TO: Ms. Debra Baker, Office of the Comptroller of the Currency

FROM: Rhonda Roland Shearer, Director, Art Science Research Laboratory and the Lessee Rights Association, RRS@ASRLAB.org; Phone: 212-925-8812

DATE: June 5, 2006

RE: White paper response to the May 5, 2006 letter from OCC:

Case # 629152, and related complaints against Sterling National Bank for their role in the Medicus Marketing; Interactive Business Development (IBD); Today’s Destiny (TNG) and Norvergence Leasing frauds.

(NOTE: Public records confirm the TNG and Norvergence cases are presently under investigations in: Federal Enforcement (FTC and NJ US Attorney’s Office); 13 States’ Attorney General’s offices, and TX and NJ Bankruptcy Courts).

ENCLOSURES:

Exhibit A: May 5, 2006 Letter from OCC regarding Case #629152

Exhibit B: Appraisal of Equipment purchased and leased by Sterling National Bank

Exhibits C1: Sterling National Bank’s Invoice for Utah State Personal Property Tax
C2: Sterling National Bank’s Invoice for Equipment Insurance Fees

Exhibits D1. Sterling Bank’s “Schedule of Equipment” lease showed no prices
D2: The Sterling Equipment Invoice had prices for each line item

Exhibits E,F,G :The Three-Contract Package Presented to Lessees:
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Introduction

This white paper is a response to the May 5, 2006 letter from OCC. (See Exhibit A.)

Dozens of victims wrote OCC complaints about Sterling National Bank’s involvement with Max and Mike Day, owners of Medicus Marketing (a.k.a. Interactive Business Development [IBD]), and Today’s Destiny (a.k.a. TNG). The Days were known credit risks and previously subjected to FTC enforcement.

The facts, as they are described in the OCC’s letter, indicate that OCC examiners had an incomplete set of documents. We could provide you only with documents from a perspective far “downstream” from where the actual fraud and irregular accounting took place. We therefore ask that you reconsider the larger set of facts and circumstances described below, which point to the serious charge of Sterling National Bank’s accounting irregularities.

We believe the material evidence discussed below indicates that Sterling Bank’s accounting irregularities directly led to, and resulted in, the fraud against a large group of doctors and dentists in the Medicus Fraud case (a.k.a Interactive Business Development [IBD], 2005-2006) as well as hundreds of other lessee victims in the Norvergence Fraud case (2003) and TNG Fraud case (2004). All three cases involve the defrauding of small business lessees out of multiple millions of dollars.

Since OCC has no mandate to deal with contracts, Sterling National Bank obviously would like OCC to believe that our charges against them are based on a contractual dispute, in order to quickly remove themselves from any OCC scrutiny.

The core of our complaint is Sterling Banks misapplication and misuse of the financial instrument of “equipment-backed finance leases.” Their stated standard practice is to completely ignore the fair market value (FMV) of equipment in equipment leases, despite FASB 13 and EITF 00-21 Lease Accounting rules that cite FMV must be determined and used at lease inception.¹

¹ FASB 13 Accounting for Leasing, 5C: “Fair value of the leased property: The price for which the property could be sold in an arm's-length transaction between unrelated parties.” FASB’s EITF 00-21 also requires the unbundling of services and equipment and the rigorous determination of their fair market value.
False valuations of asset backed loans were the downfall of the savings and loan industry. No one would doubt the danger in the banking system if Sterling Bank were to finance land for $43,000 or $48,000 an acre, when its fair market value was only $1,100 per acre. By analogy, Sterling pre-arranged with Medicus, in the Medicus Marketing fraud, to pay them $43,000 and $48,000 for computers with a fair market value of only $1,100 in hundreds of leases. See Exhibit B.

In a $250 plus billion dollar equipment leasing industry, comprised of mostly “small ticket” computer leases, such false valuations of assets by Sterling and other financial institutions is a similarly dangerous, industry-wide practice that mirrors what happened in the S&L crisis. ²

As mentioned above, Sterling made a series of nearly identical sham equipment leasing deals where equipment was falsely valued at 50 to 1000+ times FMV. These were equipment leases in name only. “Where is the equipment in the equipment lease?” OCC needs to ask Sterling. Sterling is fraudulently booking services as “equipment.”

We have focused on the Medicus Marketing scam in this complaint but also mention the other fraud cases to illustrate a pattern of unethical behavior on the part of Sterling. Sterling’s participation in the Norvergence, TNG and Medicus/IBD sham leasing schemes involves their purchase of many millions dollars of equipment and leases for equipment worth only a fraction of Sterling’s declarations of value.

With Sterling’s participation, a vendor who is approved by them buys a $1,100 computer one day and is able to increase the value of that same equipment to $48,000 the next day, based solely on a Sterling Lease.³ Sterling continues the charade by charging lessees excessive personal property taxes and insurance fees based on this same fraudulent valuation of $43,000 or $48,000. Sterling’s mockery of asset valuations creates funhouse-like accounting distortions.

² “Computers are the most commonly leased equipment, according to the Equipment Leasing Association, a trade group with headquarters in Washington, D.C. It estimates $244 billion worth of equipment will be leased in 2002.” http://www.welcomebusiness.com/articlesDisplay.asp?articleID=199&deptID=4

³ Contracts between Sterling and Norvergence indicate Sterling participated in and exerted control of the final price of the equipment that they would eventually purchase and lease. For example, the “Private Label Vendor Agreement” states, “SNB (Sterling National Bank, clarification mine), will supply you with the rates it will offer to determine the purchase price for Equipment and associated Lease, which rates are subject to change by SNB upon notice to you...For approved applications, after SNB receives within two business days in satisfactory form, the documents and information listed below, it will pay you the agreed upon purchase price (emphasis mine).”

What appears to be Sterling Banks’ boilerplate contract language is likely to be found in their contracts with Medicus Marketing. This quotation above taken from “Private Label Vendor Agreement Notification,” page 1, which is found in the suite of documents between Norvergence and Sterling Bank -- See Nor/FTC/PBN 0002648, public documents provided through the FTC and New Jersey Bankruptcy Court in the Norvergence Fraud case. We will provide copy of this and other documents referenced in this white paper upon request.
For example, Sterling billed one lessee for “Salt Lake 2006 Property Tax” at a 50% rate of the computer’s total value of $1,100. Sterling expects this lessee to pay a total of $2,254.75 in property tax over 5 years for his $1,100 computer. See Exhibit C1. We are reporting Sterling’s property tax fraud to the Tax Department of the State of Utah.

This same lessee was invoiced $48.21 per month in insurance fees. Sterling expects this lessee to pay a total of $2,892.60 over 5 years for insuring a $1,100 computer. See Exhibit C2. The response of their insurance company supports our assertion of fraud. When our group informed American Leasing Insurance about Sterling’s false declarations of equipment values, the insurance carrier immediately investigated and afterwards, canceled the Medicus and TNG insurance they underwrote for Sterling. It is notable that in all 50 States, insuring “equipment” at false asset valuations is insurance fraud. We are reporting Sterling’s insurance fraud to multiple State Departments for Insurance.

Sterling filed a law suit in New York against a lessee where they cited $5,000, instead of $48,000 for the Medicus computer⁴. Why then, OCC should ask, do they continue to use $43,000 and $48,000 as the basis for Property Tax and insurance charges?

I. Sterling Bank’s Relationship with Medicus Marketing—The Real Story Is Told Upstream Before Any Individual Leases Were Signed

The story and accompanying documents Sterling National Bank omitted in your investigation, as judged by your letter, reveal facts which you must have acquired from Sterling National Bank itself. The timing and substance of these documents are important; they prominently include Sterling’s “Lease Program Agreement” with Medicus Marketing. The agreement between Sterling and Medicus allowed for Sterling’s commitment to a Medicus lease portfolio that eventually will comprise hundreds of individual equipment purchases and leases and a “master bill of sale covering the equipment,” which defined the equipment.⁵

OCC can readily request and obtain these, and the rest of the documents, from Sterling’s deal with Medicus, to learn the specific details regarding their mutual arrangement and terms. (Note: The lessees did not submit these documents in our OCC complaint against Sterling for good reason. We would not have access or ability to obtain them prior to Court discovery).

The dating of the above list of documents will prove that the contracts, due diligence process and all details of Sterling Bank’s requirements from Medicus all occurred and were orchestrated between Medicus and Sterling—well before any individual Medicus

⁴ Sterling’s own Court filed documents state, “Upon information and belief, the Equipment currently has a value of $5,000;” #30; NYC/246547.1; Supreme Court of The State of New York County of New York; Index 600236-06

⁵ See, for example, Sterling Bank’s “Lease Program Agreement” and “Private Label Agreement” with Norvergence whose scam was nearly identical to the Medicus scheme. These public documents were provided through New Jersey Bankruptcy Court in the Norvergence case and the FTC --Nor/FTC/PBN 0002687; 0002648; 0002722 and 0002646.
customer signed a single Sterling Lease. Upon information and belief, Sterling knew or should have known the value of the computer in the equipment backed lease.

II. What Sterling Did—They Approved, Endorsed and Participated in Medicus’s Fraudulent Scheme

The bottom line is that Sterling fraudulently “approved” purchasing Medicus computers for $43,000 or $48,000 respectively, while their fair market value (FMV) was only $1,100.6 (See Exhibit B, the Medicus Equipment Appraisal report). Our group’s complaint is not that Medicus customers are unhappy with Medicus services. But common sense alerts one that something is very wrong when a bank approves a fraudulent invoice of $43,000 or $48,000 for a computer worth only $1,100. A danger arises if a banking system allows a bank to work with its vendors in the following sequence:

1. Sterling National Bank receives an equipment vendor application and approves Medicus Marketing, a company that sells services, as one of their equipment vendors after negotiations.
2. Medicus gets a “Lease Program Agreement” contract from Sterling for the bank’s future purchase of a multi-million dollar lease portfolio. The $1,100 computers are listed as “equipment” in the contract at a value agreed upon by Sterling and Medicus of $43,000 or $48,000 each.
3. Medicus buy hundreds of $1,100 computers and sells customers services.
4. Sterling gives Medicus $43,000 or $48,000 each, for hundreds of $1,100 computers, after hundreds of “equipment leases” are signed by lessees.
5. Sterling insures the $1,100 computer equipment for $43,000 or $48,000. with their insurance company, American Leasing Insurance, and collects premium fees from lessees for this insurance, or induces lessees to provide their own insurance company—all at a fraudulent valuation of $43,000 or $48,000 for each $1,100 computer.
6. Medicus Marketing fails to deliver services to lessees and goes quickly bankrupt. The monies Sterling advanced to Medicus disappear. These funds, amounting to millions of dollars were, in fact, paying for undelivered services and not equipment.
7. Sterling National Bank demands lessees, under threat, to continue paying monthly payments for 5 years of undelivered services (a total of $70,000 from each of numerous lessees, when 5 years’ interest is added to $43,000 or $48,000), despite lessees receiving no services. Bottom line of this scheme is: lessees will pay over $70,000 for a $1,100 computer.

Art Science Research Laboratory had a licensed appraiser and a computer engineer examine a sample of three of the leased Medicus computers (see Exhibit B. Equipment Appraisal Report). The Appraiser discovered that almost none of the invoiced software was found in the three computers. (See pages 13-15 and pages 23-25). The limited software that was found appears to have been pirated from Microsoft. The absence of any attempt by Medicus to conceal both the missing and unlicensed software in the hard drive evidences Medicus’s intent to only be in business for a very short term, as discovery of their deception could be quickly realized. The fact that there was no attempt to hide the missing software evidences that Medicus planned right from the start not to deliver services and to go quickly bankrupt after collecting millions from the Sterling Bank ($43,000 or $48,000 multiplied by hundreds of leases).
Not only did Sterling Bank not carry through due diligence on the equipment, but they also failed to properly verify the credit history of Medicus Marketing/IBD and TNG’s owners and officers, the Day brothers, who, as a recent credit check reveals, had been in trouble with enforcement before.

In 1992, the Day brothers ran an $11 million fraud. Victims made $50 calls to a 900 number that promised credit cards regardless of the target’s credit history. FTC Enforcement imposed stiff sanctions and seizures upon the Days and their multiple companies. FTC’s 1992 Annual Report states:

M.D.M. Interests, Inc., Southwestern Media Group, National Lottery Hotline, Max K. Day, Michael Day

M.D.M. Interests, Inc., Southwestern Media Group, National Lottery Hotline, and two of M.D.M. Interests, Inc.’s officers, Max K. Day and Michael Day, agreed to turn over various assets and to discontinue assisting a network of telemarketers who falsely represented to consumers that they could obtain a Visa or MasterCard credit card, regardless of their credit history, by making a $50 call to a 900 number. The court had previously issued a temporary restraining order, prohibiting the challenged practices, and frozen the defendants’ assets. The previously frozen assets will be turned over to the Commission pursuant to these settlements, and will be used to establish a consumer redress fund. If redress is not practical, the money will be deposited in the U.S. Treasury.

We found this information about the Days in a standard credit profile. What minimal due diligence would have still allowed Sterling Bank to make Medicus, and thus the Day brothers, an “approved vendor?”

Sterling Bank is aware of post-9/11 banking guidelines to “Know Your Customer” (KYC). The same wording cited in “Customer due diligence for banks” (October 2001), the Basel Committee on Banking Supervision’s publication, is used throughout the US and the international banking communities. See quotation below.

Supervisors around the world are increasingly recognizing the importance of ensuring that their banks have adequate controls and procedures in place so that they know the customers with whom they are dealing. Adequate due diligence on new and existing customers is a key part of these controls. Without this due diligence, banks can become subject to reputational, operational, legal and concentration risks, which can result in significant financial cost.

8 Ibid.
9 (Source: http://www.bis.org/publ/bcbs85.htm).
Doing business with such known fraudsters as the Days, in both the TNG and Medicus Marketing/IBD Scams from 2004 to 2005, certainly subjected Sterling National Bank to “reputational, operational and legal risks.”

No Medicus client expected a reputable national bank to contract with a vendor, and without question accept fraudulent invoices for computers with an increase of 50 plus times FMV. The acceptance by Sterling Bank of Medicus as, in their words, “an approved vendor,” served to endorse the credibility of Medicus for lessees and induced their signing of the suite of guarantee, marketing services and equipment lease contracts.

Moreover, Sterling employees continued to endorse and defend Medicus even after receiving complaints from lessees. They were told that lessees were not getting their monies back from Medicus as was guaranteed, and they were not receiving services as contracted. Sterling consistently stated: “Medicus is an approved vendor” or “we’ll check with [Medicus owner] Max Day.”

These statements about “what a great company” Medicus was or that the Medicus offices were “impressive,” clearly suggest close dealings. Sterling’s imprimatur declares to lessees that Medicus, its marketing program, money-back guarantees and computer equipment were so thoroughly subjected to due diligence by Sterling, a large, reputable national bank, that Sterling’s belief in Medicus’s credibility held, even in the face of evidence of their non-performance and customers’ criticism.

### III. Why would Sterling Not Conduct Proper Due Diligence on the Medicus Owners/Officers or the Equipment They proposed Sterling Buy and Lease?

Since the plan between Medicus and Sterling Bank included that each individual lease within the larger Medicus portfolio would be signed by each lessee, Sterling knew they could use the lessee’s credit to secure each lease, and from a practical—but not a legal or correct accounting standard perspective—could ignore the equipment FMV.

Standard equipment leasing industry statistical models show that banks, like Sterling, need not worry about losing money in “small ticket” equipment leases if they follow the basic formula: If the lessee has good credit, the interest rate is high, they buy large volumes and keep expenses down, then the bank will make a profit. However, this

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10 Today’s Destiny (TNG) morphed into the Medicus company on the heels of lessee complaints. Soon after, Medicus Marketing changed its name to IBD. The Texas Bankruptcy Court Trustee accused the Day brothers, of migrating assets through shell entities—from TNG to Medicus to IBD—to avoid seizure.

11 NJ Bankruptcy Court papers reveal that the close dealings between Sterling and its vendor, Norvergence included Sterling Bank employees having “power of attorney” to sign critical documents in behalf of Norvergence. The “Specific Power of Attorney” document cites that Sterling employees may, “sign on Norvergence’s behalf, all Equipment Rental Agreements and related agreements assigned by Norvergence to SNB pursuant to the Private Label Agreement dated on May 2, 2003.” With this agreement, Sterling employee names and signatures appear on Norvergence leases, as if they were Norvergence employees. Cited from document: Norv/FTC/PBN 0002624.
formula neglects the fact that equipment leasing profits must be made within FASB and SEC accounting standards, a subject discussed below.

Early in the 2000s, FASB and SEC caught on that companies, like Xerox, aggressive in the pursuit of high volume and profits, stretched the instrument of “equipment leases” further and further, with the addition of “bundled services,” to the point where the equipment in the equipment lease was nominal in value in comparison to the services. It no longer mattered to some aggressive companies that what remained was nearly all services and very little equipment in the equipment lease. They would profit.

By stretching the rules and turning a blind eye to the actual nominal equipment FMV, the volume of “equipment lease” portfolios they could create with vendor partners would increase many fold over existing business. Since the individual lease value would be low (“small ticket”) and the “finance lease” structure, in particular, kept assets off the books, companies reckoned, it would fall under the radar of the due diligence expected for the bank’s purchases, financing or booking of assets. Due diligence is perceived as an expense to be limited.

