

# CITY OF CLAYTON, OHIO

## RESOLUTION NO. R - 07 - 22- 48

### AUTHORIZING RESOLUTION (AGREEMENT)

**A RESOLUTION OF THE GOVERNING BODY OF CITY OF CLAYTON, AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT AND SEPARATE EQUIPMENT SCHEDULES THERETO FOR THE ACQUISITION, FINANCING AND LEASING OF CERTAIN EQUIPMENT FOR THE PUBLIC BENEFIT WITHIN THE TERMS HEREIN PROVIDED; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.**

WHEREAS, City of Clayton (the "*Lessee*"), a city duly organized and existing as a political subdivision of the State of Ohio, is authorized by the laws of the State of Ohio to acquire, finance and lease personal property (tangible and intangible) for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the governing body of the Lessee (the "*Board*") has determined that a need exists for the acquisition, financing and leasing of certain equipment consisting of three (3) dump trucks, which constitutes personal property necessary for the Lessee to perform essential governmental functions (collectively, the "*Equipment*") on the terms herein provided; and

WHEREAS, in order to acquire such Equipment, the Lessee proposes to enter into that certain Master Equipment Lease/Purchase Agreement (the "*Agreement*") with Bank of America, National Association (or one of its affiliates), as lessor (the "*Lessor*"), substantially in the proposed form presented to the Board at this meeting, and separate Equipment Schedules thereto substantially in the form attached to the Agreement; and

WHEREAS, the Board deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Agreement and separate Equipment Schedules thereunder and the other documentation relating thereto from time to time as provided in the Agreement for the acquisition, financing and leasing of the Equipment to be therein described on the terms and conditions therein and herein provided;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the governing body of the Lessee as follows:

*Section 1. Findings and Determinations.* It is hereby found and determined that the terms of the Agreement (including the form of Equipment Schedule and the form of Payment Schedule, both attached thereto), in the form presented to the Board at this meeting, are in the best interests of the Lessee for the acquisition financing and leasing of the Equipment.

*Section 2. Approval of Documents.* The form, terms and provisions of the Agreement (including the form of Equipment Schedule and the form of Payment Schedule, both attached thereto) are hereby approved in substantially the forms presented at this meeting, with such insertions, omissions and changes as shall be approved by City Manager of the Lessee or other members of the governing body of the Lessee (the "*Authorized Officials*") executing the same, the execution of such documents being conclusive evidence of such approval; and the City Manager of the Lessee is hereby authorized and directed to execute, the Agreement and any related Exhibits attached thereto and to deliver the Agreement (including such Exhibits) to the respective parties thereto.. The Authorized Officials are each hereby authorized and directed to sign and deliver on behalf of the Lessee the Agreement, each Equipment Schedule thereto under which a separate Lease (as defined in the Agreement) is created, each Payment Schedule attached thereto, any related Restricted Account Agreement and any related exhibits attached thereto if and when required; *provided, however*, that, without further authorization from the governing body of the Lessee, (a) the aggregate principal component of Rental Payments under all Leases entered into pursuant to the Agreement shall not exceed \$800,000.00 (b) the maximum term under any Lease entered into pursuant to the Agreement shall not exceed five (5) years; and (c) the maximum interest rate used to determine the interest component of Rental Payments under each Lease shall not exceed the lesser of the maximum rate permitted by law or 3.19% per annum. The Authorized Officials may sign and deliver Leases to the Lessor on behalf of the Lessee pursuant to the Agreement on such terms and conditions as they shall determine are in the best interests of the Lessee up to the maximum aggregate principal component, maximum term and maximum interest rate provided above. The foregoing authorization shall remain in effect for a period of [two] years from the date hereof during which the Authorized Officials are authorized to sign and deliver Leases pursuant to the Agreement on the terms and conditions herein provided and to be provided in each such Lease.

*Section 3. Other Actions Authorized.* The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of Final Acceptance Certificates, Restricted Account Agreements, Disbursement Requests and any tax certificate and agreement, as contemplated in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement and each Lease.

*Section 4. No General Liability.* Nothing contained in this Resolution, the Agreement, any Lease, any Restricted Account Agreement nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement, any Lease, any Restricted Account Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon

the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under each Lease entered into pursuant to the Agreement are limited obligations of the Lessee, subject to annual appropriation, as provided in the Agreement.

*Section 5. Appointment of Authorized Lessee Representatives.* The City Manager of the Lessee is each hereby designated to act as authorized representatives of the Lessee for purposes of each Lease and related Restricted Account Agreement until such time as the governing body of the Lessee shall designate any other or different authorized representative for purposes of the Agreement and any Lease or Restricted Account Agreement.

*Section 6. Severability.* If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

*Section 7. Repealer.* All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency with respect to this Resolution. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

*Section 8. Effective Date.* This Resolution shall be effective immediately upon its approval and adoption.

ADOPTED AND APPROVED by the governing body of the Lessee this 21st day of July, 2022.



Barbara Seim  
Notary Public State of Ohio  
My Commission Expires  
September 9, 2024

ATTEST:

CITY OF CLAYTON,  
as lessee

By: *Amanda Zimmerlin*  
Printed Name: Amanda Zimmerlin  
Title: City Manager

By: *Barbara Seim*  
Printed: Name: BARBARA SEIM  
Title: Clerk of Council

AUTHENTICATION:

James T. Hannan  
Mayor (Presiding Officer of Council)

Barbara Seim  
Clerk of Council

APPROVED AS TO FORM:

[Signature]  
Law Director

CERTIFICATION OF PUBLICATION

This shall certify that that the text of the above referenced enactment or a summary thereof was published once in the following newspaper and a summary posted in three places of public access as designated by Council.

Name of newspaper Brookville Star Date of publication July 27, 2022

Barbara Seim  
CLERK

The undersigned, a duly elected or appointed and acting City Clerk [Secretary] [City Clerk] [County Clerk] of the Lessee identified in the above Resolution No. 48 (the "Resolution"), hereby certifies that the Resolution is a full, true and correct copy of such Resolution as adopted by the governing body of the Lessee on July 21, 2022. The Resolution is in full force and effect on the date hereof and has not been amended, modified or otherwise changed by the governing body of the Lessee since the date of adoption of the Resolution.

DATED this 21<sup>st</sup> day of July, 2022.

Barbara Seim  
Name: BARBARA SEIM  
Title: Clerk of Council

## MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT

This Master Equipment Lease/Purchase Agreement (the “*Agreement*”) dated as of July 25, 2022, and entered into by and between Bank of America, National Association, a national banking association (together with its successors, assigns and transferees, and as more particularly defined herein, “*Lessor*”), and City of Clayton, a municipal corporation existing under the laws of the State of Ohio (“*Lessee*”).

### WITNESSETH:

WHEREAS, Lessee desires to lease and acquire from Lessor certain Equipment described in each Equipment Schedule (as each such term is defined herein), subject to the terms and conditions of and for the purposes set forth in each Lease; and

WHEREAS, the relationship between the parties shall be a continuing one and items of equipment and other personal property may be financed pursuant to one or more Leases entered into from time to time in accordance with this Agreement by execution and delivery of additional Equipment Schedules by the parties hereto, subject to the terms and conditions provided herein; and

WHEREAS, Lessee is authorized under the constitution and laws of the State (as such term is defined herein) to enter into this Agreement and each Equipment Schedule for the purposes set forth herein and therein;

NOW, THEREFORE, for good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

### ARTICLE I

*Section 1.01. Definitions.* The following terms will have the meanings indicated below unless the context clearly requires otherwise:

“*Acquisition Amount*” means, with respect to each Lease, the amount specified in the related Equipment Schedule and represented by Lessee to be sufficient for the purpose of acquiring and installing the Equipment listed in such Lease.

“*Acquisition Period*” means, with respect to each Lease for which a Project Account is established, that period identified in the related Equipment Schedule during which the Acquisition Amount attributable to such Lease may be expended on Equipment Costs pursuant to the related Project Account Agreement.

“*Agreement*” means this Master Equipment Lease/Purchase Agreement, including the exhibits hereto, together with any amendments and modifications to this Agreement pursuant to Section 13.04.

“*Casualty Value*” means, with respect to each Lease, the amount that is shown on the Payment Schedule for each Rental Payment Date under the column titled either (i) the Prepayment Price or (ii) the “Casualty Value”, if any.

“*Code*” means the Internal Revenue Code of 1986, as amended. Each reference to a Section of the Code in this Agreement and a Lease shall be deemed to include the relevant United States Treasury Regulations proposed or in effect thereunder.

“*Commencement Date*” means, for each Lease, the date when Lessee’s obligation to pay rent commences under such Lease, which date shall be the earlier of (a) the date on which the Equipment listed in such Lease is accepted by Lessee in the manner described in Section 5.01, or (b) the date on which the Acquisition Amount is deposited in a Project Account for the purpose of acquiring and installing the Equipment listed in such Lease.

“*Contract Rate*” means, with respect to each Lease, the rate identified as such in the related Payment Schedule.

“*Disbursement Request*” means, with respect to each Lease for which a Project Account is established, the disbursement request attached to the related Escrow Agreement as Schedule 1 or the related Restricted Account Agreement as Exhibit A, and made a part thereof.

“*Equipment*” means, with respect to each Lease, the property listed in the related Equipment Schedule and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Article V or Section 8.01. Whenever reference is made in this Agreement to Equipment listed in a Lease, such reference shall be deemed to include all such replacements, repairs, restorations, modifications and improvements of or to such Equipment.

“*Equipment Costs*” means, with respect to each Lease, the total cost of the Equipment listed in the related Equipment Schedule, including related soft costs such as freight, installation and taxes and other capitalizable costs, legal fees, financing costs and other costs necessary to vest full, clear legal title to the Equipment in Lessee, subject to the security interest granted to and retained by Lessor as set forth in each Lease, and other costs incurred in connection with the acquisition, installation and/or financing of the Equipment as provided in the related Lease; *provided that* (a) any such soft costs on a cumulative basis shall not exceed a percentage approved by Lessor of the total cost of the Equipment subject to such Lease and (b) in no event shall capitalizable delivery costs, installation charges, taxes and similar capitalizable soft costs relating to such Equipment be included without Lessor’s prior consent.

“*Equipment Schedule*” means each separately numbered Equipment Schedule, substantially in the form of either *Exhibit A-1* (general Equipment) or *Exhibit A-2* (energy services Equipment) hereto, together with the related Payment Schedule.

“*Escrow Account*” means, with respect to any Lease, the account established and held by the Escrow Agent pursuant to the related Escrow Agreement.

*“Escrow Agent”* means, with respect to each Lease for which an Escrow Account is established, the Escrow Agent identified in the related Escrow Agreement, and its successors and assigns.

*“Escrow Agreement”* means, with respect to each Lease for which an Escrow Account is established, an Escrow and Account Control Agreement in form and substance acceptable to and executed by Lessee, Lessor and the Escrow Agent, pursuant to which an Escrow Account is established and administered.

*“Event of Default”* means an Event of Default described in Section 12.01.

*“Event of Non-appropriation”* means, with respect to a Lease, the failure of Lessee’s governing body to appropriate or otherwise make available funds to pay Rental Payments under such Lease following the Original Term or then current Renewal Term sufficient for the continued performance of such Lease by Lessee.

