

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING EXECUTION OF A LEASE PURCHASE AGREEMENT TO PROVIDE SHORT-TERM FINANCING UNDER AMENDMENT 78 TO THE ARKANSAS CONSTITUTION FOR THE PURCHASE OF ATHLETIC EQUIPMENT FOR THE NORTH LITTLE ROCK PARKS AND RECREATION DEPARTMENT; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.**

WHEREAS, the City of North Little Rock, Arkansas (the “City”) is authorized and empowered under the provisions of Amendment No. 78 to the Arkansas Constitution (“Amendment No. 78) and Act No. 1808 of 2001 (codified as Title 14, Chapter 78 of the Arkansas Code of 1987 Annotated) (the “Act”) to issue notes and to expend the proceeds thereof to finance all or a portion of the costs of acquiring, constructing, installing and renting real property or tangible personal property having an expected useful life of more than one year; and

WHEREAS, the North Little Rock Parks and Recreation Department (“P&R Department”) needs to replace certain athletic equipment (the “Property”) at its facilities, and the City of North Little Rock (the “City”) desires to enter into a certain Lease-Purchase Agreement (the “Agreement”) by and between the City and Government Capital Corporation for the purpose of financing the purchase of said equipment at a cost of \$76,744.80 plus applicable interest at 3.889% (see proposal letter attached hereto as Exhibit “A”); and

WHEREAS, the City wishes to designate the obligations evidenced by the Agreement as “short-term financing obligations” authorized by Amendment 78 and the Act; and

WHEREAS, the obligations evidenced by the Lease-Purchase Agreement, along with all other “short-term financing obligations” issued by the City equal five percent or less of the assessed value of taxable property located within the City as determined by the last tax assessment completed prior to the issuance of the Agreement; and

WHEREAS, the City further designates the Agreement as a “qualified tax exempt obligation” of the City for the purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the North Little Rock City Council (the “City Council”) hereby finds that the Property is real or tangible personal property having a useful life of more than one year. The City Council further finds that the sum of the principal amount of the Agreement and the outstanding principal amount of the City’s other outstanding promissory notes do not exceed five percent (5%) of the assessed value of taxable property located

within the City as determined by the last tax assessment completed before the issuance of the Agreement.

SECTION 2: That the Mayor and City Clerk are hereby authorized to enter into a Lease-Purchase Agreement (substantially similar to Exhibit "B" attached hereto) with Government Capital Corporation for the purpose of financing the purchase of athletic equipment for the Parks and Recreation Department in the amount of \$76,744.80 plus applicable interest and costs.

SECTION 3: That the City desires to designate the obligations evidenced by the Lease-Purchase Agreement by and between the City and Government Capital Corporation as "short-term financing obligations" authorized by Amendment 78 of the Arkansas Constitution and Act 1808 of the 2001 Acts of Arkansas.

SECTION 4: That the form and content of all documents required to finalize the lease-purchase transactions shall be approved by the Office of the City Attorney.

SECTION 5: That the provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall be declared or held invalid, such invalidity shall not affect the remainder of the sections, phrases or provisions.

SECTION 6: All ordinances or resolutions of the City in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 7: It is hereby found and determined that the purchase of athletic equipment for facilities at the Parks and Recreation Department will promote physical fitness, and that the City and the residents thereof can best be served by the adoption of this Ordinance; THEREFORE, an emergency is hereby declared to exist, and this Ordinance being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

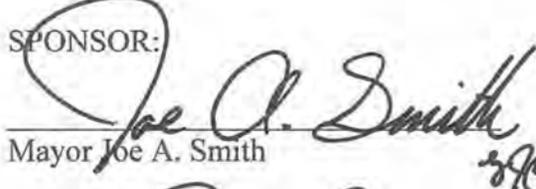
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\_\_\_\_\_

Mayor Joe A. Smith

SPONSOR:

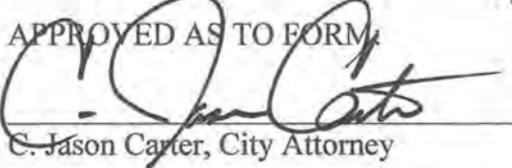
ATTEST:

  
\_\_\_\_\_  
Mayor Joe A. Smith

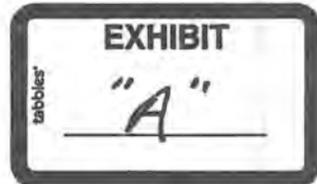
\_\_\_\_\_

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
C. Jason Carter, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/b



**GOVERNMENT CAPITAL**  
CORPORATION

November 22, 2016

**City of North Little Rock**  
120 Main Street  
North Little Rock, AR 72115

RE: Equipment Purchase

Dear Sirs,

Thank you for the opportunity to present the following proposal for financing:

ISSUER	City of North Little Rock
FINANCING STRUCTURE	Pursuant to Amendment 78 of the Arkansas Constitution and Act 1808 of 2001
EQUIPMENT COST	\$76,744.80
TERM	60 Months
PAYMENT AMOUNT	\$1,422.95
LEASE RATE	3.889%
PAYMENTS BEGINNING	1/1/17 & Monthly Thereafter

The above terms are subject to qualifications under 265(b)3 of the Internal Revenue Code, underwriting approval and mutually acceptable documentation. Proposed funding considers the total cost of borrowing and includes issuance costs at .010175 of the transaction to cover documentation, underwriting and closing.

All terms subject to change if funding occurs more than fourteen (14) days from proposal date.

Our finance programs are flexible and my goal is customer delight. If you have any questions regarding other payment terms, frequencies or conditions, please do not hesitate to call.

With Best Regards,

*Tara Clawson*

Tara Clawson  
Vice President Public Finance  
Direct 817-722-0242  
Cell 817-988-9880  
[Tara.clawson@govcap.com](mailto:Tara.clawson@govcap.com)

The transaction described herein is an arm's length, commercial transaction between you and Government Capital Corporation ("GCC"), in which GCC: (i) is acting solely for its own financial and other interests that may differ from yours; (ii) is not acting as your municipal advisor or financial advisor, and has no fiduciary duty to you with respect to this transaction; and (iii) is not recommending that you take an action with respect to this transaction.



## ARKANSAS LEASE-PURCHASE AGREEMENT

THIS ARKANSAS LEASE-PURCHASE AGREEMENT No. «Deal\_Number» (hereafter referred to as "Agreement") dated as of «AgreementContract\_Date» by and between «Lessor\_Name», a «Lessor\_State» corporation (herein referred to as "Lessor"), and «Lessee», a political subdivision or agency of the State of «Lessee\_State» (hereinafter referred to as "Lessee").

WITNESSETH: In consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto agree as follows:

**1. Term and Payments.** Pursuant to Amendment 78 of the Arkansas Constitution and Act 1808 of 2001, adopted by the 83rd General Assembly of the State of Arkansas, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the property described in Exhibit A hereto (hereinafter, with all replacement parts, substitutions, proceeds, increases, additions, accessions, repairs and accessories incorporated therein or affixed thereto, referred to as the "Property") for the amounts to be paid in the sums (the "Lease Payments") and on the dates (the "Lease Payment Dates") set forth in Exhibit B hereto. Except as specifically provided in Section 2 hereof, the obligation of the Lessee to make the Lease Payments called for in Exhibit B hereto shall be absolute and unconditional in all events and shall not be subject to any set-off, defense, counterclaim or recoupment for any reason. The term of the lease hereunder shall commence upon the dated date of the Exhibit B and shall continue until the end of the Lessee's current fiscal period and thereafter for such additional fiscal periods as are necessary to complete the anticipated total lease term as set forth in Exhibit B, unless earlier terminated as provided herein. Lessee's obligation to pay the Lease Payments shall, to the extent allowed by Amendment 78, be a general obligation of the Lessee, secured by the full faith and credit of the Lessee. The obligations of Lessee to make payment of the Lease Payments required under this Agreement, and to perform and observe the covenants and agreements contained herein, shall be absolute and unconditional in all events, except as expressly provided under this Agreement.

**2 Short-Term Financing Obligation.** Lessee hereby designates the obligations evidenced by this Agreement as "short-term financing obligations" authorized by Amendment 78 of the Arkansas Constitution and Act 1808 of the Acts of Arkansas 2001. The obligations evidenced by this Agreement along with all other "short-term financing obligations" issued by the Lessee equal 2.5% (two and one-half percent) or less of the assessed value of taxable property located within the municipality as determined by the last tax assessment completed prior to the issuance of this Agreement.