Banks like Sterling have argued: “We are funding finance lease ‘income streams’ based on lessees’ credit not equipment. Therefore, we are not obligated to know or verify the equipment value.”12 The first part of the statement is factual. Sterling does ignore the equipment value, treating equipment leases as “income streams” and the value of the equipment is not factored in projections of profits. However, Sterling’s conclusion, drawn from the fact they only look at lessee credit, does not change their obligation to follow EITF 00-21 requirements for unbundling of services from equipment FMV in order to properly time revenues.13

Sterling’s other excuse deceptively appears to be a commonsense plea: “How can we look at the values of all these small cost items and still do business?” These excuses are obvious canards only when one understands the complexities of:

1. The close dealings between Banks and the vendors who first “pre-sell” them portfolios of future leases before one lease is signed;

2. The day to day practice for booking individual leases.

12 If the equipment lease is only an “income stream” based on lessee credit, why does Sterling insure the entire fraudulent and inflated invoiced cost as “equipment.” They want to be able to ignore the value of the equipment but at the same time profit as if the $1,100 equipment were worth $48,000 upon the equipment’s loss. These are sham equipment leases. OCC needs to investigate to determine how many million dollars are being written at Sterling Bank as “equipment leases” that have little equipment underneath the paper.

13 Even if these bundled equipment and services arrangements were loans and not leases, opinion holds that EITF 00-21 still applies. See “Accounting for Commercial Loan Commitments,” by Baruch Lev and Stephen Ryan, Stern School of Business, New York University, November 2004; page 3. Lev and Ryan state, “It is our opinion that when loan commitments are provided in a bundle of services, their accounting and disclosure should follow EITF 00-21; namely, fair-value recording of the commitment upon initiation and subsequent financial statement disclosure of the liability.”
IV. The Leasing Industry Looks at FMV of Equipment as Standard Practice: Both When Approving a Vendor to Buy a Portfolio of Leases and When Approving a Vendor’s Submission of Single Lessee’s Credit Application

As described above, the standard procedure for Sterling (and the industry itself) is first to examine a vendor’s credit and equipment upon receiving his application. The contract a bank signs with a vendor, often called a Master Lease Agreement (MLA) or Master Program Agreement (MPA), involves the overall deal: what equipment the vendor, such as Medicus, proposes Sterling buy, at what price, and the sequence of when and what documents must be signed and delivered by all parties (lessor, vendor, lessee) in the leasing process.

Vendors and banks will negotiate their MLA contract, which will authorize a credit line for the vendor --say for $2 or 3 million-- for a specific set of equipment, to be sold in volume to the bank at a certain price and then leased. The lease’s wording and the interest rate are also determined from negotiations between bank and vendor. The bigger the volume and the higher the rate the vendor agrees to in a contract, the more a bank is eager to close a deal with a prospective vendor.14

The MLA and the documents that are only later put before the prospective lessee reflect all of the negotiated points, including what services the vendor buys from the bank for the processing of individual leases. Documents negotiated between the bank and the vendor are most likely based on the banks’ boilerplate vendor contracts and are drafted by the bank’s lawyers.

Frequently, specific sales goals are stated and linked to the total amount of equipment and leases, in millions of dollars, that a bank like Sterling is willing to buy. If the vendor misses or exceeds lease target volumes in the MLAs, the contract often cites corresponding penalties or incentives, respectively, naming cutbacks, increases or even cancellation of the bank’s total financial commitment to buy equipment and leases. Under what Sterling names as its “recourse program,” a vendor must buy back leases from Sterling at a discount within 24 months, solely at Sterling’s discretion or swap a bad lease with a good one if a Sterling lease goes into default within the first 60 days.15

14 See footnotes #3, #5, #11 and #15 below; for details about boilerplate contracts Sterling uses with vendors and close dealings between Sterling and vendors including agreements on pricing.

15 Lessees are unaware of any of these contractual arrangements between leasing companies and vendors, which include discount benefits to a leasing company paid by a vendor after lease signing. Further discussion on this subject of “kick-back” arrangements between Norvergence and Sterling and Norvergence and IFC Leasing are found on pages 16 and 17 of this white paper.

Quotations cited are taken from Bankruptcy Court and FTC investigation documents, Nor/FTC/PBN 0002687; 0002648; 0002722 and 0002646. See Sterling Bank’s “master program agreement” and “private label agreement” with Norvergence whose scam was nearly identical to the Medicus scheme. The contract between Sterling Bank and Norvergence, as an example, illustrates a typical arrangement for Sterling’s vendor requirement for “recourse procedures” which includes “buybacks.” A letter to Norvergence from Robert Knox, Sterling Bancorp employee states, “I am faxing the current delinquency for the portfolio, the following transactions need to be repurchased prior to the month end…” See NJ Bankruptcy Court Document, Norv/FTC/PBN 0002722.
Due diligence mentioned in the vendor’s application to the bank— including the equipment invoice— follows through in the MLA language and typically mentions that due diligence regarding the vendor and equipment has been required by the bank. (Often banks charge vendors a fee for providing due diligence). Only after a deal is struck between bank and vendor, and the amount of the overall lease portfolio is determined, are hundreds or thousands of equipment leases signed by individual lessees.

Sterling Bank’s verification of the FMV of a single equipment invoice at the beginning of their deal with Medicus is only one due diligence step, and easy to do. Since the main due diligence by a bank of a vendor and its equipment is done at beginning, before any “small ticket” equipment lease portfolio is purchased, it is a falsehood to declare it impossible or not practical to scrutinize the equipment’s FMV in small ticket leases. The due diligence at the headwater, when the MLA is made between the vendor and the bank, need not be repeated upon the signing of each individual lease in the portfolio. A single invoice approved for purchase in the Master Lease Agreement is the main due diligence. Each future lease with individual lessees is generated from that MLA. The MLA is what puts millions of dollars at stake for any bank – not the individual equipment lease.

However, despite the excuse that it is impossible for leasing companies to vet each lease in small ticket leasing, FMV due diligence is done on each lease as standard practice. On a daily basis, Sterling’s vendors submit lessee credit applications and invoices on individual leases. If Sterling is anything like most leasing companies, they have trained their “booking agents” to check the equipment invoice submitted by any of their vendors against the manufacturers FMV list, to confirm that services added do not greatly exceed FMV. (The industry rule of thumb is to limit services imbedded in an equipment lease, typically 20%).

In general, booking agents will reject a vendor’s submitted invoice if the services represent too high a percentage in comparison to FMV of equipment— even though the purchase of their portfolio has been approved and a MLA with a vendor is signed. Many years ago, leasing companies added this standard check of invoice against manufacturer’s FMV list, when they began getting stuck upon defaults. For example, the bank would discover the Xerox XYZ machine they bought and leased was not a model worth the $50,000 they paid but was the model ABC for $10,000. Their vendor’s excuse, when a lessees defaulted, was: “the difference between the $50,000 the bank paid him and the $10,000 copier was $40,000 in services.”

The above facts about the leasing industry practices indicate:

1. The bank can easily check equipment FMV in one invoice during the initial negotiations and due diligence with a prospective vendor. The contract for a MLA contract occurs well before any deal multiples into thousands of equipment purchases and leases;

2. The leasing industry, as standard practice, trains their booking agents to cursorily check equipment’s FMV against single submitted invoices.

Both points invalidate Sterling’s claim that they do not, in practice, or cannot pragmatically check the FMV of “small ticket equipment leases.”
The looming question now is, must Sterling Bank, from an accounting perspective, determine the FMV of equipment before purchases of equipment for “small ticket finance leases?” Is the determination of the FMV and the identification and unbundling of services as separate from equipment required by FASB 13 and the SEC? The answer is a resounding, “yes.”

V. Sterling National Bank Must Know the Fair Market Value of Equipment and Apply EITF 00-21

According to FASB 13, the accounting rules for leasing, at the inception of any lease, the fair market value (FMV) must be known by the lessor and used by them as the basis for any equipment lease.16 EITF 00-21 (2003) further defines this requirement and adds additional burdens for determining equipment’s FMV on the lessor, in this case, Sterling National Bank. The FMV must be determined with what FASB EITF 00-21 calls “Vendor’s Specific Objective Evidence” (VSOE). This determination of FMV is key to the EITF 00-21 lease accounting requirements. Read quotation taken from EITF 00-21, #16, below regarding the determination of FMV and VSOE:

Contractually stated prices for individual products and/or services in an arrangement with multiple deliverables should not be presumed to be representative of fair value… Fair value evidence often consists of entity-specific or vendor-specific objective evidence (VSOE) of fair value. As discussed in paragraph 10 of SOP 97-2, VSOE of fair value is limited to (a) the price charged for a deliverable when it is sold separately or (b), for a deliverable not yet being sold separately, the price established by management having the relevant authority (it must be probable that the price, once established, will not change before the separate introduction of the deliverable into the marketplace). The use of VSOE of fair value is preferable in all circumstances in which it is available. Third-party evidence of fair value (for example, prices of the vendor's or any competitor's largely interchangeable products or services) is acceptable if VSOE of fair value is not available.17

According to EITF 00-21 rules, a lessor must first determine whether separate units of accounting, such as services versus equipment cost, exist in the equipment lease. Next, if, upon using EITF 00-21 guidance, independent units of accounting are indicated, these units must be separated (“unbundled”) and booked separately. Not unbundling earnings from services versus income from equipment sales or purchase cost results in a mistiming of earnings according to FASB and the SEC.

SEC Enforcement against Xerox was based on Xerox’s mistiming of earning resulting from their bundling of services with equipment. The April 11, 2002 SEC headline read,

16 Refer to footnote #1

“Xerox Settles SEC Enforcement Action Charging Company with Fraud, Agrees to Pay $10 Million Fine, Restate Its Financial Results and Conduct Special Review of Its Accounting Controls.” The press release stated:

The complaint alleges that several of the accounting actions related to Xerox's leasing arrangements. Under these arrangements, the revenue stream from Xerox's customer leases typically had three components: the value of the "box," a term Xerox used to refer to the equipment; revenue that Xerox received for servicing the equipment over the life of the lease; and financing revenue that Xerox received on loans to its lessees. Under GAAP, Xerox was required to book revenue from the "box" at the beginning of the lease, but was required to book revenue from servicing and financing over the course of the entire lease. According to the complaint, Xerox relied on accounting actions to justify shifting more lease revenue to the "box," so that a greater portion of that revenue could be recognized immediately.18

Without clearly understanding the equipment FMV through VSOE, services not delivered until years from lease inception can be improperly booked as “equipment” at the beginning of the lease. In order to determine the proper accounting procedure – whether to separate the services and equipment as independent units of accounting or not – the lessor, by necessity, must determine the FMV by VSOE as the first step. Yet Sterling Bank employees and in-house legal staff have claimed they had no need to know the value of the equipment as the lease was a “finance lease.” However, no such exemption exists in the FASB 13, EITF 00-21 or higher literature. The equipment lease, in this case, is booked as either an operating lease or a direct financing lease according to FASB 13. Both types of leases require the application of EITF 00-21.

The SEC Staff have stated public companies, such as Sterling, must seek Vendor Specific Objective Evidence of the fair market value of equipment versus services in leases as described in EITF 00-21.

The SEC staff statements underscore the need for compliance, “the separation criteria in EITF 00-21 are not elective (emphasis mine), and items meeting the separation criteria under EITF 00-21 may not be combined or accounted for as a single unit of accounting.”19


19 See “2003 AICPA National Conference on Current SEC Developments: Compendium of Significant Accounting and Reporting Issues;” “The SEC staff reminded companies that footnote 3 to paragraph 4 of EITF 00-21 requires leased assets within arrangements with multiple deliverables to be accounted for separately under FASB Statement No.13, Accounting for Leases, regardless of whether the leased assets meet the separation criteria under EITF 00-21. For example, when leased as part of a software arrangement, including a customized build-to-suit software system, hardware or equipment and any related executory costs are required to be accounted for separately under FAS 13.”

“The SEC staff also discussed the implications of paragraph 14 of EITF 00-21, which limits the amount of revenue that can be allocated to a separate delivered element to the amount of non-contingent consideration. In some cases, this may result in the allocation of little or no revenue
To meet EITF 00-21 criteria, it is obvious that a company must first look at the equipment value underneath the paper before it can comply. It is not a creditable excuse for Sterling to now say, “When we booked $43,000 or $48,000 per lease in the first year of the 5 year lease, we did not know that the value of the Medicus computer we purchased and leased was only worth $1,100, and the rest represented payment for future services.”

VI. According to FASB 13 and EITF 00-21 Guidance: Sterling National Bank is Required to Unbundle Services and Equipment—Even If There Are Two Separate Contracts, One for Services and the Other, for Equipment

OCC, likely based on Sterling’s defense, emphasizes, in their May 5, 2006 letter, the separate contracts involved in this case: one with Medicus for services and the other, the equipment lease with Sterling. OCC writes:

The bank advises that your complaint filed is unrelated to the equipment lease for which the bank financed, but stem from problems with the marketing services that were promised to the Lessee by the supplier of the equipment, Medicus Marketing, L.L.C. These marketing services were to be provided pursuant to a separate contract between the Lessee and Medicus. The bank states it is not, and never has been, a party to the marketing contract. Therefore, the issues with the marketing services are unrelated to the Lessee’s obligations pursuant to the lease for the equipment.20

Although separate service and lease contracts were signed, (one for Medicus services and the other, Sterling equipment leases), EITF 00-21 specifically states that despite having separate contracts, lessors and vendors must still look for the VSOE to determine if separate accounting units are to be applied. EITF 00-21, #2 cites, (emphasis mine) “…separate contracts with the same entity or related parties that are entered into at or near the same time are presumed to have been negotiated as a package and should, therefore, be evaluated as a single arrangement in considering whether other are one or more units of accounting.” 21

Supporting the notion that the suite of contracts lessees signed were a single, bundled arrangement, is: one, the Medicus Service and Guarantee Contracts were first presented, signed and dated by Lessees in a single group that included the Sterling Equipment Lease; and two, Sterling’s Lease was the single nexus for payment by lessees according to all three contracts. The language in the three Medicus/Sterling “bundled” services and equipment contracts presents one unified deal:


20 See Exhibit A.

1. **Medicus Marketing and Advertising Agreement**—In section one, under “Payment Terms,” this contract instructs lessees to make payments according to the lease, quoting $43,000 or $48,000 as the amount. The Marketing contract states, “Payment shall be made in accordance with finance documents (in other words, the lease, clarification and emphasis mine).” See Exhibit F.

2. **The Sterling “Equipment Lease”**—stated the monthly payment amount to be paid for 5 years; and included a “Schedule of Equipment” with no line item prices but whose bottom line price of $43,000 or $48,000 conforms with the Medicus Marketing and Advertising Agreement instructions to follow the finance document. See Exhibit E.

3. **Medicus Warranty Agreement**—Under section two, “Financing,” this contract mentions a customer’s use of a “finance company…to secure Medicus Marketing services.” The contract states, “Your practice will be responsible for making payments directly to the finance company used to purchase the Medicus Marketing/Training program” (emphasis mine). See Exhibit G.

   If a finance company was involved, according to the contracts, a customer would pay them, not Medicus, the $43,000 or $48,000 for Medicus services. No monies were to be paid directly to Medicus Marketing. Upon present examination of the three contracts, was it ever plausible for Sterling to believe that 5 years of services were going to be delivered by Medicus at no cost to the lessee?22

   The language in the three contracts indicate that only the *Sterling Bank Lease* was intended by all parties—Lessee, Sterling and Medicus—to pay for a bundled services and equipment arrangement.

   The problem for lessees was that at the signing of the lease, only two parties—Sterling Bank and Medicus—knew all the costs of the services and equipment were attributed solely to the equipment.

   Lessees first saw the “Schedule of Equipment” at lease signing. See Exhibit D1. No prices or costs are listed. Compare the equipment schedule lessees received to the actual invoice Sterling received from Medicus, See Exhibit D2. One immediately notes that unlike the equipment schedule given to lessees, the Sterling’s original invoice included all the equipment prices. Sterling apparently retyped it and created its own, separate “Schedule of Equipment” for lessees which excluded all prices. It was not until after lease signing, when lessees saw the Sterling invoice with line item prices, that lessees first understood that the $43,00 or $48,00 amount they thought they had paid for

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22 The Warranty contract in a section called, “Services Provided,” states, “Services provided by Medicus as a part of the Marketing/Training program and this agreement but not limited to will include: onsite training, direct mail (10,000 pieces …on a 5 week cycle…for a total of 260,000 pieces in 5 years), radio spots, internet marketing, web design…newspaper & yellow page ads…sales coaching, technical support and an over all evaluation of your practice and procedures.” Medicus consistently described its services, as stated in the Warranty Agreement quote, in sales literature, its web site and Marketing and Warranty contracts. Medicus Marketing’s descriptions of themselves— that they were selling mostly services and little equipment-- is unlikely to have been unknown to or missed by Sterling.
services and equipment were fraudulently applied to only equipment by Sterling and Medicus.