*“Lease”* means an Equipment Schedule and the terms and provisions of this Agreement which are incorporated by reference into such Equipment Schedule.

*“Lease Term”* means, with respect to each Lease, the Original Term and all Renewal Terms provided in the related Equipment Schedule.

*“Lessee”* means the entity referred to as Lessee in the first paragraph of this Agreement.

*“Lessor”* means (a) the entity referred to as Lessor in the first paragraph of this Agreement and its successors or (b) any assignee or transferee pursuant to Section 11.01 of any right, title or interest of Lessor in and to the Equipment under the applicable Lease (including the Rental Payments and other amounts due thereunder), any related Project Account Agreement and Project Account, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lessor to perform hereunder or under such Lease.

*“Material Adverse Change”* means (a) any change in Lessee’s creditworthiness that could have a material adverse effect on (i) the financial condition or operations of Lessee, or (ii) Lessee’s ability to perform its obligations under this Agreement or any Lease or (b) a downgrade in Lessee’s external debt rating from the date of this Agreement of two or more subgrades by either Moody’s Investors Service, Inc. or S&P Global Ratings or any equivalent successor credit rating agency, or any downgrade by either such agency that would cause Lessee’s credit rating to be below investment grade, or, if any such rating agency no longer publishes such ratings at the date of determination, any other nationally recognized statistical rating organization that is selected by Lessee for purposes of such long-term general obligation bond ratings and long-term general fund related bond ratings.

*“Original Term”* means, with respect to each Lease, the period from the Commencement Date identified in the related Equipment Schedule until the end of the fiscal year of Lessee in effect at such Commencement Date.

“*Outstanding Balance*” means, with respect to each Lease, the amount that is shown for each Rental Payment Date under the column titled “Outstanding Balance” on the Payment Schedule.

“*Payment Schedule*” means, with respect to each Lease, the Payment Schedule attached to and made a part of the related Equipment Schedule and substantially in the form of *Exhibit B* attached to this Agreement.

“*Prepayment Price*” means, with respect to each Lease, the amount that is shown for each Rental Payment Date under the column titled “Prepayment Price” on the Payment Schedule.

“*Principal Portion*” means, with respect to each Lease, the amount that is shown for each Rental Payment Date under the column titled “Principal Portion” on the Payment Schedule.

“*Project Account*” means, with respect to any Lease, an Escrow Account or a Restricted Account, as the case may be.

“*Project Account Agreement*” means, as applicable, an Escrow Agreement or a Restricted Account Agreement.

“*Related Documents*” means, with respect to each Lease, the Lease, this Agreement and, if applicable, the related Project Account Agreement, each as may be amended and supplemented.

“*Renewal Terms*” means, with respect to each Lease, the consecutive renewal terms of such Lease as specified in the related Equipment Schedule, the first of which commences immediately after the end of the Original Term and each having a duration and a term coextensive with each successive fiscal year of Lessee; *provided* that the final such Renewal Term shall commence on the first day of the last such fiscal year and end on the first business day after the last scheduled Rental Payment Date.

“*Rental Payment Date*” means, with respect to each Lease, each date on which Lessee is required to make a Rental Payment under such Lease as specified in the related Payment Schedule.

“*Rental Payments*” means, with respect to each Lease, the basic rental payments payable by Lessee on the Rental Payment Dates and in the amounts as specified in the related Payment Schedule, consisting of a principal component and an interest component, and in all cases sufficient to repay the principal component under such Lease and interest thereon at the applicable Contract Rate (or Taxable Rate if then in effect).

“*Restricted Account*” means, with respect to any Lease, the account established by the Lessee pursuant to the related Restricted Account Agreement.

“*Restricted Account Agreement*” means, with respect to each Lease for which an Restricted Account is established, a Restricted Account Agreement in form and substance acceptable to Lessor and executed by Lessee and Lessor, pursuant to which a Restricted Account is established and administered.

“SEC” means the U.S. Securities and Exchange Commission.

“State” means the State of Ohio.

“Taxable Rate” means, with respect to each Lease, for each day that the interest component of Rental Payments is taxable for Federal income tax purposes, an interest rate equal to the Contract Rate plus a rate sufficient such that the total interest to be paid on any Rental Payment Date would, after such interest was reduced by the amount of any Federal, state or local income tax (including any interest, penalties or additions to tax) actually imposed thereon, equal the amount of interest otherwise due to Lessor.

“Vendor” means the manufacturer, installer or supplier of the Equipment listed in an Equipment Schedule or any other person as well as the agents or dealers of the manufacturer, installer or supplier with whom Lessee arranged Lessee’s acquisition, installation, maintenance and/or servicing of the Equipment pursuant to the applicable Lease.

“Vendor Agreement” means any contract entered into by Lessee and any Vendor for the acquisition, installation, maintenance and/or servicing of the Equipment under a Lease.

## ARTICLE II

*Section 2.01. Representations and Covenants of Lessee.* Lessee represents, covenants and warrants for the benefit of Lessor on the date hereof and as of the Commencement Date of each Lease as follows:

(a) Lessee is a political subdivision of the State within the meaning of Section 103(c) of the Code, duly organized and existing under the constitution and laws of the State, with full power and authority to enter into the Related Documents and the transactions contemplated thereby and to perform all of its obligations thereunder.

(b) Lessee has duly authorized the execution and delivery of the Related Documents by proper action of its governing body at a meeting duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of the Related Documents.

(c) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof. No Event of Non-appropriation has occurred or is threatened with respect to any Lease.

(d) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a municipal corporation of the State.

(e) Lessee has complied with such procurement and public bidding requirements as may be applicable to the Related Documents and the acquisition and installation by Lessee of the Equipment as provided in each Lease.

(f) During the Lease Term under each Lease, the Equipment will be used by Lessee only for the purpose of performing essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority. Lessee does not intend to sell or otherwise dispose of the Equipment or any interest therein prior to the last Rental Payment (including all Renewal Terms) scheduled to be paid under the related Lease.

(g) Lessee has kept, and throughout the Lease Term of each Lease shall keep, its books and records in accordance with generally accepted accounting principles and practices consistently applied, and shall deliver to Lessor (i) annual audited financial statements (including (1) a balance sheet, (2) statement of revenues, expenses and changes in fund balances for budget and actual, (3) statement of cash flows, and (4) footnotes, schedules and attachments to the financial statements) within two hundred seventy (270) days after the end of its fiscal year, (ii) such other financial statements and information as Lessor may reasonably request, and (iii) upon Lessor's request, its annual budget for any prior or current fiscal year or for the following fiscal year when approved but not later than thirty (30) days prior to the end of its current fiscal year. The financial statements described in this subsection (g)(i) shall be accompanied by an unqualified opinion of Lessee's independent auditor. Credit information relating to Lessee may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns.

(h) Lessee has an immediate need for the Equipment listed on each Equipment Schedule and expects to make immediate use of the Equipment listed on each Equipment Schedule. Lessee's need for the Equipment is not temporary and Lessee does not expect the need for any item of the Equipment to diminish during the related Lease Term.

(i) The payment of the Rental Payments or any portion thereof is not (under the terms of any Lease or any underlying arrangement) directly or indirectly (x) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property; or (y) on a present value basis, derived from payments (whether or not to Lessee) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. The Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local governmental unit. No portion of the Acquisition Amount relating to any Lease will be used, directly or indirectly, to make or finance loans to any person other than Lessee. Lessee has not entered into any management or other service contract with respect to the use and operation of the Equipment.

(j) There is no pending litigation, tax claim, proceeding or dispute that may adversely affect Lessee's financial condition or impairs its ability to perform its obligations

under the Related Documents. Lessee will, at its expense, maintain its legal existence and do any further act and execute, acknowledge, deliver, file, register and record any further documents Lessor may reasonably request in order to protect Lessor's first priority security interest in the Equipment and the Project Account and Lessor's rights and benefits under each Lease and the related Project Account Agreement, as applicable.

(k) Lessee is the fee owner of the real estate where the Equipment under each Lease is and will be located (the "*Real Property*") and has good and marketable title thereto, and there exists no mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to such Real Property.

(l) No lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been a party at any time has been terminated by Lessee as a result of insufficient funds being appropriated in any fiscal year. No event has occurred which would constitute an event of default under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years.

(m) In connection with the Lessee's compliance with any continuing disclosure undertakings (each, a "*Continuing Disclosure Agreement*") entered into by the Lessee pursuant to SEC Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the "*Rule*"), the Lessee may be required to file with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system, or its successor ("*EMMA*"), notice of its incurrence of its obligations under the Related Documents and notice of any accommodation, waiver, amendment, modification of terms or other similar events reflecting financial difficulties in connection with the Related Documents, in each case including posting a full copy thereof or a description of the material terms thereof (each such posting, an "*EMMA Posting*"). Except to the extent required by applicable law, including the Rule, the Lessee shall not file or submit or permit the filing or submission of any EMMA Posting that includes the following unredacted confidential information about the Lessor or its affiliates and any Escrow Agent in any portion of such EMMA Posting: address and account information of the Lessor or its affiliates and any Escrow Agent; e-mail addresses telephone numbers, fax numbers, names and signatures of officers, employees and signatories of the Lessor or its affiliates and any Escrow Agent; and the form of Disbursement Request.

The Lessee acknowledges and agrees that the Lessor and its affiliates are not responsible for the Lessee's or any other entity's (including, but not limited to, any broker-dealer's) compliance or noncompliance (or any claims, losses or liabilities arising therefrom) with the Rule, any Continuing Disclosure Agreement or any applicable securities or other laws, including but not limited to those relating to the Rule.

### ARTICLE III

*Section 3.01. Lease of Equipment.* Subject to the terms and conditions of this Agreement, Lessor agrees to provide the funds specified in each Lease to be provided by it for Lessee to acquire the Equipment described in the related Equipment Schedule. Upon the execution and delivery of

each Lease, Lessor thereby demises, leases and transfers to Lessee, and Lessee thereby acquires, rents and leases from Lessor, the Equipment as set forth in such Lease and in accordance with the terms thereof. The Lease Term for each Lease may be continued, solely at the option of Lessee, at the end of the Original Term or any Renewal Term for the next succeeding Renewal Term up to the maximum Lease Term set forth in such Lease. At the end of the Original Term and at the end of each Renewal Term until the maximum Lease Term has been completed, Lessee shall be deemed to have exercised its option to continue each Lease for the next Renewal Term unless Lessee shall have terminated such Lease pursuant to Section 3.03 or Section 10.01 of this Agreement. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in the applicable Lease. Each Equipment Schedule signed and delivered by Lessor and Lessee pursuant to this Agreement shall constitute a separate and independent lease and installment purchase of the Equipment therein described.