**3. Taxes.** In addition to the Lease Payments to be made pursuant to Section 1 hereof, Lessee agrees to indemnify and hold Lessor harmless from and against and to pay Lessor, as additional rent, on demand, an amount equal to all licenses, assessments, sales, use, real or personal property, gross receipts or other taxes, levies, imposts, duties or charges, if any, together with any penalties, fines, or interest thereon imposed against or on Lessor, Lessee or the Property by any governmental authority upon or with respect to the Property or the purchase, ownership, rental, possession, operation, return or sale of, or receipt of payments for, the Property, except any Federal or state income taxes, if any, payable by Lessor. Lessee may contest any such taxes prior to payment provided such contest does not involve any risk of sale, forfeiture or loss of the Property or any interest therein.

**4. Lessee's Covenants and Representations.** Lessee covenants and represents as follows:

(a) Lessee represents it has full power and authority to enter into this Agreement which has been duly authorized, executed, and delivered by Lessee and is a valid and binding obligation of Lessee enforceable in accordance with its terms, and all requirements for execution, delivery and performance of this Agreement have been, or will be, complied with in a timely manner;

(b) All Payments hereunder have been, and will be, duly authorized and paid when due out of funds then on hand and legally available for such purposes; Lessee will, to the extent permitted by State law and other terms and conditions of this Agreement, include in its budget for each successive fiscal period during the term of this Agreement a sufficient amount to permit Lessee to discharge all of its obligations hereunder, and Lessee has budgeted and available for the current fiscal period sufficient funds to comply with its obligations hereunder;

(c) There are no pending or threatened lawsuits or administrative or other proceedings contesting the authority for, authorization of performance of, or expenditure of funds pursuant to, this Agreement;

(d) Information supplied and statements made by Lessee in any financial statement or current budget prior to or contemporaneously with the Agreement are true and correct;

(e) Lessee has an immediate need for, and expects to make immediate use of, substantially all the Property, which need is not temporary or expected to diminish in the foreseeable future; specifically Lessee will not give priority or parity in the appropriation of funds for the acquisition or use of any additional property for purposes or functions similar to those of the Property.

(f) There are no circumstances presently affecting the Lessee that could reasonably be expected to alter its foreseeable need for the Property or adversely affect its ability or willingness to budget funds for the payment of sums due hereunder; and

(g) No lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been a party at any time during the past ten (10) years 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.

(h) The aggregate principal amount of all "short-term financing obligations" "outstanding and unpaid" (including the obligations under this Agreement), as those phrases are defined in Amendment 78 to the Arkansas Constitution and Act 1808 of 2001, will equal five percent (5%) or less of the assessed value of taxable property located within the boundaries of Lessee as determined by the last tax assessment completed prior to the issuance of the obligations to be issued;

(i) The Property acquired hereunder has an expected useful life of more than one (1) year;

(j) The referendum period during which the ordinance authorizing the execution of this Agreement may be challenged has expired;

(k) This obligation created under this Agreement has a term that does not exceed five (5) years in duration;

(l) The obligation created under this Agreement bears interest at a rate not in excess of that allowed under Amendment 78 and Act 1808 of 2001, adopted by the 83rd General Assembly of the State of Arkansas; and

(j) The referendum period during which the ordinance authorizing the execution of this Agreement may be challenged has expired;

- (k) This obligation created under this Agreement has a term that does not exceed five (5) years in duration;
- (l) The obligation created under this Agreement bears interest at a rate not in excess of that allowed under Amendment 78 and Act 1808 of 2001, adopted by the 83rd General Assembly of the State of Arkansas; and
- (m) The total annual principal and interest payments in each fiscal year on all outstanding obligations of Lessee under this Agreement shall be charged against and paid from the general revenues for such fiscal year.
- (n) Lessee will pay the Lease Payment Due by check, wire transfer, or ACH only.