The Sterling invoice listed, for example, the cost for the Dell desktop, Optiplex 170L at $3,000—a price which was 6 times its widely known fair market value of $495.23 Unlike Sterling Bank, lessees had no opportunity to make such determinations of excessive costs of individual items. Lessees were buying a single bundle of services and equipment for $43,000 or $48,000. No contract or other information informed lessees otherwise before lease signing.

Only Medicus and Sterling Bank had, or should have had, the advance knowledge that a simple computer worth $1,100 would “bundle,” and therefore hide, the entire value of services ($41,900 or $46,900) that were to be delivered over 5 years of the lease. Sterling’s boiler plate vendor contract from the Norvergence case suggests that Sterling, not lessees, not only had the opportunity, but did negotiate the price they paid Medicus for the computers.24

Moreover, when lessees started complaining to Sterling about Medicus’s failure to deliver services, Sterling had the contractual option in its “recourse program” to force Medicus to buyback its leases or to withhold certain monies as a discount. How much money did Sterling hold-back or receive in discounts in the Medicus leases? If Sterling accepted monies back from Medicus based upon defaults in the portfolio, which is a standard option in Sterling’s vendor contract, how can Sterling continue to pursue collection of the full lease amount from lessees?

A Texas Judge, upon learning that another leasing company held back monies and collected refunds from Norvergence while still charging lessees the full lease amount, immediately issued sanctions against the financial institution.25 The Judge discovered monies were, in effect, being “kicked back” from Norvergence to the leasing company upon lessee defaults, without knowledge of or financial credit to the lessee. In essence, the Court was upset because the financial institution continued to pursue full lease amounts from defaulting lessees despite having received refunds and discounts from Medicus for the same leases.

The Judge’s Order for Sanctions states:

23 The Appraisal Report, see Exhibit B of this white paper, states, “The desktop personal computer is a tier three machine and significantly overpriced compared to the Dell desktop in Exhibit 2 - Optiplex 170L.” See pages 15 and 17 of the Appraisal.

24 As stated in footnote # 3, contracts indicate Sterling—and importantly, not the lessee--negotiated the final price of the equipment that they would eventually purchase and lease. As example, the Sterling and Norvergence “Private Label Vendor Agreement” states, “SNB (Sterling National Bank, clarification mine), will supply you with the rates it will offer to determine the purchase price for Equipment and associated Lease, which rates are subject to change by SNB upon notice to you…For approved applications, after SNB receives within two business days in satisfactory form, the documents and information listed below, it will pay you the agreed upon purchase price (emphasis mine).”

25 See http://www.lesseerights.org/SOS_Order.pdf; Specialty Optical vs. IFC Credit Corp; County Court, at Law number 3; Dallas County, Texas-- Cause number 04-04187-C
ORDERED that IFC Credit Corp. (“IFC”) shall send letters to all lessees against which it has made claims under leases or rental agreements acquired from NorVergence and explain to each lessee the precise amount of money that was delivered to NorVergence for the lease, as well as what amount was held back, the basis for such holdback, and the manner in which the holdback was applied in the accounting records of IFC.26

Sterling’s standard vendor agreement has similar “hold-backs” and discounts upon lessee defaults as did IFC and Norvergence. Sterling’s Master Program and Private Label Agreements with Norvergence included what Sterling called its “Recourse Facility” for Norvergence. This contractual arrangement designates Sterling’s ability to freely elect to collect “kick-back” payments from Norvergence, in the form of “discounts” after a lessee signs a Sterling lease.27 Similar to the FTC/Norvergence kick-back scheme, Sterling lessees were unaware of these payments between Sterling and Norvergence post their signing a lease.

In the Norvergence/Sterling contract, under the section, “Terms and Conditions of the Recourse Facility,” Sterling refers to themselves as “Lessor” and Norvergence as “Vendor.” Sterling writes (all emphasis is mine):

Recourse lease term: term shall be 24 months unless specified by Lessor. At the end of the 24 months, Lessor can retain the Lease by discounting the remaining term or reassign the Lease back to the Vendor with no further obligation. If the Lessor decides to discount the remaining term or partial term, Lessor shall present value the remaining rental payments at the then agreed upon discount rate and forward the amount to the Vendor.

Recourse Line: Total funding under the Recourse Line is $250,000. The amount may be increased from time to time at Lessor’s sole discretion...

Discount rate: Discount rate shall be 11.5%...

Buyback Procedures: For any transactions funded under the recourse program, if a lessee becomes 60 days delinquent on its payment obligation, within 10 days notice NorVergence must either purchase the lease back at the then Lessor’s net investment in the lease plus any accrued late fees, taxes and interest or substitute a rental agreement with a like payment amount for the remaining term.28

26 Ibid.

27 See NJ Bankruptcy document; Nor/FTC/PBN 0002687

28 The Norvergence/Sterling contract page regarding Sterling’s “Recourse Program Facility” is found in NJ Bankruptcy document; Nor/FTC/PBN 0002687
Sterling’s lessees are similarly unaware of any kick-back arrangement Sterling may likely have with Medicus. For example, in a dunning letter Sterling wrote to a lessee, there is no mention of Sterling possibly collecting refunds or additional discounts from Medicus in connection to the lessee’s default. Sterling’s demand is for the unequivocal full amount of the lease:

While Sterling regrets that you are disappointed with the service provided by Medicus, we must point out that the leased equipment was financed independent of the services provided by Medicus…Accordingly, any issue you have with Medicus services or the equipment provided by Medicus must be taken up with Medicus. Lease payments remain due and owing to Sterling pursuant to your lease. If you choose to pursue any rights you may have against Medicus that include repayment of the Sterling lease, we will accept full payment and mark your lease as satisfied. However, absent either full payment on the lease or timely receipt of lease payments, Sterling reserves the right to enforce its remedies pursuant to paragraph 12 of the lease agreement, including the institution of legal proceedings to recover damages against your company and any guarantor.29

As this white paper abundantly makes clear, Sterling incorrectly claims in this letter to be an arms length 3rd party and also wrongly asserts that the lessee independently chose Sterling. They wrote, “Sterling played no role in the decision of your company to lease the equipment or otherwise retain the services of Medicus.”

However, on the Sterling web site in “Introducing the Sterling Bank Leasing Vendor Group,” their relationship with vendors, as they publicly describe it, is hardly construed as arms length. Since Sterling’s says they are “dedicated to…enhancing the marketing efforts of our vendor clients;”, we, therefore, assume they are also “enhancing the marketing efforts”of Medicus.

Sterling continues, “Our Vendor Group has the experience and knowledge of leasing you (the vendor, like Medicus, clarification mine), need to close the sale and receive payment quickly.”30 Sterling further promises, “to work closely with your sales force (the vendor, like Medicus’s sales force, clarification mine,) to close deals, expedite purchase orders, documentation, and provide information and guidance on leasing issues. Our services include: Immediate lock up of sale....”

The historical record will likely show that when Medicus services were going undelivered and defaults started rolling in, unbeknownst to lessees, Sterling began pursuing their buy-backs, discounts and refunds from Medicus, even while seeking full payments from lessees.

29 Sterling dunning letter dated, March 9, 2006, was sent to lessee Dr. Lance S. Rawlings, Rawlings Chiropractic, South Sandy, Utah. Letter is available upon request to author.

30 Go to http://www.sterlingbankleasing.com/vendor.cfm
It was the “side agreements” between Sterling and Medicus Marketing, unknown to lessees—including in the Master Program Agreement, Private Label and Recourse Program—that allowed for kickbacks and valuation fraud to occur. Substitution of invoices; undisclosed equipment pricing and side deal payments between Sterling and Medicus were acts of omission which tricked and cheated lessees. With this aforementioned information, lessees would never have willingly signed up for the Medicus’s bundled services and equipment deal as an “equipment rental.”

VII. Art Science Research Laboratory Unbundles Medicus/Sterling Leases Following EITF Guidance: The VSOE Procedure Required By FASB 13 and EITF 00-21 That Sterling and Medicus Failed to Do

Art Science Research Laboratory hired a licensed appraiser to seek VSOE on the Sterling National Bank/Medicus equipment leases in order to unbundle Medicus services and equipment in the Sterling Leases. See Exhibit B. The results prove these leases were in fact bundled services with equipment, which should have been determined as independent units of accounting for both Medicus and Sterling National Bank.

The Medicus equipment (a simple computer) FMV value was only $1,100. Since the invoiced purchase price of the computer was either $43,000 or $48,000, the balances of $41,900 and $46,900 are separate units of accounting for services and should not be booked as equipment cost. In the business arrangement and contracts between Sterling and Medicus, a scheme was set up whereby both companies are in violation of FASB 13 and EITF 00-21 accounting standards.

It was these accounting irregularities, of failing to follow VSOE in EITF 00-21, that directly led to the defrauding of the Medicus lessees. If Sterling had practiced correct accounting principles, and determined the equipment’s FMV before making its contract with Medicus to buy a portfolio worth millions of dollars in future equipment based leases, Sterling would never have entered into this deal with Medicus and lessees would not have been defrauded. The same Medicus deal, but with unbundled services, and equipment with the proper timing of booked earnings, would have made the Medicus deal economically unviable to Sterling.

If compliant with EITF 00-21, Sterling would be required to book only $1,100 (plus earned interest) in year one as equipment cost. Sterling would then have to carry the balance, the $41,900 and $46,900 earning for services, and spread it out over 5 years along with earned interest. The $41,900 and $46,900 spent by Sterling in year one of each lease would be unprofitable if carried years in advance of when it could legally be booked as earned income.

According to equipment industry computer modeling, the high interest rate offered by Medicus and the high credit ratings of the lessees, with its promise of large profit, was worth the risk only if Sterling turned a willfully blind eye to the equipments’ FMV, and the entire cost in year one --$43,000 and $48,000--was booked as only equipment.
VIII. Sterling Bank’s Actions in the Medicus Case Are Part of a Larger Pattern of Behavior

Especially astonishing about Sterling being party to the Medicus/IBD bundling scheme is the fact of its involvement in the same bundling scheme over the past four years. When signing a Medicus Marketing Master Lease deal in 2005 to purchase hundreds of $1,100 equipment for $43,000 or $48,000 each, they were already in litigation, and subject to possible enforcement by FTC and other agencies, over two other similar frauds: Norvergence and TNG. FTC, US Federal prosecutors, a dozen State Attorney Generals; and TX and NJ Bankruptcy Courts are still investigating the Norvergence and TNG cases (is the Medicus/IBD case far behind?); Sterling was prominently involved in all three.

In the Norvergence fraud (2002-2003), Sterling and 42 other banks signed a Master Lease Agreement with Norvergence. 11,000 equipment leases bundled $500 or $1,500 equipment with five years of phone services. Banks, including Sterling, purchased the bundled services as “equipment” with invoices up to $240,000 -- 100 to 1000 times the FMV of the equipment. 31 11,000 small businesses, churches and not-for-profits, including a Girl Scout Troop, lost millions of dollars due to this fraud.

In the TNG fraud (2004), Sterling Bank—one year after the Norvergence scam--pays TNG $30,000 to $80,000 per lease for equipment with FMV of $1,000 bundled with years of marketing services. 32 Sterling has claimed in both the Norvergence and TNG scams that they were victims. Now, four years later, in the 2005 Medicus case, does Sterling have the nerve to claim themselves victims again? A pattern emerges on the part of Sterling Bank. How can Sterling claim innocence about either the need to know equipment values or FASB EITF 00-21 requirements especially after the Norvergence, or the TNG fraud cases?

IX. Other Consequences For Sterling Resulting From False Valuations of Equipment—Insurance Fraud, Property Tax Fraud and Inadequate Loan Loss Cash Reserves

Sterling Bank and other lessors forced lessees to insure “equipment” or charged lessees fees for their insurance, which was, in fact, insurance for services with a little equipment.

We informed American Lease Insurance, the insurance company Sterling Bank uses, that the FMV of the Medicus equipment they were insuring for Sterling was worth only $1,100-- not $43,000 or $48,000, as Sterling Bank had claimed. American Lease Insurance immediately called Sterling to cancel the coverage on the Medicus Leases. They asked Sterling to return the improperly collected fees to lessees. American Lease Insurance told us they informed Sterling Bank, that “we don’t insure services.”


32 Art Science Research Laboratory has commissioned an appraisal of the TNG equipment to determine a more precise fair market value.
Bottom line—lessees, without alternative insurance must pay Sterling in this leasing scam insurance fees on $43,000 and $48,000 for equipment with an actual value of only $1,100. In addition, Sterling induced lessees to pay unconscionable amounts of State Personal Property Taxes on their computers. The same false valuations of assets also determined that lessees will pay 2 times the total FMV of the $1,100 computer in personal property tax. Sterling illegally reported services in Medicus leases (what they prefer to call “income streams”) to State Tax Departments as property. 33

Beyond insurance fraud and property tax fraud, another potential consequence for Sterling results from the misallocation of income from services as equipment. A retired partner at a Big 4 accounting firm, and an expert in leasing, states that contracts for services would have a “much reduced likelihood for collection.” Services, as the underlying basis for leases, were just “not acceptable in terms of collectibility.”

The expert’s conclusion? “The higher risks that Lessors took in front-loading service in leases would have required much higher loan loss reserves on their balance sheets than for equipment leases.” Therefore, Sterling Bank has likely not maintained the proper levels of loan loss reserves during the years of their participation in the purchase of Norvergence, TNG and Medicus/IBD Lease portfolios, from 2003 to 2005. 34

**Conclusion**

Both the requirement for EITF 00-21 compliance and the SEC priority for proper revenue recognition are widely known and make it difficult for Sterling to credibly claim ignorance. Throughout the Internet, the SEC filings of public companies clarify, by the 2003 deadline of when SEC required EITF 00-21 to be applied, whether or not EITF 00-21 has any impact on their corporate earnings or accounting practice and explain how they have reached compliance. See, one example, the Ricoh Company Ltd.’s SEC 20F, June 30, 2004 filing:

Ricoh enters into arrangements with multiple elements, which may include any combination of products, equipment, installation and maintenance. Ricoh allocates revenue to each element based on its relative fair value if such element meets the criteria for treatment as a separate unit of accounting as prescribed in the Emerging Issues Task Force Issue 00-21(“EITF 00-21”), "Revenue Arrangements with Multiple Deliverables".

Pursuant to EITF 00-21, the delivered item in a multiple element arrangement should be considered a separate unit

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33 Refer to page 5 of this white paper which gives a specific example of the overcharging by Sterling of personal property tax and insurance fees. Sterling expects one lessee to pay a total of $5,147.35 for 5 years of personal property tax and insurance for a $1,100 computer. Also, see Exhibits C1 and C2.

34 This particular leasing expert would not speak on the record because several of her firm’s clients have been involved in the Norvergence fraud. FASB 13 and EITF 00-21 experts, who have worked on FASB committees, will go on the record about the need for the proper application of EITF 00-21 by Sterling Bank. Names and contact information from individual experts can be obtained through us upon your request.
of accounting if all of the following criteria are met: 1) a delivered item has value to customers on a stand-alone basis, 2) there is objective and reliable evidence of fair value of an undelivered item, and 3) the delivery of the undelivered item must be probable and controlled by Ricoh if the arrangement includes the right of return. The price charged when the element is sold separately generally determines fair value. Otherwise, revenue is deferred until the undelivered elements are fulfilled as a single unit of accounting. EITF 00-21 was effective for revenue arrangements entered into after June 30, 2003. EITF 00-21 did not have a material effect on Ricoh’s financial position or results of operations.35

Proper timing of earnings, as a major priority for the SEC, directly impacts Sterling National Bank as a publicly traded company. Services and equipment were not separated upon inception of the Sterling/Medicus Leases as required by the SEC. Upon VSOE examination, the unbundling of Medicus services and equipment meet the EITF 00-21 standard of what should be booked as independent units of accounting.

Beside Sterling Bank’s numerous claims that they did not need to determine the FMV of the Medicus computers, prima facie evidence shows that Sterling contradicted itself as to the equipment’s FMV. The bank’s public litigation documents state the value of the Medicus computer as $5,000 in one place and as $43,000 and $48,000 in invoices.36 If Sterling National Bank doesn’t know the FMV of the Medicus equipment, we can fairly assume they did not properly unbundle the services and equipment or properly time the booking of income from services.

Therefore, Sterling’s earnings for services were mistimed--$41,900 and $46,900 for each lease, multiplied by numerous leases. This conclusion does not include the further need for restatements of earning resulting from the millions of dollars booked in Sterling’s portfolios of Norvergence and TNG bundled leases, 2003-2004.

Violations of accounting standards, such as the mistiming of earnings, and misstating asset values are a basis for civil litigation and criminal enforcement. Surely the OCC requires National Banks to maintain standard accounting practices for revenue recognition and loan loss reserves as well as to accurately state the FMV of assets they purchase.

The violations of accounting practices are the core of our complaint to the OCC. We ask the OCC to vigorously investigate our charges of Sterling National Bank’s misconduct which includes insurance and property tax frauds. We are copying this white paper to New York Senators and Congress persons and all members of the House and Senate Banking Committees.