*Section 3.02. Continuation of Lease Term.* Lessee intends, subject to Section 3.03 hereof, to continue the Lease Term of each Lease through the Original Term and all Renewal Terms and to pay the Rental Payments due thereunder. Lessee affirms that sufficient funds are legally available for the current fiscal year, and Lessee reasonably believes that an amount sufficient to make all Rental Payments during the entire Lease Term of each Lease can be obtained from legally available funds of Lessee. Lessee further intends to do all things lawfully within its power to obtain and maintain funds sufficient and available to discharge its obligation to make Rental Payments due under each Lease, including making provision for such payments to the extent necessary in each budget or appropriation request submitted and adopted in accordance with applicable provisions of law. Notwithstanding the foregoing, the decision whether or not to budget and appropriate funds or to extend the Lease Term for any Renewal Term for each Lease is within the sole discretion of the governing body of Lessee.

*Section 3.03. Non-appropriation.* Lessee is obligated only to pay such Rental Payments under each Lease as may lawfully be made during Lessee's then current fiscal year from funds budgeted and appropriated for that purpose. Should Lessee fail to budget, appropriate or otherwise make available funds to pay Rental Payments under any Lease following the then current Original Term or Renewal Term, such Lease or Leases shall be deemed terminated at the end of the then current Original Term or Renewal Term thereunder. Lessee agrees to deliver notice to Lessor of such termination promptly after any decision to non-appropriate is made, but failure to give such notice shall not extend the term beyond such Original Term or Renewal Term. If any Lease is terminated in accordance with this Section 3.03, Lessee agrees to cease use of the Equipment thereunder and peaceably remove and deliver to Lessor, at Lessee's sole expense (from legally available funds), such Equipment to Lessor at the location(s) to be specified by Lessor on or before the end of the applicable Original Term or Renewal Term for which Rental Payments have been appropriated for the applicable Lease (each, a "Non-Appropriation Return Date"). Lessor may take whatever action at law or in equity as may be necessary or desirable to enforce Lessee's obligations in the immediately preceding sentence. Without limiting or reducing in any way Lessee's obligations in the second preceding sentence or Lessor's rights in the immediately preceding sentence, if the Lessee fails to return the Equipment to Lessor on or before the applicable Non-Appropriation Return Date pursuant to this Section 3.03, Lessee shall pay month-to-month

rent at the Contract Rate (or the Taxable Rate if then in effect) set forth in the affected Lease for each month or part thereof that Lessee fails to return the Equipment thereunder pursuant to this Section 3.03.

*Section 3.04. Conditions to Lessor's Performance.* (a) As a prerequisite to the performance by Lessor of any of its obligations pursuant to any Lease, Lessee shall deliver to Lessor, in form and substance satisfactory to Lessor, the following:

- (i) A fully completed Equipment Schedule, executed by Lessee;
- (ii) If an Escrow Account is to be established with respect to such Lease, an Escrow Agreement, substantially in the form attached hereto as *Exhibit I* and satisfactory to Lessor and executed by Lessee and by the Escrow Agent, and if a Restricted Account is to be established with respect to such Lease, a Restricted Account Agreement, substantially in the form attached hereto as *Exhibit J* and satisfactory to Lessor and executed by Lessee and Lessor;
- (iii) A certified copy of a resolution, ordinance or other official action of Lessee's governing body, substantially in the form attached hereto as *Exhibit C-1A* or *Exhibit C-1B*, as applicable, authorizing the execution and delivery of this Agreement and the applicable Related Documents entered into pursuant hereto and performance by Lessee of its obligations under this Agreement and the applicable Related Documents entered into pursuant hereto;
- (iv) A Certificate completed and executed by the Clerk or Secretary or other comparable officer of Lessee, substantially in the form attached hereto as *Exhibit C-2A* or *Exhibit C-2B*, as applicable, completed to the satisfaction of Lessor;
- (v) An opinion of counsel to Lessee, substantially in the form attached hereto as *Exhibit D*, and otherwise satisfactory to Lessor;
- (vi) Evidence of insurance as required by Section 7.02 hereof;
- (vii) All documents, including financing statements, affidavits, notices and similar instruments, which Lessor deems necessary or appropriate at that time pursuant to Section 6.02 hereof;
- (viii) A waiver or waivers of interest in the Equipment from any mortgagee or any other party having an interest in the real estate on which the Equipment will be located and/or landlord of the real estate on which the Equipment will be located;
- (ix) If Lessee has designated the Lease then being entered into as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code, a certificate substantially in the form attached hereto as *Exhibit G* executed by an authorized official of Lessee;

(x) A copy of the Form 8038-G with respect to the Lease then being entered into, fully completed and executed by Lessee;

(xi) In the event that Lessee is to be reimbursed for expenditures that it has paid more than sixty (60) days prior to the Commencement Date for the Lease then being entered into, evidence of the adoption of a reimbursement resolution or other official action covering the reimbursement from tax exempt proceeds of expenditures incurred not more than sixty (60) days prior to the date of such resolution;

(xii) If any items of Equipment are motor vehicles, properly completed certificates of title or certificates of origin (or applications therefor) for such vehicles with Lessor's interest noted thereon in accordance with the instructions of Lessor;

(xiii) Copies of invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale (if title to Equipment has passed to Lessee), to the extent required by Section 5.01(b) hereof;

(xiv) Wire instructions for payments to be made to Vendors and Form W-9 from each such Vendor; and

(xv) Such other items as are set forth in the related Equipment Schedule or are reasonably required by Lessor.

(b) In addition to satisfaction of the conditions set forth in subsection (a) of this Section 3.04, the performance by Lessor of any of its obligations under the Related Documents shall be subject to: (i) no Material Adverse Change having occurred since the date of this Agreement, (ii) no Event of Default having occurred and then be continuing under any Lease then in effect, (iii) no Event of Non-appropriation under any Lease then in effect having occurred or being threatened, and (iv) no Lease having been terminated as the result of the occurrence of an Event of Default or an Event of Non-appropriation.

(c) Subject to satisfaction of the foregoing, (i) Lessor will pay the Acquisition Amount for Equipment described in an Equipment Schedule to the Vendor or reimburse Lessee for its prior expenditures with respect to such Equipment (subject to satisfaction of Section 3.04(a)(xi) hereof), upon receipt of the documents described in Sections 5.01(a) and (b) hereof; or (ii) if an Escrow Account is being established with respect to the related Lease, Lessor will deposit the Acquisition Amount for Equipment described in the applicable Equipment Schedule with the Escrow Agent to be held and disbursed pursuant to the related Escrow Agreement; or (iii) if a Restricted Account is being established with respect to the related Lease, Lessor will deposit the Acquisition Amount for Equipment described in the applicable Equipment Schedule into such Restricted Account to be held and disbursed pursuant to the related Restricted Account Agreement.

(d) This Agreement is not a commitment by Lessor or Lessee to enter into any Lease not currently in existence, and nothing in this Agreement shall be construed to impose any obligation

upon Lessor or Lessee to enter into any proposed Lease, it being understood that whether Lessor or Lessee enters into any proposed Lease shall be a decision solely within their respective discretion.

(e) Lessee will cooperate with Lessor in Lessor's review of any proposed Lease. Without limiting the foregoing, Lessee will provide Lessor with any documentation or information Lessor may request in connection with Lessor's review of any proposed Lease. Such documentation may include, without limitation, documentation concerning the Equipment and its contemplated use and location and documentation or information concerning the financial status of Lessee and other matters related to Lessee.

(f) In the event of any conflict in terms between an Equipment Schedule and this Agreement, the terms of the Equipment Schedule shall control in the interpretation of the Lease created thereby.

*Section 3.05. Evidence of Filing Form 8038-G to Lessor's Performance.* As soon as it is available, with respect to each Lease under this Agreement, Lessee shall provide to Lessor evidence that it, or its paid preparer, has filed the Form 8038-G for the applicable Lease with the Internal Revenue Service by delivering to Lessor proof of mailing such Form 8038-G. Notwithstanding anything to the contrary in this Agreement or the applicable Lease, it shall not be an Event of Default hereunder or thereunder if Lessee does not provide to Lessor evidence that it (or its paid preparer) filed the Form 8038-G for the applicable Lease with the Internal Revenue Service.

#### ARTICLE IV

*Section 4.01. Rental Payments.* Subject to Section 3.03 of this Agreement, Lessee shall promptly pay Rental Payments, in lawful money of the United States of America, to Lessor on the Rental Payment Dates and in such amounts as provided in each Lease. If any Rental Payment or other amount payable hereunder is not paid within ten (10) days of its due date, Lessee shall pay an administrative late charge of five percent (5%) of the amount not timely paid or the maximum amount permitted by law, whichever is less. Lessee shall not permit the Federal Government to guarantee any Rental Payments under any Lease. Rental Payments consist of principal and interest components as more fully detailed on the Payment Schedule for each Lease, the interest on which begins to accrue as of the Commencement Date for each such Lease.

*Section 4.02. Interest and Principal Components.* A portion of each Rental Payment is paid as, and represents payment of, interest, and the balance of each Rental Payment is paid as, and represents payment of, principal. Each Lease shall set forth the principal and interest components of each Rental Payment payable thereunder during the applicable Lease Term.

*Section 4.03. Rental Payments to Constitute a Current Expense of Lessee.* Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments under each Lease shall constitute a current expense of Lessee payable solely from its general fund or other funds that are legally available for that purpose and shall not in any way be construed to be a debt

of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained in this Agreement or in any Lease constitute a pledge of the general tax revenues, funds or moneys of Lessee.

*Section 4.04. Rental Payments to be Unconditional.* Except as provided in Section 3.03 of this Agreement, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in each Lease shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Equipment, disputes with the Lessor or the Vendor of any Equipment, any defects, malfunctions, breakdowns or infirmities in the Equipment or any accident, condemnation or unforeseen circumstances or failure of any Vendor to deliver any Equipment or otherwise perform any of its obligations for whatever reason, including bankruptcy, insolvency, reorganization or any similar event with respect to any Vendor.

*Section 4.05 Tax Covenants.* Lessee agrees that it will not take any action that would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for Federal income tax purposes, nor will it omit to take or cause to be taken, in a timely manner, any action, which omission would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for Federal income tax purposes. In connection with the foregoing, Lessee hereby agrees that (a) so long as any Rental Payments under a Lease remain unpaid, moneys on deposit in the Project Account related to such Lease shall not be used in a manner that will cause such Lease to be classified as an “arbitrage bond” within the meaning of Section 148(a) of the Code; and (b) Lessee shall rebate, from funds legally available for the purpose, an amount equal to excess earnings on the Project Account to the Federal Government if required by, and in accordance with, Section 148(f) of the Code, and make the determinations and maintain the records required by the Code.

*Section 4.06. Event of Taxability.* Upon the occurrence of an Event of Taxability with respect to a Lease, the interest component of Rental Payments under such Lease and any charge on Rental Payments or other amounts payable based on the Contract Rate shall have accrued and be payable at the Taxable Rate applicable to such Lease retroactive to the date as of which the interest component is determined by the Internal Revenue Service to be includible in the gross income of the owner or owners thereof for Federal income tax purposes (which retroactive date for such Lease shall be the earliest date as of which the interest component of any Rental Payment for such Lease is deemed includible in the gross income of the owner or owners thereof for Federal income tax purposes, which may be earlier than the date of delivery of such determination by the Internal Revenue Service), and Lessee will pay such additional amount as will result in the owner receiving the interest component at the Taxable Rate identified in the related Lease.