**5. Use and Licenses.** Lessee shall pay and discharge all operating expenses and shall cause the Property to be operated by competent persons only. Lessee shall use the Property only for its proper purposes and will not install, use, operate or maintain the Property improperly, carelessly, or in violation of any applicable law, ordinance, rule or regulation of any governmental authority, or in a manner contrary to the nature of the Property or the use contemplated by its manufacturer. Lessee shall keep the property at the location stated on the Certificate of Acceptance executed by Lessee upon delivery of the Property until Lessor, in writing, permits its removal, and the Property shall be used solely in the conduct of the Lessee's operations. Lessee shall obtain, at its expense, all registrations, permits and licenses, if any, required by law for the installation and operation of the Property. Any license plates used on the Property shall be issued in the name of the Lessee. If a certificate of title is issuable with respect to the Property, it shall be delivered to the Lessor showing the interest of the Lessor.

**6. Maintenance.** Lessor shall not be obligated to make any repairs or replacements. At its own expense, Lessee shall service, repair and maintain the Property in as good condition, repair, appearance and working order as when delivered to Lessee hereunder, ordinary wear and tear from proper use alone excepted, and shall replace any and all parts thereof which may from time to time become worn out, lost, stolen, destroyed, or damaged beyond repair or rendered unfit for intended use, for any reason whatsoever, all of which replacements shall be free and clear of all liens, encumbrances and claims of others and shall become part of the Property and subject to this Agreement. Lessor may, at its option, discharge such costs, expenses and insurance premiums necessary for the repair, maintenance and preservation of the Property, and all sums so expended shall be due from Lessee in addition to rental payments hereunder.

**7. Alterations.**

(a) Lessee may, at its own expense, install or place in or on, or attach or affix to, the Property such equipment or accessories as may be necessary or convenient to use the Property for its intended purposes provided that such equipment or accessories do not impair the value or utility of the Property. All such equipment and accessories shall be removed by Lessee upon termination of this Agreement, provided that any resulting damage shall be repaired at Lessee's expense. Any such equipment or accessories not removed shall become the property of Lessor.

(b) Without the written consent of Lessor, Lessee shall not make any other alterations, modifications or improvements to the Property except as required or permitted hereunder. Any other alterations, modifications or improvements to the Property shall immediately become part of the Property, subject to the provisions hereof. Without the prior written consent of Lessor, Lessee shall not affix or attach any of the Property to any real property. The Property shall remain personal property regardless of whether it becomes affixed or attached to real property or permanently rests upon any real property or any improvement thereon.

**8. Liens.** Lessee shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, security interest, pledge, lien, charge, encumbrance or claim on or with respect to the Property, title thereto or any interest therein, except the respective rights of Lessor and Lessee hereunder.

**9. Damage to or Destruction of Property.** Lessee shall bear the entire risk of loss, damage, theft or destruction of the Property from any and every cause whatsoever, and no loss, damage, destruction or other event shall release Lessee from the obligation to pay the full amount of the rental payments or from any other obligation under this Agreement. In the event of damage to any item of the Property, Lessee will immediately place the same in good repair, with the proceeds of any insurance recovery applied to the cost of such repair. If Lessor determines that any item of Property is lost, stolen, destroyed or damaged beyond repair, Lessee, at the option of Lessee, will either (a) replace the same with like property in good repair or (b) on the next Lease Payment Date, pay Lessor (i) all amounts then owed by Lessee to Lessor under this Agreement, including the Lease Payment due on such date, and (ii) an amount equal to the applicable Option to Purchase Value set forth in Exhibit B.

**10. Insurance.** Lessee shall either be self-insured with regard to the Property or shall purchase and maintain insurance with regard to the Property. Lessee shall indicate on each Certificate of Acceptance executed in relation to this Agreement its election to be self-insured or company insured with regard to the Property listed on that Certificate of Acceptance. Whether Lessee is self-insured or company insured, Lessee shall, for the term of this Agreement, at its own expense, provide comprehensive liability insurance with respect to the Property, insuring against such risks, and such amounts as are customary for lessees of property of a character similar to the Property. In addition, Lessee shall, for the term of this Agreement, at its own expense, provide casualty insurance with respect to the Property, insuring against customary risks, coverage at all times not less than the amount of the unpaid principal portion of the Lease Payments required to be made pursuant to Section 1 as of the last preceding Payment Date specified in Exhibit B on which a Lease Payment was made. If insurance policies are provided with respect to the Property, all insurance policies shall be with insurers authorized to do business in the State where the Property is located and shall name both Lessor and Lessee as insureds as their respective interest may appear. Insurance proceeds from casualty losses shall be payable solely to the Lessor, subject to the provisions of Section 9. Lessee shall, upon request, deliver to Lessor evidence of the required coverages together with premium receipts, and each insurer shall agree to give Lessor written notice of non-payment of any premium due and ten (10) days notice prior to cancellation or alteration of any such policy. Lessee shall also carry and require any other person or entity working on, in or about the Property to carry workmen's compensation insurance covering employees on, in or about the Property. In the event Lessee fails, for any reason, to comply with the requirements of this Section, Lessee shall indemnify, save harmless and, at Lessee's sole expense, defend Lessor and its agents, employees, officers and directors and the Property against all risk of loss not covered by insurance.