* * * * * * * * * *


36 See footnote #4
May 5, 2006

Rhonda Shearer
62 Greene Street, 3rd Floor
New York NY 10012

Re: Case# 628300 Representing Dr. Samuel Carr
STERLING NATIONAL BANK

Dear Ms. Shearer:

The Office of the Comptroller of the Currency (OCC) is responding to your letter regarding the above-mentioned bank. The focus of the OCC’s review of consumer complaints against national banks is to determine whether the banks’ actions are consistent with banking statutes, regulations or any policies that are applicable to nationally chartered banking institutions.

In your correspondence with this agency, your client expressed concerns regarding marketing services contract with Medicus/IBD. You indicate that the company sent prospectus indicating that the service came with a money back guarantee within 6-months, you were not satisfied. You state you requested a copy of the contract prior to signing and the company sent a warrantee agreement along with a lease agreement through Sterling Bank.

You state that you signed the contract and the company delivered a computer with three contracts to sign. You state the documents were the warrantee agreement, the lease agreement, and a marketing agreement. You state that the company did not provide the services advertised and only received minimal consulting and did no direct mailing, and no marketing that resulted in any new patients. You requested a refund according to the terms of the warranty contract, however the company refused the request. In addition, the bank continues to bill for the monthly installments for the computer equipment. You are seeking assistance in your getting the money returned that was paid out on the lease, plus attorney fees, and cancellation of the lease.

Customer Assistance Group, 1301 McKinney Street, Suite 3450, Houston, Texas 77010-9050
Phone: (800) 613-6743, FAX: (713) 336-4301
May 5, 2006
Rhonda Shearer
Page 2

The OCC contacted the bank, which responded to us regarding your concerns. The bank advises that your dispute arise out of contracts relating to commercial equipment leased by the Lessee and financed by the bank. Therefore, this matter is not covered within the scope of the Consumer Leasing Act or the Federal Trade Commission Act.

The bank advises the your complaint filed is unrelated to the equipment lease for which the bank financed, but stem from problems with the marketing services that were promised to the Lessee by the supplier of the equipment, Medicus Marketing, L.L.C. These marketing services were to be provided pursuant to a separate contract between the Lessee and Medicus. The bank states it is not, and never has been, a party to the marketing contract. Therefore, the issues with the marketing services are unrelated to the Lessee's obligations pursuant to the lease for the equipment.

The bank concludes that it will continue to enforce its right to payments owed by the Lessee pursuant to the terms of the lease for equipment. The bank further states, the Lessee agreed to take the equipment in "as is" condition and free of all warranties. The terms of the lease expressly provide that the Lessee's obligation to the bank under the lease is absolute and irrevocable, regardless of any service problems, such as non-performance by a third party.

Your dispute involves provisions of your contract with the bank. We cannot intercede in a private party situation regarding the interpretation or enforcement of your contract. The OCC does not have the judicial power to interpret or enforce private contractual agreements.

If you do not agree with or understand the bank's response, we can only suggest you consult with your attorney on guidance for a resolution in a court with competent jurisdiction.

The Customer Assistance Group’s consumer complaint process is a service that is provided to customers of national banks. Information provided within this letter is specifically related to an individual consumer complaint and should not be construed as either a legal opinion of the OCC or a supervisory action. If you are not satisfied with resolution of your complaint, you may wish to consult legal counsel so as to preserve your rights.
May 5, 2006
Rhonda Shearer
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We trust this is responsive to your complaint. If we can assist you in the future, please do not hesitate to contact our office.

Sincerely,

Customer Assistance Group
Expert Report

For

Art Science Research Laboratory, Inc.

By

____________________________
Peter Daley, ASA

DMC Valuation Group
Newport Beach, CA

May 2006
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Introduction and Scope of Expert Report

I am preparing this expert report for the use of and at the request of Rhonda Shearer, President of Art Science Research Laboratory, Inc. This report will outline the methodology to be employed in determining the end-user fair market value for equipment owned by Dr. Michael Taylor at Taylor Rehabilitation and Wellness Center in Chicago, IL, Dr. Kevin Dibella at Dibella Chiropractic in Gastonia, NC, and Lawrence Rawlings of Rawlings Chiropractic. Also a part of this report will be an analysis of the hardware features and software programs of each desktop computer.

All valuations will take the form of a summary desktop report. We will report the Fair Market Value of the desktop hardware as of October 1, 2005, May 1, 2006 and January 1, 2007. Drs. Michael Taylor, Kevin Dibella and Lawrence Rawlings sent their computers to me during the month of April to be inspected to see if they matched the respective invoices from Medicus Marketing. Also, I have received by fax copies of the invoices from Drs. Taylor, Dibella and Rawlings. All of the equipment, analysis and fair market values are shown in Exhibit 1 to this report. There will not be any value for freight and installation in my analysis.

Exhibit 2 contains the invoices for the equipment and a page from a fall Dell catalog showing an Optiplex 170L which is similar to the equipment purchased by the doctors. However the doctor's equipment were clones – meaning they could have been assembled at a PC store and would be considered Tier 3 equipment – the value would be considerably less than a brand name similar asset.

Exhibit 3 is a report from a software program submitted by Microsoft that indicates that the Microsoft Office 2003 on Dr. Michael Taylor’s machine was not valid license for that machine. The software was not available at the time of the inspection of the other machines. It is highly suspected that the report would have indicated that they were not valid licenses as well.

Qualifications

I started my career in 1966 with IBM as a Marketing Representative selling midrange and mainframe systems to upgrade accounts in Los Angeles, California. After leaving IBM, I worked for over four years with ITEL Corporation releasing large IBM mainframe systems and peripherals until 1975. I then started Saddleback Marketing with another former ITEL salesman and we acted as an independent computer broker and lessor for IBM and PCM equipment until May 1980. At that time, I started Daley Marketing Corporation as a computer broker and lessor operation, and then in 1985, I stopped all brokering and leasing activities and dedicated the company to publishing fair market values and other related information about the computer industry. I started publishing residual
values for the computer industry in 1987. Both reports are still being published today with more than 2,000 subscribers worldwide having access to the data.

I was the president of Daley Marketing Corporation (DMC) from 1980 until 2001 when I purchased Computer Economics, Inc (CEI). I subsequently sold CEI on April 1, 2005 this year to concentrate on the improving and expanding the fair market value reports, residual value reports, IBM price list and other reports for the industry. I continue to publish the Computer Price Guide, a quarterly report, started by Computer Merchants in 1979. This report now covers all three reports published by DMC Valuations plus DEC equipment.

I am also the president of DMC Consulting Group and an Accredited Senior Appraiser with the American Society of Appraisers for the discipline of Machinery and Equipment and have successfully participated in the Society’s mandatory re-accreditation program and formal re-accreditation is granted until April 16, 2009.

I have appraised everything from modular furniture to satellite stations and PC’s to OC48 telecom equipment but my specialty is writing appraisals for the computer industry. I have written appraisals for one machine and for a portfolio of equipment over $1 billion. I have appraised a number of large portfolios of equipment for: the Internal Revenue Service; the U.S. Department of Justice, Tax Division; various lessee’s; and lessors. I have testified in federal court, district court, bankruptcy court and various tax courts relating to some of these cases. I have also completed a large number of appraisals for Fortune 1000 companies.

My Curriculum Vita is attached as Exhibit 4 and Chuck Farner’s as Exhibit 5.

**Overview of Report**

This expert report will define the terms and methodologies to be used in the determination of fair market value as defined on page 5 of this report. Adherence to the code of ethics and the requirement and standards of Uniform Standards of Professional Appraisal Practices and the conduct of an appraiser as a member of the American Society of Appraisers is strictly followed for the creation of this report.

**Purpose and Use of this Expert Report**

The purpose of this expert report is to provide an independent valuation opinion with regard to the fair market value of equipment installed at Taylor Rehabilitation and Wellness Center, Dibella
Chiropractic and Rawlings Chiropractic. Also this report will examine the software that was to be a part of each system and comment on the existence and the software and its viability.

The fair market valuation will be done through the use of researching industry publications, the marketplace, and applying my 20 years of expertise to determine the fair market value to the equipment identified in Exhibit 1. This report and equipment schedules should be used as an opinion of value as of May 2006 date.

The end-user value is the price the user would pay to a vendor, computer broker or lessor for the equipment in an arms length contract subject to the definition of fair market value (FMV) listed later in this report. The end-user installed valuation represents on average what the user can expect to pay for like equipment in the specific timeframe requested.

The software analysis was done by a technical consultant that has over 30 years in programming and has written software programs for DMC Consulting on related companies for over 20 years. He is proficient in all aspects of computer software and operating systems software.

**Objective and Valuation Date of Report**
The objective is to give an opinion of value of the fair market value of equipment on the various dates.

**Definition and Premise of Value**
“End-User Fair Market Value” (FMV) is defined as the estimated amount, expressed in terms of money, that may reasonable be expected for an installed property in an exchange between a willing buyer and a willing seller, with equity to both, neither under any compulsion to buy or sell, and both fully aware of all relevant facts as of a specific date. Additionally Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. payment is made in terms of cash in United States dollars or financial arrangements comparable thereto, and;
2. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

**Description of Subject Computer Assets**
The detail of the subject computer assets is listed in Exhibit 1. There was an inspection of the assets and the reports are detailed in Exhibit 1. It will be assumed that all of:
• The equipment was under a normal maintenance agreement from the manufacturer since it was first installed.
• The equipment was up to its current engineering level.
• The equipment was in a proper room environment and subject only to the normal wear and tear of such use.
• The equipment was used for normal business applications.

Approaches to Value
The generally accepted approaches to tangible personal property valuation include the income approach, cost approach and the market approach. The following outlines these various approaches to value.

Income Approach
The income approach considers value in relation to the present worth of anticipated future benefits derived from ownership and is usually measured through the capitalization of a specific level of income, (i.e. net income or net cash flow). The net income or net cash flow is projected over an appropriate period and is then capitalized at an appropriate capitalization or discount rate.

While the cost approach and the market approach are readily applicable in many situations of computer equipment valuations, the income approach is less frequently applied since it is usually difficult to isolate a unique income stream.

Cost Approach
The cost approach measures value by determining the current cost of an asset and deducting for the various elements of depreciation, physical deterioration, functional obsolescence and economic obsolescence. This approach is based on the proposition that an informed purchaser would pay no more for computer equipment than the cost of producing substitute equipment with the same utility as the subject asset from the same manufacturer.

The main definitions of cost are reproduction cost and replacement cost. Reproduction cost considers the construction of an exact replica of the asset. Replacement cost considers the cost to recreate the functionality or utility of the subject asset.

The cost approach commonly measures value by estimating the current cost of a new asset, and then deducting value for various elements of depreciation, including physical deterioration and functional
and external obsolescence to arrive at the “depreciated cost new.” If the cost approach is used the appraiser must identify the specific percent deduction for each of the various elements defined to arrive at the fair market value.

Hypothetical example:

Thus: 100.0% Current Replacement Cost New or Reproduction Cost
Less: 65.0% Physical Deterioration
Equals 35.0% 100% * 1-65% = Estimated Fair Market Value
Less: 30.0% Functional Obsolescence from the above result
Equals 24.5% (35% * 1-30%) = Estimated Fair Market Value
Less: 20.0% External Obsolescence from the above result
Equals 19.6% (24.5% * 1-20%) = Results in Fair Market Value

This “cost” may be either reproduction or replacement cost. The logic behind this method is that an indication of the value of the asset is its cost (reproduction or replacement) less a charge against various forms of obsolescence (functional, technological and economic) as well as any physical deterioration. The following definitions for Physical Deterioration, Functional Obsolescence and Economic Obsolescence have been taken from pages 69 and 70 of “Valuing Machinery and Equipment: The fundamentals of Appraising Machinery and Technical Assets” published by the American Society of Appraisers, 2000.

**Physical Deterioration**
Physical deterioration is the loss in value or usefulness of a property due to the using up or expiration of its useful life caused by wear and tear, deterioration, exposure to various elements, physical stresses, and similar factors.

**Functional Obsolescence**
Functional obsolescence is the loss in value or usefulness of a property caused by inefficiencies or inadequacies of the property itself, when compared to a more efficient or less costly replacement property that new technology has developed. Symptoms suggesting the presence of functional obsolescence are excess operating cost, excess construction (excess capital cost), over-capacity, inadequacy, lack of utility, or similar conditions.

**Economic Obsolescence**
Economic obsolescence (sometimes called “external obsolescence”) is the loss in value or usefulness or property caused by factors external to the property such as: increased cost of raw materials; labor, or utilities (without an offsetting increase in product price); reduced demand for the product; increased competition; environmental or other regulations; inflation or high interest rates; or similar factors.

**Economic Useful Life**
The economic useful life is the estimated period over which it is anticipated an asset may be profitably used for the purpose for which it was intended. This time span may be limited by changing factors of economic obsolescence, functional obsolescence and physical deterioration.

The availability and cost of the substitute asset is directly affected by shifts in the supply and demand of the utility. Utility may be measured in many ways including functionality, desirability, etc. Costs typically include the cost of all material, labor, overhead, and entrepreneurial profit (or return on the investment in the subject tangible personal property).

**Market Approach**

The logic behind the market approach for computer equipment is that a prudent investor can go to the marketplace and purchase an exact copy of the asset with the same features and/or functionality built by the same manufacturer. Analysis of recent sales and/or asking prices of comparative computer assets are the basis used to establish market values for current fair market value of used equipment.

In the market approach or sometimes also called the “sales comparison” approach, recent sales and offering prices of exact copies and/or similar assets are gathered to arrive at an indication of the most probable selling price of the asset being appraised. The basic procedure is to gather data, determine the features to be compared, and apply the results to the subject. Along with this data and historical data about the same product, a depreciation curve can be established to predict a fair market and residual value for this and similar products.

The market approach is considered to be the best method to estimate the current and future value of computer assets, especially when an actual secondary market exists and there is data available to provide a good indicator of value for the asset. There is enough data available from marketplace to provide a good basis for defining value for the assets under question.

**Expert Report – Methodology**

Of the various “Approaches to Value” available, the *Market Approach is the appropriate method* of valuing this portfolio of equipment.

The Income Approach considers value in relation to the present worth of future benefits of ownership. It is not usually applied to individual items of equipment since it is difficult, if not impossible, to identify individual income streams. If you assemble a group of individual machines to
produce a product, in aggregate, they generate income for the business. So by using an income approach, we could value the aggregation of assets that generate this income. However, it is very difficult to gather and isolate the appropriate information needed for this type of appraisal.

The Cost Approach is based on the proposition that the informed purchaser would pay no more for a property than the cost of reproducing a substitute property from the same manufacturer with the same utility as the subject property. It considers that the maximum value of a property to a knowledgeable buyer would be the amount currently required to construct purchase a new asset of equal utility. This approach should not be used because the cost to Reproduce and/or to develop and re-engineer an exact Replacement would be more than a unit purchased in the secondary marketplace, plus the identification of the specific percentages to apply for physical, functional and economic depreciation.

**Economic Useful Life for computer equipment**

There are many different categories of computer equipment and not all categories have the same economic useful life. Each category, disk, tape, mainframe etc will have a separate decline rate mainly based on the first ship date of the equipment and the discount offered by the vendor at the time of announcement. While most of the manufacturers offer from 10% to 25% discounts for new equipment some will offer up to 80% and have economic useful lives from three years to ten years.

**Fair Market Value Analysis**

All of the fair market values shown in Exhibit 1 were obtained from information used to publish various DMC Fair Market Value and DMC Residual Value Reports, other subscriber fair market value reports and from various subscriber web sites and from contacting computer brokers and resellers specializing in the sale of the equipment being appraised.

**Residual Value Analysis**

DMC also publishes residual value reports on IT equipment ranging from PC’s to mainframes and network communications equipment. DMC has been publishing these residuals reports for the IT industry since 1987 and continues to publish the reports today. It is a common request for DMC to forecast values of IT equipment for portfolios of equipment. All forecasts are based on current fair market value information plus a retrospective look at the decline curve of the immediate predecessor equipment. Technological enhancements have a tendency to shorten the age/life cycle and increase the decline curve in the long run but the curve remains extremely close to the predecessor equipment.
Conclusions of Value - Summary

Exhibit 1 includes my conclusion and opinion of fair market values for the assets presented. The desktop equipment and software were supplied from IBD and Medicus Marketing:

1. The list price on the invoice is higher than the equipment offered by Dell in the current time frame – see sample page in Exhibit 2,
2. The equipment has no brand name meaning it was probably assembled in a PC store somewhere,
3. Most of the proprietary software application on the equipment was non existent. There was one application program on Dr. Dibella’s desktop for a contact management program but was a very basic program written in Microsoft Access,
4. The Microsoft Office programs that were supposed to be Microsoft XP were actually Microsoft 2003.
5. A check on the validation of Microsoft licenses was run on Dr. Micharel Taylor’s desktop and indicated that the Microsoft Office 2003 was not valid.

The information contained in this summary desktop letter expert report should be used as a guide in formulating fair market values for the computer assets and software in Exhibit 1. All estimates of value presented in this report are the experts considered opinions.

Sincerely,

Peter Daley, ASA       Chuck Farner

Peter Daley, ASA       Chuck Farner
Accredited Senior Appraiser  Technical Consultant
DMC Valuations Group
61 Wentworth
Newport Beach, CA  92660
949-737-7780
Assumptions and Limiting Conditions

I certify that, in the preparation of this report and to the best of my knowledge and belief:

The statements of fact contained in this report are true and correct.