For purposes of this Section, “*Event of Taxability*” means the circumstance of the interest component of any Rental Payment paid or payable pursuant to a Lease becoming includible for Federal income tax purposes in an owner’s gross income as a consequence of any act, omission or event whatsoever, including but not limited to the matters described in the immediately succeeding sentence, and regardless of whether the same was within or beyond the control of Lessee. An

Event of Taxability shall be presumed to have occurred upon (a) the receipt by Lessor or Lessee of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency or other written correspondence which legally holds that the interest component of any Rental Payment under such Lease is includable in the gross income of the owner thereof; (b) the issuance of any public or private ruling of the Internal Revenue Service that the interest component of any Rental Payment under such Lease is includable in the gross income of the owner thereof; or (c) receipt by Lessor or Lessee of a written opinion of a nationally recognized firm of attorneys experienced in matters pertaining to the tax-exempt status of interest on obligations issued by states and their political subdivisions, selected by Lessor and acceptable to Lessee, to the effect that the interest component of any Rental Payment under a Lease has become includable in the gross income of the owner thereof for Federal income tax purposes. For all purposes of this definition, an Event of Taxability shall be deemed to occur on the date as of which the interest component of any Rental Payment is deemed includable in the gross income of the owner thereof for Federal income tax purposes.

*Section 4.07. Mandatory Prepayment.* If the Acquisition Amount for a Lease is deposited into a Project Account, any funds not applied to Equipment Costs and remaining in such Project Account on the earlier of (a) the expiration of the applicable Acquisition Period, (b) the date on which Lessee delivers to the Lessor the executed Disbursement Request to effect the final disbursement to pay (or reimburse) Equipment Costs from such Project Account or (c) a termination of the Project Account as provided in the Project Account Agreement, shall be applied by Lessor on each successive Rental Payment Date thereafter to pay all or a portion of the Rental Payment due and owing in the succeeding twelve (12) months and any remaining amounts shall be applied by Lessor as prepayment to the applicable unpaid Principal Portion of Rental Payments owing under the related Lease in the inverse order of the Rental Payment Dates.

## ARTICLE V

*Section 5.01. Acquisition, Delivery Installation and Acceptance of Equipment.* (a) With respect to each Lease, Lessee shall order the Equipment to be acquired and financed thereunder, cause the Equipment to be delivered and installed at the location specified in such Lease and pay any and all delivery and installation costs and other Equipment Costs in connection therewith. When the Equipment listed in a Lease has been delivered and installed, Lessee shall promptly accept such Equipment and evidence said acceptance by executing and delivering to Lessor a Final Acceptance Certificate in the form attached hereto as *Exhibit E*; *provided, however*, that if a Project Account has been established with respect to such Lease as provided in Section 3.04 hereof, Lessee shall execute and deliver Disbursement Requests to the Lessor pursuant to the related Project Account Agreement for the purpose of effecting disbursements from the Project Account to pay (or reimburse) Equipment Costs for the Equipment so acquired and installed pursuant to such Lease. In connection with the execution and delivery by Lessee to Lessor of the final Disbursement Request under the applicable Project Account Agreement for a Lease, Lessee shall deliver to Lessor a "Final Acceptance Certificate" in the form attached hereto as *Exhibit E*.

(b) (i) With respect to a Lease entered into without a Project Account Agreement, Lessee shall deliver to Lessor copies of invoices (and proof of payment of such invoices if Lessee seeks

reimbursement for prior expenditures) and bills of sale (if title to such Equipment has passed to Lessee) relating to each item of Equipment accepted by Lessee. Lessee shall execute and deliver to Lessor an Equipment Schedule pursuant to Section 3.04(a)(i) within 5 business days of receipt from Lessor, subject to satisfaction of the conditions set forth in Section 3.04.

(ii) With respect to a Lease entered into with a Project Account Agreement, Lessor shall prepare an Equipment Schedule. In connection with the execution and delivery of the related Project Account Agreement, Lessee shall execute and deliver to Lessor such Equipment Schedule pursuant to Section 3.04(a)(i) within 5 business days of receipt, subject to satisfaction of the conditions set forth in Section 3.04. Lessee shall deliver to Lessor together with each Disbursement Request invoices (and proof of payment of such invoices if Lessee seeks reimbursement for prior expenditures) and bills of sale or other evidence of title transfer to Lessee relating to each item of Equipment accepted by Lessee as evidenced by such Disbursement Request. Once approved, Lessor shall deliver such Disbursement Request to the Escrow Agent for disbursement from the Escrow Account in accordance with the Escrow Agreement or to the Lessee for disbursement from the Restricted Account in accordance with the Restricted Account Agreement, as the case may be.

*Section 5.02. Quiet Enjoyment of Equipment.* So long as no Event of Default exists under the related Lease, neither Lessor nor any entity claiming by, through or under Lessor, shall interfere with Lessee's quiet use and enjoyment of the Equipment during the Lease Term under such Lease.

*Section 5.03. Location; Inspection.* Once installed, no item of the Equipment will be moved or relocated from the location (or the base location with respect to motor vehicles) specified for it in the related Lease without Lessor's prior written consent, which consent shall not be unreasonably withheld. Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the property where the Equipment is located for the purpose of inspecting the Equipment.

*Section 5.04. Use and Maintenance of the Equipment.* Lessee shall not install, use, operate or maintain the Equipment (or cause the Equipment to be installed, used, operated or maintained) improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by the related Lease. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative or judicial body, including, without limitation, all anti-money laundering laws and regulations; *provided* that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Equipment or its interest or rights under the related Lease.

Lessee agrees that it shall maintain, preserve and keep the Equipment in good repair and working order, in a condition comparable to that recommended by the manufacturer. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Equipment. In all cases, Lessee agrees to pay any costs necessary for the manufacturer to re-certify the

Equipment as eligible for manufacturer's maintenance upon the return of the Equipment to Lessor as provided for in Sections 3.03 and 12.02(b) of this Agreement.

Lessee shall not alter any item of Equipment or install any accessory, equipment or device on an item of Equipment if that would impair any applicable warranty, the originally intended function or the value of that Equipment. All repairs, parts, accessories, equipment and devices furnished, affixed to or installed on any Equipment, excluding temporary replacements, shall thereupon become subject to the security interest of Lessor.

## ARTICLE VI

*Section 6.01. Title to the Equipment.* During the Lease Term under each Lease, and so long as Lessee is either not in default under Article XII hereof or an Event of Non-appropriation has not occurred, all right, title and interest in and to each item of the Equipment under the related Lease shall be vested in Lessee immediately upon its acceptance of each item of Equipment, subject to the terms and conditions hereof and under the applicable Lease. Lessee shall at all times protect and defend, at its own cost and expense, its title, and Lessor's first priority security interest, in and to the Equipment (and Lessor's other Collateral as defined in Section 6.02 hereof) from and against all claims, liens and legal processes of its creditors, and keep all Equipment (and such other Collateral) free and clear of all such claims, liens and processes. Upon the occurrence of an Event of Default under a Lease or upon termination of a Lease pursuant to Section 3.03 hereof, full and unencumbered legal title to the Equipment shall, at Lessor's option, pass to Lessor, and Lessee shall have no further interest therein. In addition, upon the occurrence of such an Event of Default or such termination, Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of such legal title to Lessor and the termination of Lessee's interest therein, and upon request by Lessor shall deliver possession of the Equipment to Lessor in accordance with Section 3.03 or 12.02 of this Agreement, as applicable. Upon payment of all amounts due and owing under a Lease by Lessee in accordance with Section 10.01 hereof (including upon payment of all Rental Payments and other amounts payable under such Lease), Lessor's security interest or other interest in the Equipment under such Lease shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the termination of Lessor's security interest in the Equipment subject to the related Lease.

*Section 6.02. Security Interest.* As additional security for the payment and performance of all of Lessee's obligations under each Lease, upon the execution of such Lease, Lessee hereby grants to Lessor a first priority security interest constituting a first lien on (a) the Equipment subject to such Lease, (b) moneys and investments held from time to time in any related Project Account and (c) any and all proceeds of any of the foregoing, including, without limitation, insurance proceeds (collectively, the "*Collateral*"). Upon the execution of each Lease, Lessee authorizes Lessor to file (and Lessee agrees to execute, if applicable) such notices of assignment, chattel mortgages, financing statements and other documents, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain Lessor's security interest in the Collateral, including, without limitation, such financing statements with respect to personal property and fixtures under Article 9 of the Uniform Commercial Code in effect in the State and treating such Article 9 as applicable to entities such as Lessee.

*Section 6.03. Personal Property; No Encumbrances.* Lessee agrees that the Equipment is deemed to be and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Lessee shall not create, incur, assume or permit to exist any mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on any of the real estate where the Equipment under a Lease is or will be located or enter into any agreement to sell or assign or enter into any sale/leaseback arrangement of such real estate without the prior written consent of Lessor; *provided*, that if Lessor or its assigns is furnished with a waiver of interest in the Equipment under such Lease acceptable to Lessor or its assigns in their respective discretion from any party taking an interest in any such real estate prior to such interest taking effect, such consent shall not be unreasonably withheld.

## ARTICLE VII

*Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges.* Lessee shall keep the Equipment under each Lease free of all levies, liens, and encumbrances except those created by such Lease. The parties to this Agreement contemplate that the Equipment under each Lease will be used for a governmental or proprietary purpose of Lessee and that the Equipment will therefore be exempt from all property taxes. If the lease, sale, purchase, operation, use, possession or acquisition of any Equipment is nevertheless determined to be subject to taxation, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to such Equipment. Lessee shall pay all utility and other charges incurred in the operation, use and maintenance of the Equipment. Lessee shall pay such taxes, assessments or charges as the same may become due; *provided* that, with respect to any such taxes, assessments or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the Lease Term under the affected Lease. During the Lease Term under each Lease, Lessor will not claim ownership of the Equipment thereunder for the purposes of any tax credits, benefits or deductions with respect to such Equipment.

*Section 7.02. Insurance.* Lessee shall, during the Lease Term under each Lease, maintain or cause to be maintained (a) casualty insurance naming Lessor and its assigns as loss payee and insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, and any other risks reasonably required by Lessor, in an amount at least equal to the greater of (i) the then applicable Casualty Value of the Equipment under such Lease or (ii) the replacement cost of such Equipment; (b) liability insurance naming Lessor and its assigns as additional insured that protects Lessor from liability for bodily injury and property damage coverage (i) in such coverage amounts as may be required by Lessor for the applicable Equipment or (ii) in such minimum coverage amounts as may be agreed upon between Lessor and Lessee in connection with the execution and delivery of a Lease, and in all events under clauses (a) and (b) issued in form and amount satisfactory to Lessor and by an insurance company that is authorized to do business in the State and having a financial strength rating by A.M. Best Company of "A-" or better; and (c) worker's compensation coverage as required by the laws of the State. Notwithstanding the foregoing, Lessee may self-insure against

the risks described in clauses (a) and/or (b) through a government pooling arrangement, self-funded loss reserves, risk retention program or other self-insurance program, in each case with Lessor's prior consent (which Lessor may grant, withhold or deny in its sole discretion) and *provided* that Lessee has delivered to Lessor such information as Lessor may request with respect to the adequacy of such self-insurance to cover the risks proposed to be self-insured and otherwise in form and substance acceptable to Lessor. In the event Lessee is permitted, at Lessor's sole discretion, to self-insure as provided in this Section 7.02, Lessee shall provide to Lessor a self-insurance letter in substantially the form attached hereto as *Exhibit F*. Lessee shall furnish to Lessor evidence of such insurance or self-insurance coverage throughout the Lease Term under each Lease. Lessee shall not cancel or modify such insurance or self-insurance coverage in any way that would affect the interests of Lessor without first giving written notice thereof to Lessor at least thirty (30) days in advance of such cancellation or modification.