**11. Indemnification.** Lessee shall indemnify, to the extent permitted by law, and save harmless Lessor and its agents, employees, officers and directors from and, at Lessee's expense, defend Lessor and its agents, employees, officers and directors against all liability, obligations, losses, damages, penalties, claims, actions, costs and expenses (including but not limited to reasonable attorneys' fees) of whatsoever kind or nature which in any way relate to or arise out of this Agreement or the ownership, rental, possession, operation, condition, sale or return of the Property. All amounts which become due from Lessee under this Section 11 shall be credited with any amounts received by the Lessor from insurance provided by the Lessee and shall be payable by Lessee within thirty (30) days following demand therefore by Lessor and shall survive the termination or expiration of this Agreement.

**12. No Warranty.** ALL WARRANTIES, PROMISES AND SERVICE AGREEMENTS, IF ANY, RELATING TO THE PROPERTY THAT THE MANUFACTURERS OR THE PARTY WHO SUPPLIED THE PROPERTY TO LESSOR (THE "VENDOR") HAVE MADE TO LESSOR IN CONNECTION WITH OR AS PART OF THE CONTRACT BY WHICH LESSOR ACQUIRED THE PROPERTY ARE HEREBY ASSIGNED TO LESSEE. Lessee may communicate with Vendor and receive an accurate and complete statement of all such warranties, promises and service agreements, if any. All claims or actions on any warranty so assigned shall be made or prosecuted by Lessee, at its sole expense, upon prior written notice to Lessor. Lessor may, but shall have no obligation whatsoever to participate in such claim or action on such warranty, at Lessor's expense. Any recovery under such a warranty shall be made payable jointly to Lessee and Lessor. Lessee acknowledges that Lessee has selected the Vendor and that Lessee has directed Lessor to acquire the Property from Vendor in connection with this Agreement. Lessee further acknowledges that this Agreement is a "Finance Lease" within the meaning of the Uniform Commercial Code and that Lessee is entitled to the Vendor's warranties and promises described above, if any. LESSOR HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND ASSUMES NO OBLIGATION WITH RESPECT TO THE TITLE, MERCHANTABILITY, CONDITION, QUALITY OR FITNESS OF THE PROPERTY DESCRIBED IN EXHIBIT A FOR ANY PARTICULAR PURPOSE OR THE CONFORMITY OF THE PROPERTY TO ANY SPECIFICATION OR PURCHASE ORDER, OR AS TO THE PROPERTY'S DESIGN, DELIVERY, INSTALLATION OR OPERATION. All such risks shall be borne by Lessee without in any way excusing Lessee from its obligations under this Agreement, and Lessor shall not be liable to Lessee for any damages on account of such risks.

**13. Option to Purchase.** Provided Lessee has complied with the terms and conditions of this Agreement, Lessee shall have the option to purchase not less than all of the Property which is then subject to this Agreement, "as is" at the payment date, for the Option to Purchase Values set forth in Exhibit B by giving written notice to Lessor not less than sixty (60) days prior to the date specified in Exhibit B for the exercise of such option; provided that upon Lessee's timely payment of all Lease Payments specified in Exhibit B, Lessee shall be deemed to have properly exercised its option to purchase the Property and shall be deemed to have acquired all of Lessor's right, title and interest in and to the Property, free of any lien, encumbrance or security interest except such liens, encumbrances or security interest as may be created, or permitted and not discharged, by Lessee but without other warranties. Payment of the applicable Option to Purchase Value shall occur on the applicable Lease Payment Date specified in Exhibit B hereto, at which time Lessor shall, unless not required hereunder, deliver to Lessee a quitclaim bill of sale transferring Lessor's interest in the Property to Lessee free from any lien, encumbrance or security interest except such as may be created, or permitted and not discharged, by Lessee but without other warranties. Upon Lessee's actual or constructive payment of the Option to Purchase Value and Lessor's actual or constructive delivery of a quitclaim bill of sale covering the Property, this Agreement shall terminate except as to obligations or liabilities accruing hereunder prior to such termination.

