provided for by any of the insurance policies required to be maintained under this Agreement. In the event of loss, Customer shall promptly pay the deductible amount or self-insured retention or the applicable portion thereof to Company or the insurance carrier, as applicable. Notwithstanding anything to the contrary contained in this Agreement, the fact that a loss may not be covered by insurance provided by Customer under this Agreement or, if covered, is subject to deductibles, retentions, conditions or limitations shall not affect Customer's liability for any loss. Should Customer fail to procure or pay the cost of maintaining in force the insurance specified herein, or to provide Company upon request with satisfactory evidence of the insurance, Company may, but shall not be obliged to, procure the insurance and Customer shall reimburse Company on demand for its costs. Lapse or cancellation of the required insurance shall be deemed to be an immediate and automatic default of the Agreement.

(i) Waiver of Subrogation. Anything in this Agreement to the contrary notwithstanding, Customer hereby waives and releases Company from any and all right of recovery, claim, action, or cause of action, against Company, or any of its agents, employees, stockholders, directors, officers, attorneys and assigns, for any loss, cost, or damage that may occur regardless of cause or origin including, without limitation, negligence of Company or its agents, employees, stockholders, directors, officers, attorneys and assigns, to the extent that the damage or loss is covered or required to be covered by an insurance policy under this Agreement. To the extent such is reasonably available at commercially reasonable rates, Customer shall obtain from its respective insurance companies a waiver of subrogation, a written notice of the terms of the waiver contained in this Section and proper endorsement of the

insurance policies, if necessary, to prevent the invalidation of the insurance coverages by reason of the waivers contained herein.

Government Permits, Licenses Laws. Customer shall obtain all government permits and licenses necessary for the use and/or operation of the Equipment and for compliance with all applicable laws and regulations.

Taxes. Customer shall pay all personal property taxes, assessments, ad valorem taxes, stamp and documentary taxes, and all other governmental charges, fees, fines or penalties whatsoever, whether payable by Company or Customer or others, on or relating to the Equipment or the use, registration, rental, shipment, transportation, delivery or operation thereof and on or relating to this Agreement, and shall timely file all returns required therefor. Company will cooperate with Customer and furnish Customer with any information available to Company in connection with Customer's obligations under this Section.

Identity. Company has the right to place and maintain on the exterior or interior of each piece of property covered by this Agreement the following: the "Southern Lighting & Grip" logo. You will not remove, obscure, or deface the logo or permit any other person to do so.

Screen and Other Credits. Customer shall give Company screen and other credits as specified by Company. ~~Company shall have the absolute right to publicize the use of its equipment and facilities in the productions.~~