*Section 7.03. Risk of Loss.* Whether or not covered by insurance or self-insurance, Lessee hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Equipment under any Lease from any cause whatsoever, and no such loss of or damage to or liability arising from the Equipment under any Lease shall relieve Lessee of the obligation to make the Rental Payments or to perform any other obligation under any Lease. Whether or not covered by insurance or self-insurance, Lessee hereby agrees to reimburse Lessor (to the fullest extent permitted by applicable law, but only from legally available funds) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Lessor, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into this Agreement or any Lease or any of the transactions contemplated hereby or thereby, (b) the ordering, acquisition, ownership, use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Equipment under any Lease, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment under any Lease resulting in damage to property or injury to or death to any person, and/or (d) the breach of any covenant of Lessee under or in connection with this Agreement or any Lease or any material misrepresentation provided by Lessee under or in connection with this Agreement or any Lease. The provisions of this Section 7.03 shall continue in full force and effect notwithstanding the full payment of all obligations under any or all Leases or the termination of the Lease Term under any or all Leases for any reason.

*Section 7.04. Advances.* In the event Lessee shall fail to keep the Equipment in good repair and working order or shall fail to maintain any insurance required by Section 7.02 hereof, Lessor may, but shall be under no obligation to, maintain and repair the Equipment or obtain and maintain any such insurance coverages, as the case may be, and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the then current Original Term or Renewal Term under the affected Lease, and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the due date until paid at a rate equal to the Contract Rate (or the Taxable Rate if then in effect) *plus* five percent (5%) per annum or the maximum amount permitted by law, whichever is less.

## ARTICLE VIII

*Section 8.01. Damage, Destruction and Condemnation.* If, prior to the termination of the Lease Term under the related Lease, (a) the Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, (i) Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment or such part thereof and any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee or (ii) Lessee shall exercise its option to prepay the obligations under the affected Lease in accordance with Section 10.01(b) hereof.

If Lessee elects to replace any item of the Equipment (the "*Replaced Equipment*") pursuant to this Section 8.01, the replacement equipment (the "*Replacement Equipment*") shall be new or of a quality type, utility and condition at least as good as the Replaced Equipment and shall be of equal or greater value than the Replaced Equipment as determined and approved by Lessor in its sole discretion. Lessee shall grant to Lessor a first priority security interest in any such Replacement Equipment. Lessee shall represent, warrant and covenant to Lessor that each item of Replacement Equipment is free and clear of all claims, liens, security interests and encumbrances, excepting only those liens created by or through Lessor, and shall provide to Lessor any and all documents as Lessor may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lessor evidencing Lessor's security interest in the Replacement Equipment. Lessor and Lessee hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute "Equipment" for purposes of this Agreement and the related Lease. Lessee shall complete the documentation of Replacement Equipment on or before the next Rental Payment Date after the occurrence of a casualty event, or be required to prepay the obligations under the related Lease with respect to the damaged Equipment for an amount that shall be determined and approved by Lessor in its sole discretion.

For purposes of this Article VIII, the term "*Net Proceeds*" shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys' fees, incurred in the collection thereof.

*Section 8.02. Insufficiency of Net Proceeds.* If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 8.01, Lessee shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) pay or cause to be paid to Lessor the amount of the then applicable Casualty Value under the related Lease *plus* all other amounts then owing thereunder, and, upon such payment, the applicable Lease Term shall terminate and Lessor's security interest in the Equipment shall terminate as provided in Section 6.01 hereof. The amount of the Net Proceeds remaining, if any, after completing such

repair, restoration, modification or improvement or after paying such Casualty Value for such Lease *plus* all other amounts then owing thereunder shall be retained by Lessee. If Lessee shall make any payments pursuant to this Section 8.02, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article IV.

## ARTICLE IX

*Section 9.01. Disclaimer of Warranties.* Lessor makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of any of the Equipment under each Lease, or any other warranty or representation, express or implied, with respect thereto and, as to Lessor, Lessee's acquisition of the Equipment under each Lease shall be on an "as is" basis. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, any Lease, any Equipment or the existence, furnishing, functioning or Lessee's use of any item, product or service provided for in this Agreement or any Lease.

*Section 9.02. Vendor Agreements; Warranties.* Lessee covenants that it shall not in any material respect amend, modify, rescind or alter any Vendor Agreement for any Lease without the prior written consent of Lessor. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term under each Lease, so long as Lessee shall not be in default under such Lease, to assert from time to time whatever claims and rights (including without limitation warranties) relating to the Equipment that Lessor may have against a Vendor. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the applicable Vendor of the Equipment and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor with respect to any Lease, including the right to receive full and timely Rental Payments and other payments under each Lease. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties relating to any of the Equipment under each Lease.

## ARTICLE X

*Section 10.01. Prepayment; Payment in Full.*

(a) *Prepayment.* Lessee shall have the option to prepay or satisfy all, but not less than all, of its obligations under a Lease, at the following times and upon the following terms:

(i) *Optional Prepayment.* From and after the date specified (if any) in the applicable Payment Schedule (the "*Prepayment Option Commencement Date*"), on the Rental Payment Dates specified in such Payment Schedule, upon not less than thirty (30) days prior written notice, and upon payment in full of the sum of all Rental Payments then due under the related Lease *plus* the then applicable Prepayment Price, which may include a prepayment premium on the unpaid Outstanding Balance as set forth in such Payment Schedule *plus* all other amounts then owing thereunder; or

(ii) *Casualty or Condemnation Prepayment.* In the event of substantial damage to or destruction or condemnation of substantially all of the Equipment listed in a Lease, on the day specified in Lessee's notice to Lessor of its exercise of the prepayment option (which shall be the earlier of the next Rental Payment Date or sixty (60) days after the casualty event) upon payment in full to Lessor of (A) in the event such prepayment occurs on a Rental Payment Date, the sum of (i) all Rental Payments then due under such Lease plus (ii) the then applicable Casualty Value for such Lease plus (iii) all other amounts then owing thereunder OR, (B) in the event such prepayment for such Lease occurs on a date other than a Rental Payment Date, the sum of (i) the applicable Casualty Value shown on the Payment Schedule for such Lease for the Rental Payment Date immediately preceding the applicable date of such prepayment (or if the date of such prepayment occurs prior to the first Rental Payment Date for such Lease, the earliest Casualty Value shown on the related Payment Schedule) plus (ii) accrued interest at the Contract Rate (or the Taxable Rate if then in effect) on the Outstanding Balance as of the Rental Payment Date immediately preceding the applicable date of such prepayment from such Rental Payment Date (or if the date of such prepayment occurs prior to the first Rental Payment Date, the Commencement Date for such Lease) to the date of such prepayment plus (iii) all other amounts then owing thereunder.

(b) *Payment in Full.* Upon the expiration of the Lease Term under a Lease, the payment in full of all Rental Payments then due and all other amounts then owing under such Lease by Lessee to Lessor.

(c) Lessor's security interests in and to the related Equipment under such Lease will be terminated and Lessee will own such Equipment free and clear of Lessor's security interest in such Equipment after either (i) payment of either (A) the applicable Prepayment Price and all other amounts then owing under a Lease in accordance with Section 10.01(a)(i) of this Agreement or (B) the applicable Casualty Value and all other amounts then owing under a Lease in accordance with Section 10.01(a)(ii) of this Agreement or (ii) upon the expiration of the Lease Term of a Lease and payment in full of all Rental Payments then due and all other amounts then owing thereunder in accordance with Section 10.01(b) of this Agreement.

## ARTICLE XI

*Section 11.01. Assignment by Lessor.* (a) Lessor's right, title and interest in and to the Rental Payments and any other amounts payable by Lessee under any and all of the Leases and the Project Account Agreement relating to any Lease, its security interest in the Equipment subject to the related Lease and in any related Project Account, and all proceeds therefrom (collectively, with respect to each Lease and related Project Account Agreement, the "*Related Assigned Rights*"), may be assigned and reassigned by Lessor at any time, in whole or in part, to one or more assignees or sub-assignees without the necessity of obtaining the consent of Lessee; *provided*, that any such assignment, transfer or conveyance (i) shall be made only to investors each of whom Lessor reasonably believes is a "*qualified institutional buyer*" as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, or an "*accredited investor*" as defined in Section 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933,

as amended, and in either case is purchasing the Related Assigned Rights (or any interest therein) for its own account with no present intention to resell or distribute such Related Assigned Rights (or interest therein), subject to each investor's right at any time to dispose of the Related Assigned Rights (or any interest therein) as it determines to be in its best interests, (ii) shall not result in more than 35 owners of the Related Assigned Rights with respect to a Lease or the creation of any interest in the Related Assigned Rights with respect to a Lease in an aggregate principal component that is less than \$100,000 and (iii) shall not require Lessee to make Rental Payments, to send notices or otherwise to deal with respect to matters arising under the Related Assigned Rights with respect to a Lease with or to more than one Lease Servicer (as such term is defined below), and any trust agreement, participation agreement or custodial agreement under which multiple ownership interests in the Related Assigned Rights with respect to a Lease are created shall provide the method by which the owners of such interests shall establish the rights and duties of a single entity, trustee, owner, servicer or other fiduciary or agent acting on behalf of all of the assignees (herein referred to as the "*Lease Servicer*") to act on their behalf with respect to the Related Assigned Rights with respect to a Lease, including with respect to the exercise of rights and remedies of Lessor on behalf of such owners upon the occurrence of an Event of Default or an Event of Non-appropriation under the related Lease. Lessor and Lessee hereby acknowledge and agree that the restrictions and limitations on transfer as provided in this Section 11.01 shall apply to the first and subsequent assignees and sub-assignees of any of the Related Assigned Rights with respect to a Lease (or any interest therein).

(b) Unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance permitted by this Section 11.01 shall be effective as against Lessee until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, participation interests, trust certificates or partnership interests with respect to the Rental Payments payable under a Lease, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank, trust company or other entity that acts as the Lease Servicer for such Lease. Notices of assignment provided pursuant to this Section 11.01(b) shall contain a confirmation of compliance with the transfer requirements imposed by Section 11.01(a) hereof. During the Lease Term under each Lease, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees or Lease Servicer last designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor or any Vendor. Assignments in part may include, without limitation, assignment of all of Lessor's security interest in and to the Equipment listed in a particular Lease and all rights in, to and under the Lease related to such Equipment and all of Lessor's security interest in and to the related Project Account, or all rights in, to and under the related Project Account Agreement.