**14. Default and Lessor's Remedies.**

(a) The occurrence of one or more of the following events shall constitute an Event of Default, whether occurring voluntarily or involuntarily, by operation of law or pursuant to any order of any court or governmental agency:

(1) Lessee fails to make any payment hereunder when due or within ten (10) days thereafter;  
(2) Lessee fails to comply with any other covenant, condition or agreement of Lessee hereunder for a period of the ten (10) days after notice thereof;  
(3) Any representation or warranty made by Lessee hereunder shall be untrue in any material respect as of the date made;

(4) Lessee makes, permits or suffers any unauthorized assignment, transfer or other disposition of this Agreement or any interest herein, or any part of the Property or any interest therein; or

(5) Lessee becomes insolvent; or admits in writing its inability to pay its debts as they mature; or applies for, consents to or acquiesces in the appointment of a trustee, receiver or custodian for the Lessee or a substantial part of its property; or, in the absence of such application, consent or acquiescence, a trustee, receiver or custodian is appointed for Lessee or a substantial part of its property and is not discharged within sixty (60) days; or any bankruptcy, reorganization, debt arrangement, moratorium, or any proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding is instituted by or against Lessee and, if instituted against Lessee, is consented to or acquiesced in by Lessee or is not dismissed within sixty (60) days.

(b) Upon the occurrence of any Event of Default specified herein, Lessor may, at its sole discretion, exercise any or all of the following remedies:

(1) Enforce this Agreement by appropriate action to collect amounts due or to become due hereunder, by acceleration of otherwise, or to cause Lessee to perform its other obligations hereunder in which event Lessee shall be liable for all costs and expenses incurred by Lessor;

(2) Take possession of the Property, without demand or notice and without court order or any process of law, and remove and relet the same for Lessee's account, in which event Lessee waives any and all damages resulting therefrom and shall be liable for all costs and expenses incurred by Lessor in connection therewith and the difference, if any, between the amounts to be paid pursuant to Section 1 hereof and the amounts received and to be received by Lessor in connection with any such reletting;

(3) Terminate this Agreement and repossess the Property, in which event Lessee shall be liable for any amounts payable hereunder through the date of such termination and all costs and expenses incurred by Lessor in connection therewith;

(4) Sell the Property or any portion thereof for Lessor's account at public or private sale, for cash or credit, without demand on notice to Lessee of Lessor's intention to do so, or relet the Property for a term and a rental which may be equal to, greater than or less than the rental and term provided herein. If the proceeds from any such sale or rental payments received under a new agreement made for the periods prior to the expiration of this Agreement are less than the sum of (i) the costs of such repossession, sale, relocation, storage, reconditioning, reletting and reinstallation (including but not limited to reasonable attorneys' fees), (ii) the unpaid principal balance derived from Exhibit B as of the last preceding Lease Payment Date specified in Exhibit B, and (iii) any past due amounts hereunder (plus interest on such unpaid principal balance at the rate specified in Section 20 hereof, prorated to the date of such sale), all of which shall be paid to Lessor, Lessor shall retain all such proceeds and Lessee shall remain liable for any deficiency; or

(5) Pursue and exercise any other remedy available at law or in equity, in which event Lessee shall be liable for any and all costs and expenses incurred by Lessor in connection therewith. "Costs and expenses," as that term is used in this Section 14, shall mean, to the extent allowed by law: (i) reasonable attorneys' fees if this Agreement is referred for collection to an attorney not a salaried employee of Lessor or the holder of this Agreement; (ii) court costs and disbursements including such costs in the event of any action necessary to secure possession of the Property; and (iii) actual and reasonable out-of-pocket expenses incurred in connection with any repossession or foreclosure, including costs of storing, reconditioning and reselling the Property, subject to the standards of good faith and commercial reasonableness set by the applicable Uniform Commercial Code. Lessee waives all rights under all exemption laws.