The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal and unbiased professional analyses, opinions, and conclusions.

I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.

My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this report.

My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Practice.

This valuation report is prepared solely for the purpose stated herein and is accurate to best of my knowledge and belief. No other purpose is intended or should be inferred.

DMC renders no opinion as to the legal owner of the equipment and is not aware of any tax liens of encumbrances of the property

I understand that I may be called upon to offer expert testimony regarding this independent valuation opinion.

Peter Daley, ASA
Accredited Senior Appraiser
DMC Consulting Group

Date__May 2006____
Exhibit 1. Chiropractic Equipment Portfolio
# Art Science Research Laboratory, Inc.
## Portfolio Valuation

### Dr. Michael Taylor - Taylor Rehabilitation and Wellness Center, Chicago, IL.

<table>
<thead>
<tr>
<th>Description</th>
<th>Qty</th>
<th>Invoice Price</th>
<th>Oct 2005 Fair Market Value</th>
<th>May 2006 Fair Market Value</th>
<th>Jan 2007 Fair Market Value</th>
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<td><strong>Description</strong></td>
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<td><strong>Ext Cost</strong></td>
<td><strong>Costs/Ea</strong></td>
<td><strong>Ext Cost</strong></td>
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<tr>
<td>Intel P4(Celeron) /512MB RAM/40GB Hard Disk Drive (see comments next page)</td>
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<td>3,000</td>
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<tr>
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<td>1</td>
<td>3,450</td>
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</tr>
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</table>
| **Notes:** 1                   The Desktop Personal Computer is configured with an Intel P4/Celeron 2.6GHz processor with 512MB memory, 80GB hard drive (not 40GB).  
2 The desktop personal computer is a tier 3 machine and significantly overpriced compared to the Dell desktop in Exhibit 2 - Optiplex 170L.  
3 The Microsoft Office product is MS Office 2003 **NOT** MS Office XP and is not an official licensed product from Microsoft - See Exhibit 3.  
4 The MS Office on the machine references Chinese language so the authenticity of the license is questionable.  
5 The IBD database management program is a web based program not on the Desktop PC. There is an MS Access program that interfaces with the IBD web application through exporting files.  
6 There does not appear to be any voice call handler on the desktop.  

DMC Consulting Group
### Dr. Dibella Chiropractic

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<th>Description</th>
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Exhibit 2. Invoice copies and Dell Optiplex 170L.
Dell-branded desktops to meet any customer need.

Dell-branded Dimension™ desktops, OptiPlex™ desktops, and Dell Precision™ Workstations — powered by Intel® Pentium® 4 Processors with HT Technology, which offer outstanding performance for multitasking situations — have something for everyone. For customers requiring manageability, platform stability through long product life cycles, and network-optimized technology, there’s the Dell® OptiPlex line of desktops. Dell Dimension desktops offer customers with standalone or peer-to-peer environments basic performance at an affordable price — and if uncompromising performance and expandability are their top priorities, we offer a full line of Dell Precision Workstations that are tested, optimized, and ISV-certified to run workstation-class applications.

The n Series
OS options for your desktop customers.

Designed for customers who want more control over their operating system environment, our n Series desktops ship with a copy of FreeBSD™ — an open-source OS — dropped in the box.

Select n Series models are also available with Linux® operating system factory installed. For more information, go to www.dell.com/series

In order to boot this system, you must install an operating system. A FreeDOS media kit will be provided which will allow you to boot your system once installed. Please note that many common applications will not run on this fully functional using FreeBSD, and in order to run these applications, you will need to install an appropriate operating system and/or device specific drivers. Consult FreeDOS.org for your chosen operating system vendor for compatibility details. n Series systems sold with FreeBSD are not eligible for upgrades to Microsoft client operating systems as part of a Microsoft Volume Licensing Agreement with Dell.

NEW OptiPlex GX620
Ultimate Performance Business Desktop

- Intel Pentium 4 Processor 521 with HT Technology (2.8GHz, 1MB L2 Cache, 800MHz FSB)
- Genuine Windows® XP Professional
- Dell OpenManage™ Remote Management Software
- 512MB shared DDR2 SDRAM
- 80GB* (7200 RPM) SATA Hard Drive
- 128MB ATI® RADEON® X600SE with DVI and TV-Out
- 48x CD-ROM Drive
- Integrated 10/100/1000* PCie Ethernet
- 3-Year Economy Service Plan (Ltd. Warranty, On-Site Service*)

$1049
Pricing for Solution Providers only
Monitor not included.

E-VALUE CODE 66084-S30110

- Dell 17" E173FP Flat-Panel Display — Add $299
- Dell Color Laser Printer 3000cn — Add $399

Dimension 5100
Exceptional Performance Desktop

- Intel Pentium 4 Processor 521 with HT Technology (2.8GHz, 1MB L2 Cache, 800MHz FSB)
- Genuine Windows XP Home Edition
- Corel® WordPerfect® Word Processor
- 256MB shared* DDR2 SDRAM
- 80GB* SATA Hard Drive
- Integrated Intel Graphics Media Accelerator 950 (GMA 950)
- 48x CD Burner/DVD Combo Drive
- Integrated Intel PRO 10/100 Ethernet
- 1-Year Economy Service Plan (Next Business Day On-Site Service, 1-Year Tech Support)
- Includes Dell E173FP 17" Flat-Panel Display

$899
Pricing for Solution Providers only
Monitor not included.

E-VALUE CODE 66084-S3110

- 512MB shared* DDR2 SDRAM — Add $40
- 15-Month Subscription to McAfee® SecurityCenter — Add $79
- 160GB* (7200 RPM) SATA Hard Drive — Add $40
- Dell Multifunction Laser Printer 1600n — Add $399

OptiPlex 170L
Value Business Desktop

- Intel Celeron® D Processor (2.40GHz, 256KB L2 Cache, 533MHz FSB)
- Genuine Windows XP Professional
- Dell OpenManage Remote Management Software Available
- 256MB shared* DDR SDRAM
- 80GB* (7200 RPM) Hard Drive
- Integrated Intel Extreme Graphics 2
- 48x CD-ROM Drive
- Integrated 10/100 NIC
- 1-Year Economy Service Plan (Ltd. Warranty, On-Site Service*)

$649
Pricing for Solution Providers only
Monitor not included.

E-VALUE CODE 66084-S3110

- 3-Year Business Standard Plan (Limited Warranty, On-Site Service, Technical Support) — Add $118
- 48x CD Burner — Add $20
- Dell Network Laser Printer 1700n — Add $239

*See p. 16-17 for important details.
ATTN: PETE DALEY
FAX #949-737-7784

SCHEDULE OF EQUIPMENT

Attached to and made a part of Master Lease Agreement No. 8596 dated June 24, 2005 Between Rawlings Chiropractic, P.C., as Lessee and Sterling National Bank as Lessor.

Equipment Location:
891 East 9400 South
Sandy, UT 84094

<table>
<thead>
<tr>
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<th>DESCRIPTION</th>
<th>VENDOR</th>
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<td>Internal Security Interface Keys w/online relay</td>
<td>Medicus Marketing</td>
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<td>IBD System voice mail w/live call handler</td>
<td>11700 Old Katy Road, Ste 1300</td>
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<td>Dual interrupt interface server w/hard case &amp; punch down</td>
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<td>1</td>
<td>Intel P4@12 MB RAM/40 GB WD hard disk</td>
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<tr>
<td>1</td>
<td>IBD business suite software</td>
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<tr>
<td>1</td>
<td>17&quot; flat screen LCD monitor</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>US Robotics voice fax modem</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Microsoft windows OEM certification</td>
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<td>PCAnywhere</td>
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<tr>
<td>1</td>
<td>IBD annual database management program</td>
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</tr>
<tr>
<td>1</td>
<td>Alta point PM &amp; Aredentra software suite</td>
<td></td>
</tr>
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</table>

Together with all parts, fittings, cables, accessories, attachments, fixtures, renewals, improvements, substitutions, and replacements to the Equipment, whether now owned or hereafter acquired, and together with all rents, proceeds, income and profits derived therefrom.

Rawlings Chiropractic, P.C.
Lessee
By: [Signature]
Title: Owner
SCHEDULE OF EQUIPMENT

Attached to and made a part of Equipment Lease No. 8794 dated August 2, 2005 between Kevin DiBella, P.C., as Lessee and Sterling National Bank, as Lessor.

Equipment Location: 528 Union Road
Gastonia, NC 28054

<table>
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<td></td>
</tr>
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</table>

Together with all parts, fittings, cables, accessories, attachments, fixtures, renewals, improvements, substitutions, and replacements to the Equipment, whether now owned or hereafter acquired, and together with all rents, proceeds, income and profits derived therefrom.

Kevin DiBella, P.C.
Lessee

X: [Signature]

Title: [Title]
## SCHEDULE OF EQUIPMENT

Attached to and made a part of Equipment Lease No. 83-#6, dated April 27, 2005, between Michael A. Taylor, D.C. dba Taylor Rehabilitation & Wellness Center, as Lessee and Sterling National Bank, as Lessor.

**Equipment Location:** 3070 North Milwaukee  
Chicago, IL 60041

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<td>24-bit RS-232 interface key w/Out-Board Circuit Relay</td>
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<td>Local system phone and call transfer board</td>
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<td>Dual interface interface w/Word Case &amp; punch down</td>
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<tr>
<td>1</td>
<td>Enterprise commercial processing server</td>
<td>Houston, TX 77024</td>
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<tr>
<td>1</td>
<td>Medical Business suite software</td>
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</tr>
<tr>
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<td>US Robotics voice fax modem</td>
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</tr>
<tr>
<td>1</td>
<td>Also pont PM &amp; Ardenas software suite</td>
<td></td>
</tr>
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Together with all parts, fittings, cables, accessories, attachments, fixtures, renewals, improvements, substitutions, and replacements to the Equipment, whether now owned or hereafter acquired, and together with all rents, proceeds, income and profits derived there from.

Michael A. Taylor, D.C.  
DBA Taylor Rehabilitation & Wellness Center  
Lessee

X: [Signature]  
Title: [Job Title]  
Owner/Proprietor
**Invoice**
April 26, 2005

Medicus Marketing
11700 Old Katy Road
Suite 1300
Houston, TX 77099
(888) 991-1000 - Phone
(666) 516-6438 - Fax

To:
Sterling National Bank
500 7th Ave.
New York, NY 10019-4502

Ship to (if different address):
Taylor Rehabilitation and Wellness Center
Michael Taylor
3970 N. Milwaukee Avenue
Chicago, IL 60641


<table>
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<td>4</td>
<td>Inter System Page and Call Transfer Board</td>
<td>5,705.00</td>
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<td>Dail Interrupt Interface with Hard Case &amp; Punch Down</td>
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<td>Intel P4/512 MB RAM/40 GB WD Hard Disk</td>
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<td>US Robotics Voice Fax Modem</td>
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Subtotal: 48,000.00
Sales Tax: 0.00
Shipping & Handling: 0.00
Total Due: $ 48,000.00

Make all checks payable to:
Medicus Marketing

If you have any questions concerning this invoice, call:
Jared Oerly, (888) 991-1000

THANK YOU FOR YOUR BUSINESS!

---

THIS WAS NOT IN MY ORIGINAL PACKAGE FROM STERLING. NOTE QUANTITIES AND PRICES FROM MY LEASE TO THE ONE FROM DUBLIN, OH

944-772-7784
Exhibit 3. Microsoft Validation of Taylor Desktop PC
The PC sent directly to my house has an invalid licensed copy of Office 2003 (see screen below). The XP licensed did pass validation (second screen). If the Office 2003 had passed validation you would have seen the third screen...
Validation Complete!

Thank you for validating your copy of Microsoft Windows.

Thank you for using the Windows Genuine Advantage program. You may now access resources for genuine Windows users.
Validation Successful!

Thank you for using genuine Office and participating in the Office Genuine Advantage program. You may now enjoy all the benefits reserved for genuine Office users.

- **Reliability**
  You will have access to product support and upcoming updates.

- **Additional value**
  You will have access to add-ins, templates, learning tools, Smart Tags and stationery that can help you get more value from Office.

- **Confidence and peace of mind**
  You will know that your software is authentic, does not include any unauthorized or potentially harmful programs, and is properly licensed.

Validation does not guarantee that the copy of Office installed on this computer is properly licensed. For more information about how to properly license your product:

- Read your End-user License Agreement (EULA)
- Learn about Volume Licenses
- Learn about OEM Licenses
Exhibit 4. Curriculum Vita for Peter Daley

Peter Daley
61 Wentworth
Newport Beach, CA  92660

EDUCATION:

Bachelor of Science, Business Administration
    Cal State Northridge - 1965
Masters of Business Administration
    Pepperdine University -1991
Accredited Senior Appraiser
    American Society of Appraisers -1999

BUSINESS:

IBM Corporation, Marketing Representative. Marketed mid-range computer systems and peripherals in the Southern California area. Received Regional Managers Award and two District Managers Awards for competitive wins. Qualified for three hundred percent clubs.

Itel Corporation, Marketing Representative. Re-marketed the IBM System/360 portfolio to customers in Southern California, Hawaii, Colorado and Arizona. Qualified for three hundred percent clubs.

Saddleback Marketing Corporation, President. Brokered and leased used IBM equipment to customers in the western United States. Sales volume varied between $3 and $5 million per year.

1980-2001 - Daley Marketing Corporation. President. From 1980 to summer of 1985, brokered and leased IBM equipment in the Western United States. In 1981 began to market an IBM Computer Price List and in June of 1985 sold existing leasing business and created the market value and residual value publications that are sold worldwide today.

2001-2005 – Computer Economics. President. Mr. Daley acquired CEI on January 1, 2001 and sold the IT Management portion of the business to a management consulting firm in Irvine Ca in April 2005. CEI is an IT Consulting company that deals with economics of running and managing an Information Technology department. It publishes FMV and Residual Values for the computer equipment as well as salary and demographic information.

1994-Present - DMC Consulting Group. President. From 1994 to present Mr. Daley has been writing computer appraisals and reports for Fortune 500 customers. He received his Accredited Senior Appraisal certificate in April 1999 from the American Society of Appraisers.

2005-Present – DMC Valuations Group. President. An extension from Daley Marketing Corporation and a spin off from Computer Economics, DMC Valuations Group will publish, both on the web and in print, fair market values, residual values and manufacturer’s price lists to existing valuation clients around the world. DMC will continue to license the products to Computer Economics for publication on the CEI website.

I have participated in the American Society of Appraisers mandatory Reaccreditation Program and has complied with its continuing education requirements, as set forth in the organization’s Constitution, Bylaws and Administrative Rules until April 16, 2009.
Appraiser Qualifications

PETER DALEY, Accredited Senior Appraiser

Professional Overview
Mr. Daley is an ASA (Accredited Senior Appraiser) for the discipline of Machinery and Equipment with a specialty in High-Tech for the valuation of computer equipment and has successfully participated in the Society’s mandatory re-accreditation Program and formal re-accreditation is granted until April 16, 2009.

Mr. Daley has been in the computer business since 1965, first with IBM as a computer broker/lessor and then with Daley Marketing Corporation (DMC), a firm he founded in July 1980 to publish reports about computer equipment, including "Market Value Reports" and "Residual Value Reports." In January 2001 Mr. Daley acquired Computer Economics, merged DMC into CEI and in April 2005 sold the IT Management Company and created a new company focus on the fair market value business. Additionally, Mr. Daley remains president of DMC Consulting Group, a separate company that specializes in writing Appraisals, Portfolio Analysis and Property Tax Valuation from Fair Market Value (FMV) to Residual Value (RV) valuations.

Mr. Daley has developed a database of “Fair Market Value” equipment values from 1980 to the present, utilizing a variety of reports and publications along with the DMC and CEI Market Value Reports. This database has been successfully used in the valuation of computer equipment in the settlement of a number of Virginia tax cases. He has also previously testified in California, Minnesota, Michigan, New York and the Virginia Courts as an expert in the field of valuation of computer equipment.