(c) If Lessor notifies Lessee of its intent to assign a Lease, Lessee agrees that it shall execute and deliver to Lessor a Notice and Acknowledgement of Assignment with respect to such Lease, substantially in the form of *Exhibit H* attached hereto, within five (5) business days after its receipt of such request.

*Section 11.02. Assignment and Subleasing by Lessee.* **None of Lessee's right, title and interest in, to and under this Agreement, any Lease or any portion of the Equipment, any Project Account Agreement or Project Account related thereto may be assigned, encumbered or subleased by Lessee for any reason, and any purported assignment, encumbrance or sublease without Lessor's prior written consent shall be null and void.**

## ARTICLE XII

*Section 12.01. Events of Default Defined.* Any of the following events shall constitute an "Event of Default" under a Lease:

(a) Failure by Lessee to (i) pay any Rental Payment or other payment required to be paid under any Lease within ten (10) days of the date when due as specified therein, (ii) maintain insurance as required under such Lease (including Section 7.02 of this Agreement, which is incorporated therein), or (iii) observe and perform any covenant, condition or agreement on its part to be observed or performed under Section 6.01 or 6.02 hereof for any Lease;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement contained in this Agreement or any Lease on its part to be observed or performed, other than as referred to in subsection (a) above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; *provided* that, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

(c) Any statement, representation or warranty made by Lessee in or pursuant to this Agreement or any Lease or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made;

(d) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which Lessee is an obligor, if such default (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by Lessor or any affiliate of Lessor (including, without limitation, the occurrence of any Event of Default under any other Lease), or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregated amount in excess of \$100,000.00;

(e) Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief

entered against it under applicable Federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization, moratorium or insolvency proceeding; or

(f) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator for Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of thirty (30) consecutive days.

*Section 12.02. Remedies on Default.* Whenever any Event of Default exists under any Lease, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps with respect to any or all Leases with an Event of Default under this Agreement, including those with an Event of Default pursuant to Section 12.01(d) (each a “*Defaulted Lease*”):

(a) By written notice to Lessee, Lessor may declare all Rental Payments payable by Lessee pursuant to one or more Defaulted Leases and other amounts payable by Lessee under each such Defaulted Lease to the end of the then current Original Term or Renewal Term to be immediately due and payable;

(b) With or without terminating the Lease Term under any one or more Defaulted Leases, Lessor may enter the premises where the Equipment listed in any one or more of each such Defaulted Leases is located and retake possession of such Equipment or require Lessee at Lessee’s expense to promptly return any or all of such Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease such Equipment or, for the account of Lessee, sublease such Equipment, continuing to hold Lessee liable, but solely from legally available funds, for the difference between (i) the Rental Payments payable by Lessee pursuant to each such Defaulted Lease and other amounts related to each such Defaulted Lease that are payable by Lessee to the end of the then current Original Term or Renewal Term, as the case may be, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lessor in exercising its remedies under each such Defaulted Lease, including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing such Equipment and all brokerage, auctioneer’s and attorney’s fees), subject, however, to the provisions of Section 3.03 of this Agreement. The exercise of any such remedies respecting any such Event of Default under any such Defaulted Lease shall not relieve Lessee of any other liabilities under each such Defaulted Lease or any other Lease that Lessor determines not to treat as a Defaulted Lease or with respect to the Equipment listed therein;

(c) Lessor may terminate the Project Account Agreement relating to any one or more of such Defaulted Leases and apply any proceeds in each such applicable Project

Account thereunder to the Rental Payments scheduled to be paid under any one or more of such Defaulted Leases as Lessor shall determine; and/or

(d) Lessor may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under any one or more of such Defaulted Leases or each such Project Account Agreement relating thereto or as a secured party in any or all of the Equipment subject to any one or more of such Defaulted Leases or with respect to the related Project Account for one or more of such Defaulted Leases.

*Section 12.03. No Remedy Exclusive.* No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder and/or under any Lease now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article XII it shall not be necessary to give any notice other than such notice as may be required in this Article XII.

*Section 12.04. Application of Moneys.* Any net proceeds from the exercise of any remedy under this Agreement, including the application specified in Section 12.02(b)(ii) (after deducting all expenses of Lessor in exercising such remedies including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing Equipment and all brokerage, auctioneer's or attorney's fees), shall be applied as follows:

(a) If such remedy is exercised solely with respect to a single Defaulted Lease, Equipment listed in such Defaulted Lease or rights thereunder, then to amounts due pursuant to such Defaulted Lease and to other amounts related to such Defaulted Lease or such Equipment.

(b) If such remedy is exercised with respect to more than one Defaulted Lease, Equipment listed in more than one Defaulted Lease or rights under more than one Defaulted Lease, then to amounts due pursuant to one or more of such Defaulted Leases as Lessor shall determine and distribute on a pro rata basis or on such other basis as Lessor shall determine.

### ARTICLE XIII

*Section 13.01. Notices.* All notices, certificates or other communications under this Agreement or any Lease shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, or delivered by overnight courier, or sent by facsimile transmission (with electronic confirmation) to the parties hereto at the addresses immediately above the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party) and to any assignee at its address as it appears on the registration books maintained by Lessee.

*Section 13.02. Binding Effect.* This Agreement and each Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

*Section 13.03. Severability.* In the event any provision of this Agreement or any Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof or thereof.

*Section 13.04. Amendments, Changes and Modifications.* This Agreement and each Lease may only be amended by Lessor and Lessee in writing.

*Section 13.05. Execution in Counterparts.* This Agreement and each Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; *provided* that only Counterpart No. 1 of each Lease (including the terms and provisions of this Agreement incorporated therein by reference) shall constitute chattel paper for purposes of the applicable Uniform Commercial Code.

*Section 13.06. Applicable Law; Venue; Waiver of Jury Trial.* This Agreement and each Lease shall be governed by and construed in accordance with the laws of the State. The parties hereto consent and submit to the jurisdiction of the State and venue in any state or Federal court of such State for the purposes of any suit, action or other proceeding arising in connection with this Agreement or any Lease, and each party expressly waives any objections that it may have to the venue of such courts. The parties hereto expressly waive any right to trial by jury in any action brought on or with respect to this Agreement or any Lease.

*Section 13.07. Captions.* The captions or headings in this Agreement and in each Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement or any Lease.

*Section 13.08. No Advisory or Fiduciary Relationship.* In connection with all aspects of each transaction contemplated by this Agreement and each Lease thereunder (including in connection with any amendment, waiver or other modification hereof or of any other related document), the Lessee acknowledges and agrees that: (a) (i) the transactions regarding this Agreement and each Lease thereunder provided by the Lessor and any affiliate thereof are arm's-length commercial transactions between the Lessee, on the one hand, and the Lessor and its affiliates, on the other hand, (ii) the Lessee has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Lessee is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement and each Lease thereunder and by the other related documents; (b) (i) the Lessor and its affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Lessee, or any other person and (ii) neither the Lessor nor any of its affiliates has any obligation to the Lessee with respect to the transactions contemplated by this Agreement and each Lease thereunder except those obligations expressly set forth herein and in the other related documents; and (c) the Lessor and its affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Lessee, and neither the Lessor nor any of its affiliates has any obligation to disclose any of such interests to the Lessee. To the fullest extent permitted by law,

the Lessee, hereby waives and releases any claims that it may have against the Lessor or any of its affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated by this Agreement and each Lease thereunder.

*Section 13.09. Entire Agreement.* The parties agree that this Agreement and each Lease hereunder constitutes the final and entire agreement between the parties superseding all conflicting terms or provisions of any prior proposals, term sheets, solicitation documents, requests for proposals, award notices, approval letters or any other agreements or understandings between the parties.

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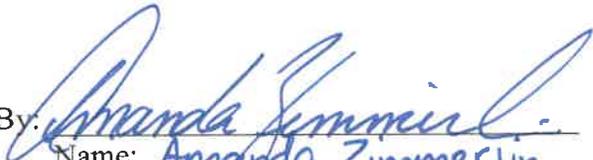
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Lessor and Lessee have caused this Master Equipment Lease/Purchase Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

LESSOR:  
Bank of America, National Association  
11333 McCormick Road  
Hunt Valley II  
M/C MD5-032-07-05  
Hunt Valley, MD 21031  
Attention: Contract Administration  
Fax No.: (443) 541-3057

LESSEE:  
City of Clayton  
6996 Taywood Road  
Englewood, OH 45322  
Attention: Kevin Schweitzer  
Fax No.: 937-836-6773

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By:   
Name: Amanda Zimmerlin  
Title: City Manager

## EQUIPMENT SCHEDULE NO. 1 - GENERAL EQUIPMENT

Re: Master Equipment Lease/Purchase Agreement, dated as of July 25, 2022, between Bank of America, National Association, a national banking association, as Lessor, and City of Clayton, as Lessee

1. *Defined Terms.* All terms used herein have the meanings ascribed to them in the above-referenced Master Equipment Lease/Purchase Agreement (the “*Agreement*”).

2. *Equipment.* For purposes of the Lease created hereby, the following items of Equipment are hereby included under this Equipment Schedule together with all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto as provided in the Agreement:

Three (3) Dump Trucks

3. *Payment Schedule.*

(a) *Rental Payments; Commencement Date.* The Rental Payments shall be in such amounts and payable on such Rental Payment Dates as set forth in the Payment Schedule attached to this Equipment Schedule and incorporated herein by this reference, subject to adjustment upon the occurrence of an Event of Taxability as provided in Section 4.06 of the Agreement. Lessee’s obligation to pay Rental Payments under the Lease created hereby shall commence on the earlier of (i) the date on which the Equipment listed in this Equipment Schedule is accepted by Lessee in the manner described in Section 5.01 of the Agreement, as evidenced by the Final Acceptance Certificate executed by Lessee and substantially in the form of *Exhibit E* attached to the Agreement, or (ii) the date on which the Acquisition Amount is deposited in a Project Account for the purpose of acquiring and installing the Equipment listed in this Equipment Schedule pursuant to Section 3.04(c) of the Agreement (the earlier of such two dates being herein referred to as the “*Commencement Date*”).

(b) *Prepayment Price Schedule.* The Prepayment Price on each Rental Payment Date shall be the amount set forth for such Rental Payment Date in the “Prepayment Price” column of the Payment Schedule attached to this Equipment Schedule *plus* all Rental Payments then due (including the Rental Payment due on such Rental Payment Date) *plus* all other amounts then owing under this Equipment Schedule.

4. *Representations, Warranties and Covenants.* Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Agreement (particularly Section 2.01 thereof) are true and correct as though made on the Commencement Date. Lessee further represents and warrants that (a) no Material Adverse Change has occurred since the dated date of the Agreement; (b) no Event of Default has occurred and is continuing under any Lease currently in effect; (c) no Event of Non-appropriation under any Lease currently in effect has occurred or is threatened; (d) no Lease has been terminated as the result of the occurrence of an Event of Default or an Event of Non-appropriation; (e) the governing body of Lessee has authorized the execution and delivery of the Agreement and this Equipment Schedule; (f) the Equipment listed in this Equipment Schedule is essential to the functions of Lessee or to the services Lessee provides its citizens; (g) Lessee has an immediate need for, and expects to make immediate use of, substantially all such Equipment, which will be used by Lessee only for the purpose of performing one or more of Lessee's governmental or proprietary functions consistent with the permissible scope of its authority; and (h) Lessee expects and anticipates adequate funds to be available for all future payments or rent due after the current budgetary period.