(6) Under no circumstances shall Lessee be liable under this subsection 14 (b) for any amount in excess of the sum appropriated pursuant to Section 1 hereof for the previous and current fiscal years, less all amounts previously due and paid during such previous and current fiscal years from amounts so appropriated.

**15. Termination.** Unless Lessee has properly exercised its option to purchase pursuant to Section 13 hereof, lessee shall, upon the expiration of the term of this Agreement or any earlier termination hereof pursuant to the terms of this Agreement, deliver the Property to Lessor unencumbered and in at least as good condition and repair as when delivered to Lessee, ordinary wear and tear resulting from proper use alone excepted, by loading the Property, at Lessee's sole expense, on such carrier, or delivering the Property to such location, as Lessor shall provide or designate at or within a reasonable distance from the general location of the Property. If Lessee fails to deliver the Property to Lessor, as provided in this Section 15, on or before the date of termination of this Agreement, Lessee shall pay to Lessor upon demand, for the hold-over period, a portion of the total payment for the applicable period as set forth in Exhibit B prorated from the date of termination of this Agreement to the date Lessee either redelivers the Property to Lessor or Lessor repossesses the Property. Lessee hereby waives any right which it now has or which might be acquired or conferred upon it by any law or order of any court or other governmental authority to terminate this Agreement or its obligations hereunder, except in accordance with the express provisions hereof.

**16. Assignment.** Without Lessor's prior written consent, Lessee will not either (i) assign, transfer, pledge, hypothecate, grant any security interest in or otherwise dispose of this Agreement or the Property or any interest in this Agreement or the Property; or (ii) sublet or lend the Property or permit it to be used by anyone other than Lessee or Lessee's employees. Lessor may assign its rights, title and interest in and to this Agreement, the Property and any other documents executed with respect to this Agreement and/or grant or assign a security interest in this Agreement and the Property, in whole or in part. Any such assignees shall have all of the rights of Lessor under this Agreement. Subject to the foregoing, this Agreement inures to the benefit of and is binding upon the heirs, executors, administrators, successors and assigns of the parties hereto. No assignment or reassignment of any of Lessor's rights, title or interest in this Agreement or the Property shall be effective with regard to Lessee unless and until Lessee shall have received a copy of the document by which the assignment or reassignment is made, disclosing the name and address of such assignee. No further action will be required by Lessor or by Lessee to evidence the assignment. During the term of this Agreement, Lessee shall keep a complete and accurate record of all such assignments in form necessary to comply with the United States Internal Revenue Code of 1986, Section 149 (a), and the regulations, proposed or existing, from time to time promulgated thereunder.

**17. Personal Property.** The Property is and shall at all times be and remain personal property.

**18. Title.** Upon acceptance of the Property by Lessee hereunder, Lessee shall have title to the Property during the term of this Agreement; however, in the event of (i) an Event of Default hereunder and for so long as such Event of Default is continuing, or (ii) termination of this Agreement pursuant to the provisions of Section 15 hereof, title shall be reverted immediately in and shall revert to Lessor free of any right, title or interest of Lessee unless Lessor elects otherwise.

**19. Lessor's Right to Perform for Lessee.** If Lessee fails to make any payment or perform or comply with any of its covenants or obligations hereunder, Lessor may, but shall not be required to, make such payment or perform or comply with such covenants and obligations on behalf of Lessee, and the amount of any such payment and the expenses (including but not limited to reasonable attorneys' fees) incurred by Lessor in performing or complying with such covenants and obligations, as the case may be, together with interest thereon at the highest lawful rate, shall be payable by Lessee upon demand.

**20. Interest on Default.** If Lessee fails to pay any Lease Payment specified in Section 1 hereof within ten (10) days after the due date thereof, Lessee shall pay to Lessor interest on such delinquent payment from the due date until paid at the highest lawful rate.

**21. Notices.** Any notices to be given or to be served upon any party hereto in connection with this Agreement must be in writing and may be given by certified or registered mail, and shall be deemed to have been given and received forty-eight (48) hours after a registered or certified letter containing such notice, postage prepaid, is deposited in the United States mail, and if given otherwise shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notice shall be given to the parties at their respective addresses designated on the signature page of this Agreement or at such other address as either party may hereafter designate.