Lectures/Seminars/Presentations


AFCOM Spring Conference – Lease Negotiations April 2004

Published Articles

Computer Economics IT Advisory Web Site - Planning IT Equipment Acquisitions – Overview – October 2003

Computer Economics IT Advisory Web Site – Lease Negotiations – March 2004

Five Year PC Desktop Study 2001 to 2005 – Depreciation schedule and fair market value - September 2005
Mr. Daley has testified in Federal and Tax Courts in the following cases:

Andantech, LLC v. Commissioner of IRS  
No. 15532-98, 4277-00, 6348-00  
U.S. Tax Court  
October 2000  
St. Paul, MN

Nicole Rose v. Commissioner of IRS  
No. 1967-00  
U.S. Tax Court  
December 2000  
New York, NY

Central Funding Inc v. CompuServe Interactive Services, Inc.  
Case No. 01CVH05-4019  
U.S. District Court  
May 10, 2002  
Columbus, Ohio

CMA Consolidated, Inc and Subsidiaries, Inc v. Commissioner of IRS  
No. 12746-01  
U.S. Tax Court  
October 2002  
San Francisco, CA

CTC Communications, v CCA Financial LLC.  
Case No. 02-12873  
U. S. Bankruptcy Court  
January 2003, March 2003  
Wilmington, DL

Long Term Capital Holding v United States  
Case No. 3:01CV1290  
U.S. District Court  
June 2003  
New Haven, CT

Cable & Wireless USA of Virginia v Commonwealth of Virginia State Corporation Commission  
Case No PST-2002-00045  
Virginia State Tax Court  
October 2003  
Richmond, VA
Mr. Daley has been deposed in the following cases:

Central Funding Inc v. CompuServe Interactive Services, Inc.
Case No. 01VH05-4019
Santa Ana, CA
April 23, 2002

Magnetek v. United States
Case No. 3-00-0925
Los Angeles, CA
July 16, 2002

Long Term Capital Holdings v United States
Case No. 3:01CV1290
Santa Ana, CA
February 19, 2003

WorldCom, Inc and MCI WorldCom Network Services v. General Electric Global Asset Management Services
Case No. : 02-13533 (AJG)
Los Angeles, CA
April 25, 2005
Partial Client List

BankAmerica Leasing & Capital
Boeing Computer Services
CCA Financial
Charles Schwab & Company
Commonwealth Capital Corp
Compuserve
Dreamworks Interactive
EMC Corporation
FLC Partnership
Fleet Credit Corporation
Forsythe Solutions Group
G.E. Capital Corporation
GTE Service Corporation
Hewlett Packard Financial Services
IBM Corporation
Internal Revenue Service
Leasing Technologies Int'l
Meridian Leasing Corporation
Pacific Gas & Electric
Sanwa Business Credit Corporation
United Computer Capital
United States Department of Justice
DMC Publications History

The following is a breakdown of reports conceived and marketed by Daley Marketing Corporation and now part of DMC Valuations Group:

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<th>PRODUCT</th>
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<td>Non-IBM Price List</td>
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<td>Market Value Reports - Broker and End-User Reports</td>
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<tr>
<td>IBM/PCM Market Value Report</td>
<td>1985</td>
<td>Market Values for Amdahl, IBM, EMC, HDS, Memorex, STK . From Mainframes to Midrange to I/O Equipment</td>
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<td>Monthly and Weekly reports</td>
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<td>DEC Market Value Report</td>
<td>1991</td>
<td>Market Values for DEC I/O Equipment, VAX, MicroVAX</td>
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<td>Workstation/PC Market Value</td>
<td>1992</td>
<td>Market Values for DEC, HP, IBM, SGI, SUN, Compaq etc.</td>
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<td>Network Communications</td>
<td>1995</td>
<td>Market Values for over 25 mfrs. Bridges, Hubs, Routers, Switches</td>
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<td>Residual Value Reports</td>
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<td>Mainframe/Midrange Report</td>
<td>1987</td>
<td>Mainframe Residuals for Amdahl, HDS, HP, IBM and Stratus</td>
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<td>Disk/Tape/Miscellaneous I/O Report</td>
<td>1987</td>
<td>Residual Values on DASD, printers, controllers and tape Subsystems for Amdahl, EMC, HDS, IBM, HP &amp; StorageTek.</td>
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<td>Workstation &amp; PC Report</td>
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<td>Residual Values for DEC, HP, IBM, SGI, SUN, Compaq etc.</td>
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<tr>
<td>Network Communications Report</td>
<td>1995</td>
<td>Residual Values on Bridges, Hubs, Routers, Switches, etc.</td>
</tr>
<tr>
<td>Miscellaneous Publications</td>
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The above subscriber products are available either hard copy, on-line or email.
Objective: Director / CIO level IT position with a growing company in a team environment atmosphere.

Experience: Targus 2002 to present Anaheim, CA
Director of Information Technology
- Responsible for all aspects of computing, including managing ASP providers, internal development, world wide network, budgets, contracts, system designs, etc.
- Work with a team of talented professionals to ensure the IT strategic plan matches and supports the needs of Targus business model.

Avnet Electronics 2001 to 2002 Irvine, CA
Director of Information Technology – eSolutions
- Team responsible for developing and implementing Services Solutions for Avnet Electronics, globally. This includes in-house development along with working with business partners.
- Responsibilities include project management, system design, infrastructure design and implementation, and working closely with business partners on requirements, implementation and budgets.

Wyle Electronics 1979 to 2001 Irvine, CA
Director of Information Technology 1992 to 2001
- Senior, hands on manager with extensive technical background. Strong believer in team environment, and empowerment of employees.
- Responsible for directing DBA, R&D, Systems, Networking, PC, and warehouse system staffs.
- Project Manager for Wide Area Network Rollout to over 45 locations, 1500+ PCs, and 80+ Servers in a 4 month period. Responsible for developing standards, design, project plans, scope, and budget, along with the coordination of both internal staff and business partners.
- Responsible for all hardware, software, data and voice communications for Wyle, nation-wide, including understanding and selection of technologies, developing standards, acquisition, contracts, implementation, customer service and support, and financial impact and budgets.
- Team is responsible for ensuring service levels, including up time, performances, capacity planning, response time, and user satisfaction. Transaction volumes exceed one million per day.
- Lead Instructor for educating Wyle personnel (nation-wide) on Total Quality Management (TQM) and Total Customer Satisfaction Program. Assisted in developing course material
for program.

- Responsible for negotiation and acceptance of all IT and Communication contracts including both purchases, leases, and services.

- Areas of System's team responsibilities range from PCs, NT servers, mid-range Unix servers, and large IBM mainframe environments running OS/390 (MVS). This includes the integration and management of all systems.

**Wyle Electronics**  
*Manager of Technical Support and Operations*  1986 to 1992

- Led and directed Systems programmers, Voice and Data Communications staff, and Operations personnel.

- Supported systems environments with company growth that averaged over 25% per year.

**Wyle Electronics**  
*Manager Systems Development*  1984 to 1986

- Responsible for 12 Application Developers. Included requirements, design, development, and implementation phases.

**Wyle Electronics**  
*Data Base Administrator*  1979 to 1983

- Data Base Administrator responsible for designing and leading conversion effort from flat files to database environment.

**Del Mar Woven Woods**  
*Huntington Beach, CA*  
*Application Programmer and Data Base Administrator*  1976 to 1979

- Responsible for designing, developing, coding, and maintaining financial applications.

- Designed and led conversion effort of Order Processing system to database environment.

**Education:**  
**University of California Irvine**  
*Irvine, CA*  
*Bachelors in Computer Science and Statistics*  1975  
GPA 3.9  
Magna Cumme Laude  
Phi Beta Kappa
STERLING NAT’L BANK-LEASING DEPT.
P.O. BOX 1570
CHURCH STREET STATION
NEW YORK NY 10008-1570

(800) 315-1963

INVOICE

DATE  05/26/2006
AMOUNT DUE  520.95
INVOICE NO.  383382
CONTRACT NO.  005-0048596-001

Make Check Payable To:
STERLING NAT’L BANK-LEASING DEPT.

MR. LANCE RAWLINGS
RAWLINGS CHIROPRACTIC, P.C.
891 EAST 9400 SOUTH
SANDY UT 84094

YOUR ACCOUNT IS SEVERELY PAST DUE. REMIT PAYMENT NOW.

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<td>SALT LAKE 2006 PROPERTY TAX DUE 05/30/06</td>
<td>450.95</td>
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</tbody>
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TOTAL DUE 520.95

IF THERE IS A CHANGE IN INVOicing ADDRESS OR EQUIPMENT LOCATION PLEASE COMPLETE REVERSE SIDE.

RETURN THIS PORTION WITH YOUR PAYMENT

MR. LANCE RAWLINGS
RAWLINGS CHIROPRACTIC, P.C.
891 EAST 9400 SOUTH
SANDY UT 84094

REM TO: STERLING NAT’L BANK-LEASING DEPT.
P.O. BOX 1870
CHURCH STREET STATION
NEW YORK NY 10008-1870

DATE  05/26/2006
AMOUNT DUE  520.95
INVOICE NO.  383382
CONTRACT NO.  005-0048596-001

Make Check Payable To:
STERLING NAT’L BANK-LEASING DEPT.

0050048596001 000723 001 05292006 0000052095 9
INVOICE

DATE: 03/28/2006
AMOUNT DUE: 227.84
INVOICE NO.: 371785
CONTRACT NO.: 005-0048596-001

Make Check Payable To:
STERLING NAT'L BANK-LEASING DEPT.

YOUR PAYMENT IS NOW PASTDUE AND LATE CHARGE HAVE BEEN ASSESSED. REMIT IMMEDIATELY.

<table>
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<tr>
<th>CONTRACT NO.</th>
<th>DESCRIPTION</th>
<th>CONTRACT PAYMENT</th>
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<th>LATE CHARGES</th>
<th>TOTAL DUE</th>
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<td>E DUE 12/30/05</td>
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TOTAL DUE: 227.84

IF THERE IS A CHANGE IN INVOICING ADDRESS OR EQUIPMENT LOCATION PLEASE COMPLETE REVERSE SIDE.

RETURN THIS PORTION WITH YOUR PAYMENT

DATE: 03/28/2006
AMOUNT DUE: 227.84
INVOICE NO.: 371785
CONTRACT NO.: 005-0048596-001

Make Check Payable To:
STERLING NAT'L BANK-LEASING DEPT.

REMIT TO:
STERLING NAT'L BANK-LEASING DEPT.
P.O. BOX 1570
CHURCH STREET STATION
NEW YORK NY 10008-1570

0050048596001 000723 001 03292006 0000022784 0
Sterling National Bank

SCHEDULE OF EQUIPMENT

Attached to and made a part of Equipment Lease No. 8369, dated May 3, 2005 between Michael B. Priestmen, D.C. dba Priestman Chiropractic, as Lessee and Sterling National Bank, as Lessor.

Equipment Location: 68 West Avenue
Canandaigua, NY 14424

<table>
<thead>
<tr>
<th>QTY</th>
<th>DESCRIPTION</th>
<th>VENDOR</th>
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</thead>
<tbody>
<tr>
<td>2</td>
<td>Internal Security Interface Keys w/online relay</td>
<td>Medicus Marketing</td>
</tr>
<tr>
<td>1</td>
<td>IBD System voice mail w/live call handler</td>
<td>11700 Old Katy Road, Ste 1300</td>
</tr>
<tr>
<td>1</td>
<td>Dual interrupt interface server w/ hard case &amp; punch down</td>
<td>Houston, TX 77079</td>
</tr>
<tr>
<td>1</td>
<td>Intel P4/512 MB RAM/40 GB WD hard disk</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Medicus business suite software</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>17” flat screen LCD monitor</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>US robotics voice fax modem</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Microsoft windows OEM certification</td>
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<tr>
<td>1</td>
<td>Microsoft office</td>
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<tr>
<td>1</td>
<td>PCAnywhere</td>
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</tr>
<tr>
<td>1</td>
<td>Medicus annual database management program</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Alta point PM &amp; Aredentra software suite</td>
<td></td>
</tr>
</tbody>
</table>

Together with all parts, fittings, cables, accessories, attachments, fixtures, renewals, improvements, substitutions, and replacements to the Equipment, whether now owned or hereafter acquired, and together with all rents, proceeds, income and profits derived therefrom.

Michael B. Priestman  
dba Priestman Chiropractic  
Lessee

X: [Signature]

Title: Owner/Proprietor
A+ N: Larry Larent

Medicus Marketing
11700 Old Katy Road
Suite 1300
Houston, TX 77009
(888) 991-1000 - Phone
(866) 516-4638 - Fax

Invoice No.: (208) 386-8944
Ship to (if different address):
Taylor Rehabilitation and Wellness Center
Michael Taylor
3970 N. Milwaukee Avenue
Chicago, IL 60641

To:
Sterling National Bank
500 7th Ave.
New York, NY 10018-4562

Salesperson: Mary Lynn Calhoun
Your P.O. No.:
Date Shipped:
Shipped Via:
P.O.B. Point:
Terms: 60 Months

<table>
<thead>
<tr>
<th>Quantity</th>
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<td>HASP Security Interface Key with On-Board Circuit Relay</td>
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<td>Dual Interrupt Interface with Hard Case &amp; Punch Down</td>
<td>9,675.00</td>
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<tr>
<td>1</td>
<td>Intel P4/512 MB RAM/40 GB WD Hard Disk</td>
<td>3,000.00</td>
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<tr>
<td>1</td>
<td>Medicus Business Suite Software</td>
<td>1,925.00</td>
<td>1,925.00</td>
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<tr>
<td>1</td>
<td>17&quot; Flat Screen LCD Monitor</td>
<td>350.00</td>
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<tr>
<td>1</td>
<td>US Robotics Voice Fax modem</td>
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<td>1</td>
<td>Medicus Annual Database Management Program</td>
<td>500.00</td>
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<td>1</td>
<td>Alta Point PM &amp; Acracenter Software Suite</td>
<td>3450.00</td>
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Subtotal: 48,000.00
Sales Tax: 0.00
Shipping & Handling: 0.00
Total Due: $ 48,000.00

Make all checks payable to:
Medicus Marketing

If you have any questions concerning this invoice, call:
Jared Dey, (888) 991-1000

THANK YOU FOR YOUR BUSINESS!

This was not in my original package from Sterling. Note quantities and prices from my lease to the one from Dublin, OH
Dear Lessee: We have written this lease in plain language because we want you to fully understand the terms. Please read your copy of this lease carefully and feel free to ask us any questions you may have about it. We use the words you and your to mean the lessee indicated below. The words we, us, and our, refer to the lessor indicated below.

1. LEASE AGREEMENT. You agree to lease from us and we agree to lease to you, the equipment listed above or on any schedule to this lease. You agree that, at our option, any schedule of this lease shall be considered a separate lease and the terms and conditions of this lease agreement shall also apply to any schedule. You promise to pay us the sum of all the rental payments indicated above or on any schedule, which sum can be calculated by multiplying the number of payments times the payment amount. You authorize us to adjust the rental payment if the actual cost of the equipment is greater than or less than the estimate, or if a lease rate adjustment is necessary to protect our after-tax rate of return due to an increase in the rate of comparable U.S. Treasury instruments whose maturity matches the underlying lease. 

LESSEE CONFIRMS THAT THE EQUIPMENT WILL BE USED SOLELY FOR COMMERCIAL OR BUSINESS PURPOSES AND NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

2. ORDERING EQUIPMENT. You agree that we arrange delivery to you at your expense. If the equipment has not been delivered, installed, and accepted by you within forty-five (45) days from the date that we ordered the equipment, we may on ten (10) days written notice to you terminate the lease and our obligations to you. In the event that we have issued a purchase contract or order for the equipment, you agree that the purchase order or contract is acceptable to you. If you have entered into a purchase contract for the equipment, you agree to assign it to us, effective when we pay for the equipment.

3. NO WARRANTIES: We are leasing the equipment to you "AS IS". WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE OR ORDINARY USE IN CONNECTION WITH THIS LEASE. If the supplier or anyone else has made a representation or warranty to you as to the equipment or any other matter, you agree that any such representation or warranty shall not be binding on us, nor shall the breach of such reliefe you of, or in any way affect, any of your obligations to us under this lease. If the equipment is not satisfactory for any reason, you shall make your claim only against the supplier and you shall nevertheless pay us all rent payable under this lease. So long as you are not in default under any of the terms of this lease, you are transferred to you any warranties made to us by the manufacturer or supplier. You understand and agree that the supplier, its agents and employees are not agents of ours, nor are they authorized to waive or change any term or condition of this lease. 

4. CANCELLABLE LEASE: This lease cannot be canceled by you.

SEE REVERSE SIDE FOR ADDITIONAL TERMS AND CONDITIONS WHICH ARE PART OF THIS LEASE.

---

GUARANTY

I guarantee that the lessee will make all payments and pay all other charges required under the lease when they are due and will perform all other obligations under the lease fully and promptly. I also agree that you may make other arrangements with the lessor and I will still be responsible for those payments and other obligations. You do not have to notify me if the lease fails to meet all of its obligations under the lease. If lessee fails to meet all of its obligations, I will immediately pay in accordance with the default provisions of the lease all sums due under the original terms of the lease and will perform all other obligations of lessee under the lease. I will reimburse you for all of the expenses you incur in enforcing any of your rights against the lessee or me, including attorneys' fees. If this is a corporate guaranty, it is authorized by the Board of Directors of the guaranteeing corporation. If this is a partnership guaranty, it is authorized under the partnership agreement. THIS GUARANTY SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, THE STATE IN WHICH LESSOR'S PRINCIPAL PLACE OF BUSINESS IS LOCATED. I AGREE AND CONSENT THAT THE COURT OF THE STATE OF NEW YORK FOR NEW YORK COUNTY OR ANY OTHER FEDERAL DISTRICT COURT HAVING JURISDICTION IN THAT COUNTY SHALL HAVE EXCLUSIVE JURISDICTION FOR THE DETERMINATION OF DISPUTES ARISING UNDER THIS LEASE AND GUARANTY. I agree to and consent that you may serve me by registered or certified mail, which will be sufficient to obtain jurisdiction. No payment by me under this guaranty shall entitle me, by subrogation or otherwise, to any payment from the lessor out of the property or other assets of the lessee. I WAIVE TRIAL BY JURY IN ANY ACTION BETWEEN US. Before proceeding against me under this guaranty, you do not have the sale of the equipment or recover the equipment. You may release or compromise any other of lessee's obligations under the lease without notifying me or getting my consent. Your loss of any right to the equipment will not affect my obligation to pay you under this guaranty. I am not entitled to any arrangement or payment by the lessee.