5. *The Lease.* The terms and provisions of the Agreement (other than to the extent that they relate solely to other Equipment Schedules or Equipment listed on other Equipment Schedules) are hereby incorporated into this Equipment Schedule by reference and made a part hereof.

6. *Acquisition Amount.* The Acquisition Amount that Lessor shall cause to be deposited into the Restricted Account in connection with this Equipment Schedule is \$787,497.00. It is expected that by eighteen (18) months from the date of this Equipment Schedule No. 1, Lessee will have taken possession of all items of Equipment shown above and that the Lessee's final Disbursement Request pursuant to the Restricted Account Agreement will be signed by Lessee, approved by Lessor and delivered to the Lessee on or before eighteen (18) months from the date of this Equipment Schedule.

7. *Acquisition Period.* The Acquisition Period applicable to this Equipment Schedule shall end at the conclusion of the 18th month following the date hereof.

8. *Lease Term.* The Lease Term shall consist of the Original Term and five (5) consecutive Renewal Terms, with the final Renewal Term ending on July 26, 2027, subject to earlier termination pursuant to the Agreement.

9. *Registration.* Any Equipment that is a motor vehicle is to be registered and titled as follows:

- (a) *Registered Owner:* City of Clayton
- (b) *Lienholder:* Bank of America, National Association  
Bank of America Plaza  
600 Peachtree Street NE, 11<sup>th</sup> Floor  
Atlanta, GA 30308-2265

Lessee shall be responsible for the correct titling of all Equipment leased hereunder. Lessee will cause the original Certificates of Title to be delivered to Lessor for retention in Lessor's files throughout the Lease Term of the Lease created hereby.

Dated: July 25, 2022

LESSOR:  
Bank of America, National Association  
11333 McCormick Road  
Hunt Valley II  
M/C MD5-032-07-05  
Hunt Valley, MD 21031  
Attention: Contract Administration  
Fax No.: (443) 541-3057

LESSEE:  
City of Clayton  
6996 Taywood Road  
Englewood, OH 45322  
Attention: Kevin Schweitzer

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By:   
Name: Amanda Zimmerlin  
Title: City Manager

Counterpart No. \_\_\_\_\_ of \_\_\_\_\_ manually executed and serially numbered counterparts. To the extent that the Lease created hereby constitutes chattel paper (as defined in the applicable Uniform Commercial Code), no security or ownership interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

**EXHIBIT B**

**FORM OF PAYMENT SCHEDULE**

Rental Payment Date	Rental Payment Amount	Interest Portion	Principal Portion	Outstanding Balance	Prepayment Price [including prepayment premium; if applicable]	Casualty Value [including casualty premium; if applicable]
7/25/2022				\$787,497.00	N/A	\$795,371.97
7/25/2023	\$172,887.50	\$25,121.16	\$147,766.34	\$639,730.66	N/A	\$646,127.97
7/25/2024	\$172,887.50	\$20,407.41	\$152,480.09	\$487,250.57	N/A	\$492,123.08
7/25/2025	\$172,887.50	\$15,543.29	\$157,344.21	\$329,906.36	\$329,906.36	\$329,906.36
7/25/2026	\$172,887.50	\$10,524.02	\$162,363.48	\$167,542.88	\$167,542.88	\$167,542.88
7/25/2027	\$172,887.50	\$5,344.62	\$167,542.88	\$0.00		

*Contract Rate; Taxable Rate.* The Contract Rate for this Equipment Schedule is 3.19% per annum. The Taxable Rate for this Equipment Schedule is 3.98% per annum.

*Prepayment Option Commencement Date.* For purposes of Section 10.01 of the Agreement, the Prepayment Option Commencement Date for this Equipment Schedule is July 25, 2025.

LESSOR:  
Bank of America, National Association

LESSEE:  
City of Clayton

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By:   
Name: Amanda Zimmerlin  
Title: City Manager

**INCUMBENCY AND AUTHORIZATION CERTIFICATE (AGREEMENT)**

The undersigned, a duly elected or appointed and acting City Clerk of City of Clayton (“Lessee”) certifies as follows:

A. The following listed persons are duly elected or appointed and acting officials of Lessee (the “Officials”) in the capacity set forth opposite their respective names below and the facsimile signatures below are true and correct as of the date hereof; and

B. THE OFFICIALS ARE DULY AUTHORIZED, ON BEHALF OF LESSEE, TO NEGOTIATE, EXECUTE AND DELIVER THE MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT DATED AS OF JULY 25, 2022 (THE “AGREEMENT”) AND SEPARATE EQUIPMENT SCHEDULES RELATING THERETO FROM TIME TO TIME AS PROVIDED IN THE AGREEMENT (COLLECTIVELY, THE “EQUIPMENT SCHEDULES”) AND THE RESTRICTED ACCOUNT AGREEMENT, EACH BY AND BETWEEN LESSEE AND BANK OF AMERICA, NATIONAL ASSOCIATION (“LESSOR”), ALL DOCUMENTS RELATED THERETO AND DELIVERED IN CONNECTION THEREWITH, AND ANY FUTURE MODIFICATION(S) OR AMENDMENTS THEREOF (COLLECTIVELY, THE “OPERATIVE AGREEMENTS”), AND THE OPERATIVE AGREEMENTS EACH ARE THE BINDING AND AUTHORIZED AGREEMENTS OF LESSEE, ENFORCEABLE IN ALL RESPECTS IN ACCORDANCE WITH THEIR RESPECTIVE TERMS.

Name of Official	Title	Signature
Amanda Zimmerlin _____ _____	City Manager _____ _____	 _____ _____

DATED: JULY 25, 2022

BY:   
NAME: BARBARA SEIM  
TITLE: Clerk of Council

(THE SIGNER OF THIS CERTIFICATE CANNOT BE LISTED ABOVE AS AUTHORIZED TO EXECUTE THE OPERATIVE AGREEMENTS.)

**LAW OFFICE OF MARTINA M. DILLON, ESQ.**

7501 Paragon Road, Suite A

Dayton, Ohio 45459

Phone: 937-434-1908

[martina@mdillonlaw.com](mailto:martina@mdillonlaw.com)

Bank of America, National Association

11333 McCormick Road

Hunt Valley II

M/C MD5-032-07-05

Hunt Valley, MD 21031

Attention: Contract Administration

Re: Equipment Schedule No. 1, dated July 25, 2022, to Master Equipment Lease/Purchase Agreement, dated as of July 25, 2022, by and between Bank of America, National Association, as Lessor, and the City of Clayton as Lessee

Ladies and Gentlemen:

As legal counsel to the City of Clayton ("*Lessee*"), I have examined (a) an executed counterpart of that certain Master Equipment Lease/Purchase Agreement, dated as of July 25, 2022 (the "*Agreement*") and Exhibits thereto, by and between Bank of America, National Association, as lessor ("*Lessor*"), and Lessee; (b) an executed counterpart of Equipment Schedule No. 1, dated July 25, 2022, by and between Lessor and Lessee, which incorporates by reference the terms and provisions of the Agreement (such Equipment Schedule No. 1 together with such incorporated terms and provisions are herein referred to collectively as the "*Equipment Schedule*"), has attached the Payment Schedule with respect thereto (the "*Payment Schedule*") executed by Lessee, and provides for the lease of certain property listed in the Equipment Schedule (the "*Equipment*"); (c) an executed counterpart of that certain Restricted Account Agreement dated as of July 25, 2022 (the "*Restricted Account Agreement*"), by and between Lessor and Lessee (d) an executed counterpart of the ordinances or resolutions of Lessee with respect to authorization of the transaction contemplated by the Agreement, the Equipment Schedule, the Restricted Account Agreement and documents related thereto; and (e) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. The Agreement, the Equipment Schedule, including the terms and provisions of the Agreement incorporated therein by reference, the related Payment Schedule, the Restricted Account Agreement and the documents relating thereto are herein collectively referred to as the "*Transaction Documents*".

Based on the foregoing, I am of the following opinions:

1. Lessee is a city duly organized and existing under the laws of the State, and is a political subdivision of the State within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the "*Code*") and the obligations of Lessee under the

Lease will constitute an obligation of Lessee within the meaning of Section 103(a) of the Code, notwithstanding Section 103(b) of the Code.

2. Lessee has the requisite power and authority to lease and acquire the Equipment and to execute and deliver the Transaction Documents and to perform its obligations under the Transaction Documents.

3. The Transaction Documents have been duly authorized, approved, executed and delivered by and on behalf of Lessee and the Transaction Documents are legal, valid and binding obligations of Lessee, enforceable against Lessee in accordance with their respective terms, except to the extent limited by State and Federal law affecting creditor's remedies and by bankruptcy, reorganization, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights.

4. The authorization, approval, execution and delivery of the Transaction Documents and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, procurement and public bidding laws and all other applicable State or Federal laws.

5. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Transaction Documents or the security interest of Lessor or its assigns, as the case may be, in the Equipment under the Lease, the Restricted Account or other Collateral thereunder.

All capitalized terms herein shall have the same meanings as in the Transaction Documents, unless otherwise provided herein. Lessor and its successors and assigns are entitled to rely on this opinion.

Printed Name: Martina M. Dillon, Esq.  
Firm: Law Office of Martina M. Dillon, Esq.  
Address: 7501 Paragon Rd., Suite A, Dayton,  
Ohio 45459  
Telephone No.: 937-434-1908

Signature:   
Dated: July 25, 2022

## BANK QUALIFICATION CERTIFICATE

The undersigned, a duly authorized official of City of Clayton (the "*Lessee*") certifies in connection with Equipment Schedule No. 1, dated as of July 25, 2022, which incorporates by reference the terms and provisions of that certain Master Equipment Lease/Purchase Agreement dated as of July 25, 2022 (such Equipment Schedule and incorporated terms and provisions are herein referred to as the "*Lease*"), each by and between Bank of America, National Association and Lessee, as follows:

1. The obligations evidenced by the Lease are not "private activity bonds" as defined in Section 141 of the Internal Revenue Code of 1986, as amended (the "*Code*");

2. The Lessee hereby designates the principal components of the Rental Payments payable under the Lease as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code;

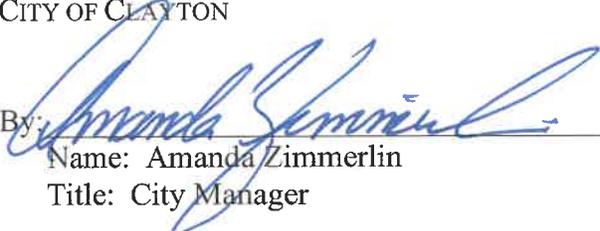
3. The reasonably anticipated amount of tax-exempt obligations (other than private activity bonds, treating qualified 501(c)(3) bonds as not being private activity bonds) which will be issued by the Lessee (and all entities treated as one issuer with the Lessee, and all subordinate entities whose obligations are treated as issued by the Lessee) during the current calendar year will not exceed \$10,000,000; and

4. Not more than \$10,000,000 of obligations issued by the Lessee during the current calendar year has been designated for purposes of Section 265(b)(3) of the Code.