GUARANTOR'S NAME: M. PRIESTMAN
SIGNATURE: ____________________________
TITLE: Owner/Proprietor

---

ACCEPTED: STERLING NATIONAL BANK
500 Seventh Avenue, 11th Floor
NEW YORK, NY 10018

LESSEE (FULL LEGAL NAME): Michael B. Priestman, D.C. dba Priestman Chiropractic
BILLING ADDRESS: 68 West Avenue, Canandaigua, NY 14424
PHONE (585) 380-0616
DATED May 3, 2005

(The undersigned certifies that the equipment shall be used for exclusively business purposes and agrees that no modification to this lease shall be effective unless made in writing and signed by both parties)

x:/\_M. PRIESTMAN/\_
PRINT NAME: M. PRIESTMAN

---

PAYMENT DATE:
SCHEDULE OF PAYMENTS: Sixty (60) Monthly Payments of $110,25 plus applicable sales tax

PAYABLE AT SIGNING
OF LEASE:
☐ First and Last. Total Payment $ 110,25
☐ First Only
☐ Other $ 110,25

PURCHASE AGREEMENT:
☐ Fair Market Value
☐ $1.00
☐ Purchase at % of original cost

---

Supplier (Name & Address)
Medicus Marketing
11700 Old Katy Road, Suite 1300
Houston, TX 77079

Device Location:
68 West Avenue
Canandaigua, NY 14424

Equipment Description:
See Equipment Schedule attached Herein and made a part Hereof

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Other Provisions:

---

HOME ADDRESS

---

SSN
5. TERM OF LEASE. ADMINISTRATIVE FEE: The term of this lease will start on the date we sign this lease (the "lease commencement date") and will continue until you have met all of your obligations under the lease. Advance rentals are not refundable if the lease does not begin for any reason. The payments of rent are payable periodically in advance as stated on the reverse side or on any schedule of this lease. Consecutive periodic payments will be due on either the first or the fifteenth day of the "payment date" whichever first occurs after the acceptance date of the equipment. If the acceptance date of the equipment falls on a day other than the payment date, in addition to the periodic monthly payments, you must pay one prorated rent payment calculated by multiplying the periodic payment amount, by the number of days between and including the acceptance date and the payment date divided by the number of days in the periodic payment cycle. All payments will be made to us at our address. If any additional address is specified on your lease, your obligation to pay rent is subject to any reduction, set-off, defense, or counterclaim for any reason whatsoever. You authorize us to insert serial numbers and other identification data about the equipment, as well as other omitted factual matters. If we accept a security deposit from you, it will be held by us to secure your faithful performance of this lease, and it will be returned or applied as stated in Paragraph 14. On the acceptance date of the equipment for this lease and each schedule to this lease, you shall pay us an administrative fee of $100.00, to reimburse us for our start-up administrative and recording costs. Lessee shall pay the first month's and last [two] months' rental in advance upon the execution of this Lease. The payments shall be deemed to have been earned by Lessor immediately upon Lessee's receipt thereof and shall be applied immediately to satisfy Lessee's obligations to make such payments hereunder. These payments shall not be refundable to Lessee under any circumstances, including (without limitation) any termination of this Lease for any reason prior to the end of its scheduled term in accordance with the terms hereof.

6. ASSIGNMENT YOU MAY NOT SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT. We may, without notifying you, sell, assign or transfer this lease and ownership of the equipment; and you agree that if we do so, the new lessee will have the same rights and duties as you have hereunder, and the new lessee will be required to perform all obligations. You agree that the rights of the new lessee will not be subject to any claims, defenses or set-offs that you may have against us. However, any such assignment, sale, or transfer of this lease or the equipment will not relieve us of our obligations to you under this lease.

7. OWNERSHIP AND QUIET ENJOYMENT. We are the owner of the equipment and have title to the equipment. If any other person attempts to claim ownership of the equipment by asserting that claims against you or through you, you, as agent of, or as agent for, all other individual persons, will not only use it for business purposes and in compliance with all applicable laws. You will not make any alterations to the equipment without our prior written consent (which we will not unreasonably withhold), nor will you permanently attach the equipment to any real estate. You agree that you will not remove the equipment from that location unless you have written permission in advance. At the end of the term of the lease, you will return the equipment to us, at your expense. You are responsible for protecting the equipment from damage due to wear, tear and from any other inherent risks of loss which you have in possession of or while it is being delivered to you, or until the equipment is received by us. If the equipment is lost or damaged, and you are not in default under this lease or any other obligations to us, instead of continuing to pay us rent you have the option of paying us the then present value of both the unpaid balance remaining with the equipment under the lease (each computed with a discount rate of six percent (6% per year).

8. TAXES AND FEES: You agree to pay when due all taxes, fees and penalties relating to this lease. You also agree that we have the right to recover from you the amount of income tax and any of that tax that may constitute a penalty for the failure of any person (whether you are the legal owner or not) to report to the authority the income we receive under this lease. In addition, we may require that you pay us any of our costs, fees, or penalties for you, agree to reimburse us on demand. You also agree that we have the right to sign your name to any document for the purpose of filing such an application as long as that filing does not interfere with our right to use the equipment.

9. TENANT IN DEFAULT: We are not responsible for any injuries or losses to you or any other person caused by the installation or use of the equipment. You agree to reimburse us for and defend us against any claims for losses or injuries, including any claims arising out of tort, negligence or strict liability. This indemnity shall continue even after the term of the lease has expired.

10. INSURANCE: You agree to keep the equipment fully insured against loss, theft, damage or destruction to the equipment, for the full replacement value, naming us as loss payee; and (b) liability and property damage insurance naming us as an additional insured. You agree to provide to us certificates of insurance acceptable to us within thirty (30) days. If you fail to maintain such insurance, or fail to provide us with evidence of such insurance, we will not be required to maintain the insurance.

11. DEFECTS AND REMEDIES: If you do not pay rent when due or if you break any of your promises under this lease, or you become insolvent, assign your assets for the benefit of your creditors, or enter (voluntarily or involuntarily) a bankruptcy proceeding, you will be in default. If you are in default, we can require that you return the equipment to us and pay to us immediately the remaining balance of all the rental payments due under this lease, plus any additional amount required to be paid to us as a result of any damage to the equipment, interest and costs recovered after the equipment has been sold. If you pay to us our interest in the equipment, present valued as noted above. You also agree to pay interest on all sums due us from the date of default until paid at the rate of one and one-half percent (1-1/2%) per month, but only to the extent permitted by law. If your default is caused by your breaking any of your promises under this lease, other than to make payments, we shall be entitled to recover from you all damages caused by that type of default. We can also use any of the remedies available to us under the Uniform Commercial Code or any other law. If we refer this lease to an attorney for enforcement or collection, you agree to pay our reasonable attorneys' fees of at least twenty percent (20%) of the remaining balance of all rental payments, and actual costs. If we take possession of the equipment, you agree to pay the cost of repossession, storing, shipping, repairing and selling the equipment. Although you agree that we are not obligated to do so, if we decide to sell the equipment, and we are able to sell the equipment for a price that exceeds the sum of (a) our cost of repossession and sale of the equipment and (b) the residual value of the equipment, present valued as calculated above, then we shall give you a credit for the amount of such excess. You agree that we do not have to notify you that we are selling the equipment. If we sell the equipment, we will give you notice of the sale within thirty (30) days after the sale. If we sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price. If you sell the equipment, we will provide you with a copy of the sale contract and the sale price.
Marketing and Advertising Agreement

This agreement is entered into by and between MEDICUS MARKETING, LLC, hereinafter sometimes referred to as “MEDICUS MARKETING”, whose mailing address is 11700 Old Katy Road, Suite 1300 Houston, Texas 77079 and __________________________, hereinafter referred to as “Client”, whose mailing addresses is __________________________.

The Client agrees to purchase and MEDICUS MARKETING by its acceptance of this agreement (the "Agreement"), agrees to provide and sell, in accordance with the following terms and conditions, a permanent non-exclusive single-site license for use of ARDENTRA PATIENT TRACKING SOFTWARE, hereinafter sometimes referred to as "Ardentra", proprietary to MEDICUS MARKETING, MEDICUS MARKETING’S Marketing Program and the hardware more fully described as Practice Management, Mail Pieces, Coaching, Training, Marketing Strategy, TV, Reactivation, Business Employee Hosting, Hardware, Software and Referral Programs.

ARTICLE I
ACCEPTANCE

Acceptance of the MEDICUS MARKETING products will be performed at MEDICUS MARKETING, or any location designated by MEDICUS MARKETING or Client site. The MEDICUS MARKETING products will be deemed to be accepted when they have successfully satisfied the acceptance criteria in accordance with procedures defined in MEDICUS MARKETING’s Acceptance Test or as established by MEDICUS MARKETING prior to testing. Once Client has received and accepted according to the criteria above, no refunds will be given for any reason unless described in exhibit A.

1. PAYMENT TERMS - Payment shall be made in accordance with finance documents, if applicable, or by cash payment of $43,000.00 certified funds. All payments shall be made in U.S. Dollars within ten days of the date of the invoice. MEDICUS MARKETING reserves the right to add an interest charge not to exceed 1.5% per month or the maximum rate allowed by law, whichever is less, for failure to make payment within 30 days of the invoice date, if financed through MEDICUS MARKETING.

2. TITLE, RISK OF LOSS AND SECURITY INTEREST - Ownership of the hardware and the license to the software and the risk of loss or damage shall pass to Client upon delivery F.O.B. shipping point by MEDICUS MARKETING; however, the Client does hereby give to MEDICUS MARKETING a security interest in the hardware as security for the performance by the Client of all its payment obligations hereunder, together with the right, without liability, to repossess the hardware, with or without notice, in the event of default of any such obligations.

3. TAXES - Prices and fees are exclusive of all federal, state, municipal, or other government, excise, sales, use, occupational, or like taxes now in force or enacted in the future and, therefore, prices are subject to an increase equal in the amount to any tax MEDICUS MARKETING may be required to collect or pay upon the sale or delivery of items purchased or licensed. If a certificate of exemption or similar document or proceeding is to be made in order to exempt the sale from sales or use tax liability, the Client will obtain and pursue such certificate, document or proceeding prior to installation date.

4. DELIVERY - Delivery will be made F.O.B. shipping point. The time of delivery is the time when items to be delivered are ready for pickup by the carrier. Items held or stored for the Client shall be at the risk and expense of the Client. MEDICUS MARKETING will ship collect which indicates freight invoices go directly to Client for payment of shipping charges, or at MEDICUS MARKETING’s discretion, MEDICUS MARKETING will prepay shipping charges and invoice Client for actual said shipping charges.

5. DELAYS - MEDICUS MARKETING shall not be liable for any damages or penalty for delay in delivery or for failure to give notice of delay when such delay is due to factors beyond MEDICUS MARKETING’s reasonable control, including, but not limited to, delays in transportation and delay in delivery by MEDICUS MARKETING vendors.

6. CLIENT RESPONSIBILITIES - Client shall be responsible for timely preparation including, but not limited to, adequate electrical power for computer server operation as required by the installation. Client is responsible for providing a telephone line available for use at the time of installation, for Internet access through the server, used for the Ardentra software. Client shall be responsible for cabling except as specifically set forth herein. Client is also responsible for ensuring that any marketing or advertising provided under this Agreement complies with any applicable laws, regulations, rules or requirements related to Client’s profession. MEDICUS MARKETING does not have the resources to familiarize itself with all regulations for any applicable profession and does not advise the Client in any way related to any laws, regulations, rules or requirements.
MEDICUS MARKETING DO HEREBY DISCLAIM ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH ANY GOODS OR MERCHANDISE TRANSFERRED OR SOLD. CUSTOMER HEREBY ACKNOWLEDGES THAT CUSTOMER HAS BEEN NOTIFIED THE GOODS OR MERCHANDISE AND THE USE THEREOF BY CUSTOMER MAY BE SUBJECT TO THE LAWS OF THE UNITED STATES, ANY STATE, OR ANY OTHER SOVEREIGNTY WHICH MIGHT PROHIBIT, PREVENT, OR EFFECT THE USE OR PROPOSED USE OF THE GOODS IN SUCH A MANNER BY CUSTOMER, EITHER UNDER THE CIVIL OR CRIMINAL STATUTES OR LAWS OF ANY SUCH JURISDICTION. MEDICUS MARKETING MAKES NO REPRESENTATION AS TO THE EFFECT OF ANY SUCH STATUTES OR LAWS IN CONNECTION WITH THE GOODS OR CUSTOMER'S USE OR INTENDED USE. CUSTOMER ACKNOWLEDGES THAT CUSTOMER IS FREE TO CONSULT WITH LEGAL COUNSEL OF ITS OWN CHOICE PRIOR TO THE PURCHASE OF ANY GOODS AND THEREAFTER WITH RESPECT TO THE EFFECT OF SUCH STATUTES AND LAWS AND CUSTOMER'S USE OR INTENDED USE. CUSTOMER DOES HEREBY RELEASE, DISCHARGE, AND INDEMNIFY MEDICUS MARKETING, FROM ANY AND ALL CLAIMS, DEMANDS, EXPENSE (INCLUDING FINES, PENALTIES, ASSESSMENTS AND ATTORNEY FEES) ARISING OUT OF OR CONNECTED WITH THE OWNERSHIP, USE OR INTENDED USE OF THE GOODS BY PURCHASER.

ARTICLE II
MARKETING PROGRAM

1. DATABASE - The database(s) provided to Client is the property of MEDICUS MARKETING and may not be used outside of a limited license to use the database pursuant to the terms of this Agreement. These databases are for one-time rental purposes only and MEDICUS MARKETING reserves the right to demand the return of all databases upon fixed request. Client agrees to return these databases, not duplicate them, or use them for any purpose. Once demand for return has been made, Client agrees to return these databases within seven working days, or pay two dollars per record (name) they keep after seven days. The database(s) are to be used at the sole responsibility of the Client and Client is responsible for scrubbing any list used for telemarketing with any and all state and federal do not call list and maintaining the required updates to comply with all laws. MEDICUS MARKETING only uses this list for mail and therefore does not scrub for do not call list for its Clients. If you intend on using these list to call, follow up on mail, or solicit in any way over the telephone, Client agrees to hold harmless MEDICUS MARKETING and its staff from any claims arising out of the use of the list in this manner, and Client agrees that they have been notify verbally and in writing of these requirements, and Client agrees to comply with all state and federal do not call list requirements.

2. PRODUCTS/SERVICES - See Exhibit "A"

3. ASSIGNMENT AGREEMENT - This Agreement is not assignable without prior written consent of MEDICUS MARKETING. Any attempt by Client to assign any of the rights, duties or obligations of this Agreement without such consent is void. MEDICUS MARKETING cannot prevent you from selling your equipment, but MEDICUS MARKETING will only provide continued support for Equipment transferred to another person under the following circumstances:

   a. You must submit a written request for the transfer with detailed location and contact information on the transferee. MEDICUS MARKETING will respond to the request and either accept or deny the transfer at its sole discretion.

   b. If MEDICUS MARKETING accepts the transfer, then you must send in a $500.00 administrative fee.

   c. The transferee must submit executed current contract documents with MEDICUS MARKETING.

   d. If the transferee desires a new or updated database, the transferee will be charged at $.02 per record. A new or updated database is not required.

   c. The Response Guarantee cannot be transferred unless the transferee signs up and pays for MEDICUS MARKETING's Coaching program, currently billed at $12,000 for a one-year subscription.

This only relates to a transfer of technical support and other support services from MEDICUS MARKETING. MEDICUS MARKETING does not own the equipment and cannot transfer it. MEDICUS MARKETING does not warrant that Client or Transferee owns the equipment. MEDICUS MARKETING does not act for or approve the sale or transfer of the equipment for any leasing company or other party who may have an ownership interest in the equipment. Client warrants and represents that it is not violating any lease, finance or security agreement by transferring the equipment.

4. GENERAL - This Agreement can only be modified by written Agreement duly signed by persons authorized to sign agreements on behalf of Client and MEDICUS MARKETING and variance from the terms and conditions of this Agreement in any manner or other written notification from the Client will be of no effect.
5. QUALITY CONTROL - MEDICUS MARKETING reserves the right to assess or examines the practice unannounced with a third party professional quality assurance auditor. Audits will provide invaluable information for use by our management team about the practice and implementation of all MEDICUS MARKETING policies and procedures, to include but not limited to use of the Ardentra patient tracking software, front desk training and referral programs. By highlighting deficiencies in polices and outlining areas that require attention, our management team can correct these deficiencies to improve overall bottom line numbers. All auditors will pay for services rendered by the practice for that visit and will be tracked and counted as a new patient in the Ardentra patient tracking software. Any omission or exclusion of the new patient/auditor in the Ardentra patient tracking software will void, Exhibit A of the MEDICUS MARKETING Agreement.

6. PROGRAM LIABILITY - All patients derived from MEDICUS MARKETING programs and ads will have a minimum value of $1000.00 each. Once MEDICUS MARKETING has delivered twice the total initial investment in patients (1 patient X $1000.00 each) or $86,000.00 in patient revenue from the initial principal investment of $43,000.00, MEDICUS MARKETING will no be obligated to honor any rebate guarantees in the Warrantee Agreement (Reference: Exhibit A of this contract, however, MEDICUS MARKETING will continue to provide all advertising and coaching and marketing services as agreed even after this goal has been achieved. After 30 days from the execution of this agreement all new patients to the practice will be considered MEDICUS MARKETING produced and will count towards monthly totals. A patient will be defined as anyone that receives and pays for an initial consultation or re-care visit.

7. If any provision or provisions of this Agreement may be brought by either party more than one year after the cause of action has arisen, or, in the case of non-payment, more than one year from the date of last payment. Client agrees and understands that any statute of limitations to the contrary is hereby waived.

8. This Agreement shall be governed by the laws of the State of Texas without regard to its choice of law provisions. All parties submit and agree to exclusive jurisdiction and venue in Houston, Harris County, Texas. Any other provision of this Agreement notwithstanding the provisions in the Agreement concerning Arbitration, trade secrets, confidentiality, and limitations shall survive the termination of this Agreement.

9. Client waives all rights to file suit or claim against MEDICUS MARKETING or umbrella companies in any state or federal court for any discrepancies. All discrepancies or claims with MEDICUS MARKETING or umbrella companies must be resolved in Arbitration pursuant to Article V, Arbitration, of this agreement.

ARTICLE IV
WARRANTY

1. HARDWARE
   A. All MEDICUS MARKETING supplied equipment is warranted against defects in workmanship and materials, under normal use and service for (24) months from date of delivery.

   i. The above warranty is contingent upon proper use in the application for which the hardware was intended and is not applicable to hardware which has been modified without MEDICUS MARKETING approval, or which has been subjected to unusual physical or electrical stress, or on which the original identification marks have been removed or altered. This warranty will not apply if adjustment, repair or parts replacement is required because of accident, neglect, misuse, failure of electrical power, air conditioning, humidity control, transportation or causes other than ordinary use. This warranty is intended only for hardware supplied by MEDICUS MARKETING and will only be serviced upon the delivery of system to the location designated by MEDICUS MARKETING at the expense of Client. MEDICUS MARKETING will provide unlimited technical support and marketing support for as long as the Client has the equipment, providing the Client is in good standing with any financing institution that has financed the equipment, and is in good standing with MEDICUS MARKETING, and has not done anything that may harm MEDICUS MARKETING or the reputation of MEDICUS MARKETING.

   ii. See Warranty Agreement attached as Exhibit “A” respectively, and incorporated herein by reference. Failure to comply with any of the Minimum Operation Requirements voids the Warranty Agreement which includes the rebate offer.

2. ARDENTRA SOFTWARE
   A. MEDICUS MARKETING will deliver any amendments or alterations to the Ardentra that may be required to correct errors present at the time of acceptance of the system and which significantly affect performance in accordance with the specifications. This warranty is contingent upon Client advising MEDICUS MARKETING in writing of such errors, in accordance with MEDICUS MARKETING's prescribed reporting procedures. During the term of this Agreement, Client is
entitled to receive upgrades that enhance performance and features of the product provided the Client is in good acceptable standing with MEDICUS MARKETING and all finance fees are current. There is no charge for the software, however costs incurred for installation, documentation, hardware upgrades, as needed, shipping and related expenses required to deliver the upgrade are the sole responsibility of the Client. Client shall inform MEDICUS MARKETING in writing of any modifications to the hardware and/or software on the system on which software provided under this Agreement depends for correct operation. Corrections for difficulties or defects traceable to Client errors or system changes will be billed at standard time and materials rates. MEDICUS MARKETING will provide Unlimited technical support and marketing support during normal business hours Monday through Friday to qualified Clients, and honor the patient guarantee, only if, and for as long as the Client has the equipment and providing the Client is in good standing with any financing institution that has financed the equipment and is in good standing with MEDICUS MARKETING, and has not done anything that may harm MEDICUS MARKETING or the reputation of MEDICUS MARKETING. Failure to comply with any of the Minimum Operation Requirements, from the date of signing of this document, and continuously weekly thereafter, voids the Warranty Agreement permanently and all unlimited technical and marketing support. MEDICUS MARKETING may at its discretion, continue to provide full marketing, advertising, coaching and other support, however MEDICUS MARKETING will not be obligated under the patient guarantee after any breach or failure to comply or other provisions within this Agreement. No breach of this Agreement by any party changes or voids any financing or lease arrangement Client may have with a third party related to the product sold hereunder.

3. NO OTHER WARRANTIES

A. MODIFIED AGREEMENT - Except for the express warranties stated above, MEDICUS MARKETING disclaims all warranties with regard to the MEDICUS MARKETING products sold hereunder including all implied warranties of merchantability and fitness for a particular purpose and all obligations or liabilities on the part of MEDICUS MARKETING for damages, including but not limited to, consequential or incidental damages arising out of or in connection with the use or performance of the system.

ARTICLE IV
SOFTWARE LICENSE FOR ARDENTRA - PROPRIETARY RIGHTS OF MEDICUS MARKETING

1. Rights and Title - Client recognizes that the computer programs, system documentation manuals, Ardentra and other materials supplied by MEDICUS MARKETING to Client are subject to the proprietary right of MEDICUS MARKETING. Client agrees with MEDICUS MARKETING that the programs, documentation and all information or data supplied by MEDICUS MARKETING in machine readable form and trade secrets of MEDICUS MARKETING are protected by civil and criminal law, and by the law of copyright, are very valuable to MEDICUS MARKETING and that their use and disclosure must be carefully and continuously controlled. Client further understands that operator manuals, training aids and other written materials are subject to the Copyright Act of the United States.

A. Title: MEDICUS MARKETING retains title to the programs, documentation, information or data furnished by MEDICUS MARKETING in machine-readable form, and training materials.

B. Client shall keep each and every item, to which MEDICUS MARKETING retains title free and clear of all claims, liens and encumbrances except those of MEDICUS MARKETING and any act of Client; voluntary or involuntary, purporting to create a claim, lien or encumbrance on such an item shall be void.

2. Restrictions on Client’s Use - The computer programs and other items supplied by MEDICUS MARKETING hereunder are for the sole use of Client at the named location.

3. Competitive Uses: Client agrees that while this License is in effect or while it has custody or possession of any property of MEDICUS MARKETING it will not directly or indirectly lease, licenc, sell, offer or negotiate or contract for any marketing, advertising or software similar to that supplied under this license, but this clause shall not be construed to prohibit Client from acquiring for its own use advertising, marketing or software from third parties.

A. Copies: Client agrees that while this License is in effect, or while it has custody or possession of any property of MEDICUS MARKETING it will not (a) copy or duplicate, or permit anyone else to copy or duplicate, any physical magnetic version of the programs, documentation or information furnished, in readable form, (b) create or attempt to create, or permit others to create or attempt to create, by reverse engineering or otherwise, the source programs or any part thereof from the object or executable program or from other information made available under this License or otherwise, (whether oral, written, tangible or intangible). Client may copy for its own use and its own expense operator manuals, but shall advise MEDICUS MARKETING of the number of copies made and their distribution.
B. Use Restrictions: The computer programs licensed hereunder shall be used only on a single central processing unit (referred to as the CPU) and its associated peripheral units at the same site. Use of a program shall consist either of copying any portion of the program from storage units or media into the CPU or processing of data with this program, or both. All programs, documentation, material in machine readable form supplied under this license shall be kept in a secure place, under access and use restrictions satisfactory to MEDICUS MARKETING and not less strict than those applied to Client's most valuable and sensitive programs. The programs licensed hereunder may be temporarily transferred to another CPU while the specified CPU is undergoing repairs, but Client shall notify MEDICUS MARKETING of such transfer if it is for a period of more than 72 hours.

C. Backup Files: Client shall furnish MEDICUS MARKETING a written description of site file backup procedures insofar as those procedures may involve backup of the computer programs licensed hereunder. The written backup procedures description shall include for each file backup copy of any of the programs licensed hereunder, media type and, for off site backup, where kept. MEDICUS MARKETING shall promptly approve or disapprove backup procedures. Approval shall not be unreasonably withheld. Copies of the licensed programs made under MEDICUS MARKETING approved Client backup procedures shall not be deemed to be copies under 3.B. above.

D. Unauthorized Acts: Client agrees to notify MEDICUS MARKETING immediately of the unauthorized possession, use or knowledge of any item supplied under this license and of other information made available to Client under this Agreement, by any person or organization not authorized by this Agreement to have such possession, use or knowledge. Client will promptly furnish full details of such possession, use or knowledge, and will cooperate with MEDICUS MARKETING in any litigation against third parties deemed necessary by MEDICUS MARKETING to protect its proprietary rights. Client's compliance with this subparagraph shall not be construed in any way as a waiver of MEDICUS MARKETING right to recover damages or obtain other relief against Client for its negligent or intentional harm to MEDICUS MARKETING proprietary right, or for breach on contractual rights.

E. Inspection: To assist MEDICUS MARKETING in the protection of its proprietary rights, Client shall permit representatives of MEDICUS MARKETING to inspect at all reasonable times any location at which items supplied are being used or kept.

4. Transfer of License Rights: The Client's rights to use the programs, documentation, manuals and other materials supplied by MEDICUS MARKETING hereunder shall not be assigned, licensed or transferred to a successor, affiliate or any other person, firm, corporation or organization voluntarily, by operation of law, or in any other manner without prior written consent of MEDICUS MARKETING.

5. Remedies: If Client attempts to use, copy, license, or convey the items supplied by MEDICUS MARKETING hereunder in a manner contrary to the terms of this Agreement or in competition with MEDICUS MARKETING or in derogation of MEDICUS MARKETING' proprietary rights, whether these rights are explicitly herein stated, determined by law, or otherwise, MEDICUS MARKETING shall have, in addition to any other remedies available to it, the right of injunctive relief enjoining such action, the Client hereby acknowledging that other remedies are inadequate.

6. Binding Effect and Definitions: The Client agrees that this Agreement binds the named Client and each of its employees agents, representatives and persons associated with it. This Agreement further binds each affiliated and subsidiary firm, corporation or other organization with which the Client may enter a joint venture or other cooperative enterprise. The term employee means an individual on whose behalf the Client withholds income taxes or makes contributions under the Federal Insurance Contributions Act or similar statutes in other nations.

ARTICLE V
ARBITRATION

1. Any question, claim, cause of action, dispute or controversy arising out of or relating to this Agreement shall be arbitrated according to the Federal Arbitration Act as modified by the arbitration provisions of this Agreement. Any party who, in contravention of the arbitration or jurisdiction provisions of the Agreement (including this SECTION V), brings an action in state or federal court will pay all the other parties costs, fees, attorneys' fees, and any other expenses related to the defense of such action. Any appropriate arbitrator or judge may award such expenses and fees. If any dispute should arise under this Agreement, either party may within 180 days after the date on which the dispute arises make a demand for arbitration by filing a demand in writing with the other party.

2. The parties may agree on one arbitrator, but in the event that they cannot so agree within 30 days, there shall be three arbitrators, one named in writing by each of the parties within 45 days after demand for arbitration is made, and a third to be
chosen by the two so named within 75 days after the demand for arbitration is made. Should either party fail to timely join in the appointment of the arbitrators, and then such party waives their right to appoint an arbitrator.

3. All arbitration hearings conducted under the terms of this agreement and all judicial proceeding to enforce any of the provisions of this Agreement, shall take place in Harris County, Texas. The hearing before the arbitrators of the matter to be arbitrated shall be at the time and place within said County selected by the arbitrators, but in no event shall the hearing be held later than nine months after the demand for arbitration. Notice of hearing shall be given and the hearing conducted within ten days of such notice. At the hearing, either party may present any relevant evidence, or the formal rules of evidence applicable to judicial proceedings shall not govern. Evidence may be admitted or excluded in the sole discretion of the arbitrators. The arbitrators shall hear and determine the matter and shall execute and acknowledge their award in writing and deliver a copy thereof to each of the parties by registered or certified mail. The award shall be enforceable in any court of competent jurisdiction.

4. If there is only one arbitrator, his or her decision shall be binding and conclusive on the parties. If there are three arbitrators, the decision of any two shall be binding and conclusive.

5. If the arbitrators selected pursuant to Paragraph 3, above, shall fail to render a decision within 10 days of the date of the hearing, they shall be discharged, and three new arbitrators shall be appointed and shall proceed in the same manner, and the process shall be repeated until a decision is finally reached by two of the three arbitrators selected.

6. The costs, attorneys' fees and expenses of arbitration, excluding the fees of the arbitrators, shall be borne by the party who incurs such expenses. The fees of the arbitrator(s) shall be split equally between the parties.

7. Each party may notice no more than two depositions total. Each party may serve no more than thirty requests for admissions due within 30 days of service. Each party may serve no more than thirty interrogatories. No interrogatory shall contain subparts, or concern more than one topic or subject of inquiry. Interrogatories may not be phrased so as to circumvent the purpose of this clause. No interrogatories may be served within 30 days of the date of hearing. All interrogatories shall be responded to within 30 days of service. Each party may serve no more than 30 requests for production of documents on the other party. Requests for productions of documents may not be served within 30 days of the date of hearing and shall be responded to within 30 days of service. If any party contends that the other party has served discovery requests in a manner not permitted by this section, or that the other party's response to a discovery request is unsatisfactory, the party may request the arbitrator(s) to resolve such discovery disputes. A majority of the arbitrator(s) shall prescribe the procedure by which such disputes are resolved.

The Client acknowledges that he has read this Agreement, understands it, and agrees to be bound by its terms and conditions. Further the Client agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes all proposals or prior agreements, oral or written, and all other communications between parties relating the subject matter of this Agreement. The length of this agreement is never to exceed 60 Months from date below.

AGREED TO AND ACCEPTED ON THIS ___________________ DAY OF ____________________, 200__.

CLIENT

NAME (PRINT) ___________________________ 

SIGNATURE: ___________________________

TITLE: ___________________________

ACCEPTED BY MEDICUS MARKETING

MEDICUS REP: ___________________________

BY: ___________________________

TITLE: ___________________________

I have the signed copy dated 8/2/2005
May 19, 2005

Kevin DiBella PC
Dr. Kevin DiBella
528 Union Road
Gastonia, NC 28054

Dear Dr. DiBella:

Warranty Agreement Reference: Exhibit A

I. Agreement

While in compliance with our minimum operations requirements listed below, your practice does not produce five (5) patients per month from Medicus Marketing/Training programs described as: Direct Mail, Reactivation, Business Employee Marketing and Referral programs. Medicus will rebate you up to twelve hundred and fifty dollars a month on a prorated basis. Prorate example: If Medicus produces three new patients from Direct Mail and one reactivation patient, Medicus will rebate you back two hundred and fifty dollars. Provided your practice has followed the minimum operations requirements after six (6) months and are displeased due to non-performance in the program, Medicus will rebate your practice back the remaining balance owed on the marketing/ training program.

II. Financing

This will serve as a binding agreement between Dr. DiBella and Medicus Marketing, not to supersede any contract between Dr. DiBella and any finance company used to secure Medicus Marketing's services. Your practice will be responsible for making payments directly to the finance company used to purchase the Medicus Marketing/Training program. Medicus cannot make a full and/or partial payment to the finance company on your behalf.

III. Term of Agreement

This agreement will commence sixty (60) days after the initial training date and terminate sixty (60) months from that same date. Medicus will continue to provide free customer and marketing support provided you are in good standing with Medicus and the finance company used for purchase. Failure to comply with any of the minimum operation requirements voids the Marketing/Training agreement.
IV. Services Provided

Services provided by Medicus as a part of the Marketing/Training program and this agreement but not limited to will include: onsite training, direct mail (10,000 pieces to specifically targeted residential or business destinations, on a 5 week cycle, for a period of 12 months, for a total of 100,000 pieces in the first year; then in the 2nd, 3rd, 4th and 5th year 10,000 pieces quarterly, for a total of 260,000 pieces in 5 years), radio spots, internet marketing, web design, reactivation & referral programs, newspaper & yellow page ads, business marketing programs, sales coaching, technical support and an over all evaluation of your practice & procedures.

V. Minimum Operation Requirements

You agree to use the Medicus patient tracking software to track where all patients were generated. If there is a problem for any reason, to include advertising, technical, coaching, case presentation or any other facet of the Medicus Marketing/Training program, you must notify Medicus in writing immediately. You will also, fax your revenue reports to your assigned Personal Practice Trainer weekly. You will fax a request once a week and get verbal verification from the support technician who received it, allowing Medicus into your system via PcAnywhere. This will allow Medicus to verify that the programs are being used for patient tracking and are functioning properly. You will need to specify a time Monday – Thursday between 9am & 4pm CST. Your Medicus server must be running with PcAnywhere in standby or ready mode during that time. If you have any questions you may call technical support toll free at 888.991.1000.

Medicus Client:

By: ____________________________

Print Name: Kevin DiBella, D.C

Title: Dr.

Medicus Administration:

Authorized Signer: ____________________________

Print Name: ____________________________

Title: ____________________________

I have the signed copy  
dated 8/2/2005