DATE: July 25, 2022

LESSEE:

CITY OF CLAYTON

By:   
Name: Amanda Zimmerlin  
Title: City Manager

## RESTRICTED ACCOUNT AGREEMENT

July 25, 2022

TO: Bank of America, National Association  
11333 McCormick Road  
Hunt Valley II  
Mail Code: MD5-032-07-05  
Hunt Valley, MD 21031]  
Attn: Contract Administration

Ladies and Gentlemen:

The City of Clayton (“**Lessee**”) and Bank of America, National Association (“**Lessor**”) are entering into that certain Equipment Schedule No. 1, dated July 25, 2022 (the “**Schedule**”), which incorporates the terms of the Master Equipment Lease/Purchase Agreement, dated as of July 25, 2022, between Lessee and Lessor (the “**Master Equipment Lease**” and, together with the Schedule, the “**Lease**”). Pursuant to the Lease, Lessor agrees, among other things, to fund certain sums for the purpose of financing Lessee’s purchase of certain equipment. In order to induce Lessor to enter into the Lease and fund the amounts contemplated under the Lease, and as a condition for Lessor’s entering into the Lease and funding such amounts, Lessor has requested that Lessee execute this letter agreement (the “**Agreement**”). For purposes of this Agreement, “**Treasurer**” means the Director of Finance, as the fiscal agent charged under the laws of the State of Ohio with the responsibility for the receipt, custody and disbursement of the funds of Lessee. All capitalized terms herein shall have the same meanings as in the Lease unless otherwise provided herein.

With reference to the foregoing facts, the parties agree as follows:

1. The Treasurer shall establish for the benefit of Lessee an account entitled the “**City of Clayton Schedule 1 Equipment Acquisition**” (the “**Account**”) to serve as the acquisition account for this equipment lease financing under the Lease. The Treasurer shall do this, and shall provide satisfactory evidence of the establishment of the Account to Lessor, on or before the funding of the amounts contemplated under the Lease. Withdrawals and disbursements from the Account may be made only in accordance with paragraphs 3 and 4 of this Agreement and the Lease. Lessee shall bear all costs to administer the Account.

2. The Treasurer shall place in the Account all amounts that Lessor funds under the Lease. The Account shall be terminated at the earliest of (i) the final distribution of amounts in the Account, (ii) the date on which Lessee executes a Final Acceptance Certificate or (iii) written notice given by Lessor of the occurrence of an Event of Default under the Lease or termination of the Lease due to an Event of Non-appropriation. Upon termination of the Account, any funds remaining in the Account shall be distributed by the Treasurer to the Lessor in order for the Lessor to apply such funds to amounts owed by Lessee under the Lease in accordance with Section 4.07

of the Master Equipment Lease.

3. The Treasurer may withdraw cash from the Account only (a) upon receipt by Lessee and the Treasurer of a disbursement request in the form of Exhibit A that is attached hereto (the “**Disbursement Request**”), signed by Lessor and in the amount specified in such Disbursement Request; or (b) as set forth in Section 2 above. No further consent or direction from Lessee is needed for disbursement under the Account.

4. The Treasurer may invest sums held in the Account in such investments as shall comply with all federal, state and local laws, regulations and ordinances governing investment of such funds by Lessee. Accordingly, the Lessor shall not be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to the investment or reinvestment of all or any portion of the moneys in the Account, and Lessee agrees to and does hereby release the Lessor from any such liability, cost, expenses, loss or claim. The Treasurer shall maintain his records so as to reflect the security interest of Lessor in and to such investments or portion thereof. All interest and proceeds on such investments will accrue to Lessee’s benefit as Lessee’s full compensation for its duties hereunder, subject to the security interest granted herein by Lessee to Lessor.

5. By signing below on Lessee’s behalf, the Treasurer also accepts the obligations imposed on him under this Agreement. The Treasurer shall receive, hold, and disburse cash from the Account for the benefit of Lessor and Lessee in accordance with the terms of this Agreement and the Lease. Within 30 days after the end of each calendar quarter, and on any other day that Lessor may reasonably request, the Treasurer shall deliver to Lessor a statement in reasonable detail showing, as of the date of the statement, (a) the amount of cash held in the Account; (b) the amount of interest earned on the amounts in the Account; (c) the investments made from the cash in the Account and the dividends, interest, and profits thereon; and (d) the payee of all amounts disbursed from the Account.

6. This Agreement and the security interest in the Collateral granted to Lessor under this Agreement (see paragraph 7 below) secure the prompt payment and performance of Lessee’s obligations under the Lease and this Agreement (the “**Obligations**”).

7. Lessee pledges and grants to Lessor a first priority and exclusive security interest in and to the Account, all sums contained in the Account, any investment of funds in the Account, and all products and proceeds from those investments (collectively, the “**Collateral**”) as additional security for the Obligations. In addition to Lessor’s other rights and remedies under this Agreement, the Lease, and applicable law, and to the extent allowed by law, (a) Lessee grants Lessor all rights and remedies relating to the Collateral of a secured party under the Uniform Commercial Code as in effect on the date hereof in the State of Ohio (the “**UCC**”); (b) Lessee shall execute and deliver, concurrently with the execution and delivery of this Agreement, one or more UCC-1 Financing Statements reflecting Lessor’s security interest in the Collateral under this Agreement; and (c) no application of all or any part of the cash from the Account, pursuant to this Agreement or the Lease, will in any way release, satisfy, or discharge any of the unpaid balance of Obligations, except to the extent applied to the Obligations by Lessor. This Agreement constitutes notice to Lessee and the Treasurer of Lessor’s security interest in the Collateral under the UCC. No delay or omission by Lessor in exercising any of its rights or remedies waives or impairs any of Lessor’s rights or remedies under this Agreement or the Lease.

8. Lessee shall cooperate with Lessor and shall execute and deliver, or cause to be executed and delivered, all financing statements, payment notices and other documents and instruments. Lessee shall take such other lawful action as Lessor reasonably requests from time to time to accomplish and satisfy the provisions and purposes of this Agreement.

9. All notices, requests, and demands to be made hereunder to the parties must be made in the manner set forth in, and, in the case of Lessor and Lessee, must be directed to the addresses set forth in, the Master Equipment Lease. All notices to be sent to the Treasurer must be sent to the following address:

Treasurer  
City of Clayton  
6996 Taywood Road  
Englewood, OH 45322  
Attn: Kevin Schweitzer, Director of Finance

10. No change, waiver, release, discharge, withdrawal, revocation, or termination of this Agreement is effective and enforceable unless evidenced by written a document signed by the party against which enforcement of the change, waiver, discharge, withdrawal, revocation, or termination is sought, and then only to the extent specifically provided in that document.

11. This Agreement is governed by, and is to be construed in accordance with, the laws of the State of Ohio.

12. The rights and remedies under this Agreement are limited to the extent necessary to avoid invalidation or to make this Agreement legal and enforceable. If any provision of this Agreement is invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remainder of this Agreement will not be affected, prejudiced, or disturbed by the partial invalidity, illegality, or unenforceability.

13. Lessee shall not assign any right or duty with respect to the Account, this Agreement, or any funds in the Account without Lessor's prior written consent. Lessor may assign its security interest granted in this Agreement to any assignee permitted under Section 11.01 of the Master Equipment Lease.

[Remainder of page intentionally left blank; signature page follows]

If the foregoing is acceptable, please execute below where indicated.

Very truly yours,

**CITY OF CLAYTON**

By:   
Name: Amanda Zimmerlin  
Title: City Manager

**AGREED AND ACCEPTED:**

Treasurer

By:   
Name: Kevin Schweitzer  
Title: Director of Finance

**BANK OF AMERICA, NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**(to Restricted Account Agreement)**

**DISBURSEMENT REQUEST NO. \_\_\_\_\_**

I, the undersigned, hereby certify that I am the duly qualified and acting officer of the Lessee identified below. On Lessee's behalf, I hereby request a disbursement in the amount of \$ \_\_\_\_\_ with respect to the Equipment listed below, which is subject to Equipment Schedule No. 1, dated July 25, 2022 (the "**Equipment Schedule**"), which incorporates the terms of the Master Equipment Lease/Purchase Agreement, dated as of July 25, 2022, between Lessee and Bank of America, National Association (the "**Master Equipment Lease**" and, together with the Schedule, the "**Lease**"):

Disbursement Amounts:

Payee's Name and Address	Invoice Number	Dollar Amount	Purpose
<Payee's Name> <Payee Address 1> <Payee Address 2> <Payee Address 3>  <Payee Bank Name*> <Payee Bank ABA/Routing*> <Payee Bank Account No*> <Payee Account Name*>  <*Payee Address and Payee Bank information is required.>	<invoice list OR "see attached" with a spreadsheet>	< invoice amount>	<general description of equipment; ex "police cruiser">
<Payee's Name> <Payee Address 1> <Payee Address 2> <Payee Address 3>  <Payee Bank Name*> <Payee Bank ABA/Routing*> <Payee Bank Account No*> <Payee Account Name*>  <*Payee Address and Payee Bank information is required.>	<invoice list OR "see attached" with a spreadsheet>	<invoice amount>	<general description of equipment; ex "police cruiser">

The undersigned hereby certifies as follows:

1. Lessee has incurred an obligation in the stated amount. This obligation is a proper charge against the Account for costs relating to the Equipment identified in the Lease and has not been paid. Attached hereto is a copy of the original invoice with respect to this obligation.

2. The undersigned has no notice of any vendor's, mechanic's, or other liens or rights to liens, chattel mortgages, conditional sales contracts, or security interest that should be satisfied or discharged before the obligation is paid.

3. This requisition contains no item representing payment on account or any retained percentages that Lessee is, at the date hereof, entitled to retain.

4. The Equipment is insured in accordance with the Lease.

5. No Event of Default under the Lease, and no event that with notice or lapse of time, or both, would become an Event of Default, has occurred and is continuing at the date hereof. No Event of Non-appropriation has occurred or is threatened with respect to the Lease.

6. The disbursement will occur during the Acquisition Period set forth in the Lease.

7. No material adverse change in Lessee's or any guarantor's financial condition has occurred since the date of the Master Equipment Lease.

8. Lessee hereby reaffirms that the representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof.

9. Lessee has verified and confirmed that the information in this Disbursement Request regarding each Vendor, including their respective name, address and wiring instructions, (collectively, the "Vendor Information") is true and correct and the Lessor can rely on Lessee's verification and confirmation of the accuracy of such Vendor Information. Lessee hereby acknowledges and agrees that any call-back to verify the disbursement instructions pursuant to this Disbursement Request shall be made to Lessee only and Lessor shall have no obligation to call-back any Vendor listed above.

All capitalized terms herein shall have the same meanings as in the Lease unless otherwise provided herein.

LESSEE: City of Clayton

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Disbursement Authorized:  
**Bank of America, National Association**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_