**22. Security Interest.** As security for Lessee's covenants and obligations hereunder, Lessee hereby grants to Lessor, and its successors, a security interest in the Property, all accessions thereto and proceeds therefrom, and, in addition to Lessor's rights hereunder, all of the rights and benefits of a secured party under the Uniform Commercial Code as in effect from time to time hereafter in the State in which the Property is located or any other State which may have jurisdiction over the Property. Lessee agrees to execute, acknowledge and deliver to Lessor in recordable form upon request financing statements or any other instruments with respect to the Property or this Agreement considered necessary or desirable by Lessor to perfect and continue the security interest granted herein in accordance with the laws of the applicable jurisdiction. Lessee hereby authorizes Lessor or its agent/assigns to sign and execute on its behalf, any and all necessary UCC-1 forms to perfect the Purchase Money Security interest herein granted to Lessor.

**23. Tax Exemption.** Lessee certifies that it does reasonably anticipate that not more than \$10,000,000 of "qualified tax-exempt obligations", as that term is defined in Section 265 (b) 3 (D) of the Internal Revenue Code of 1986 ("the Code"), will be issued by it and any subordinate entities during «Issue\_Year». Further, Lessee designates this issue as comprising a portion of the \$10 million in aggregate issues to be designated as "qualified tax exempt obligations" eligible for the exception contained in Section 265 (b) 3 (D) of the Code allowing for an exception to the general rule of the Code which provides for a total disallowance of a deduction for interest expense allocable to the carrying of tax exempt obligations.

**24. Continuing Disclosure.** Specifically and without limitation, Lessee agrees to provide audited financial statements, prepared by a certified public accountant not later than six (6) months after and as of the end of each fiscal year. Periodic financial statements shall include a combined balance sheet as of the end of each such period, and a combined statement of revenues, expenditures and changes in fund balances, from the beginning of the then fiscal year to the end of such period. These reports must be certified as correct by one of Lessee's authorized agents. If Lessee has subsidiaries, the financial statements required will be provided on a consolidated and consolidation basis.

**25. Miscellaneous.**

(a) Lessee shall, whenever requested, advise Lessor of the exact location and condition of the Property and shall give the Lessor immediate notice of any attachment or other judicial process affecting the Property, and indemnify and save Lessor harmless from any loss or damage caused thereby. Lessor may, for the purpose of inspection at all reasonable times enter upon any job, building or place where the Property and the books and records of the Lessee with respect thereto are located.

(b) Lessee agrees to equitably adjust the payments payable under this Agreement if there is a determination for any reason that the interest payable pursuant to this Agreement (as incorporated within the schedule of payments) is not excludable from income in accordance with the Internal Revenue Code of 1986, as amended, such as to make Lessor and its assigns whole.

(c) Time is of the essence. No covenant or obligations hereunder to be performed by Lessee may be waived except by the written consent of Lessor, and a waiver of any such covenant or obligation or a forbearance to invoke any remedy on any occasion shall not constitute or be treated as a waiver of such covenant or obligation as to any other occasion and shall not preclude Lessor from invoking such remedy at any later time prior to Lessee's cure of the condition giving rise to such remedy. Lessor's rights hereunder are cumulative and not alternative.

(d) This Agreement shall be construed in accordance with, and governed by, the laws of the State in which the Property is located.

(e) This Agreement constitutes the entire agreement between the parties and shall not be modified, waived, discharged, terminated, amended, altered or changed in any respect except by a written document signed by both Lessor and Lessee.

(f) Any term or provision of this Agreement found to be prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without, to the extent reasonably possible, invalidating the remainder of this Agreement.

(g) The Lessor hereunder shall have the right at any time or times, by notice to Lessee, to designate or appoint any person or entity to act as agent or trustee for Lessor for any purposes hereunder.

(h) All transportation charges shall be borne by Lessee. Lessee will immediately notify Lessor of any change occurring in or to the Property, of a change in Lessee's address, or in any fact or circumstance warranted or represented by Lessee to Lessor, or if any Event of Default occurs.

(i) Use of the neuter gender herein is for purposes of convenience only and shall be deemed to mean and include the masculine or feminine gender whenever and wherever appropriate.

(j) The captions set forth herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

(k) Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, where permitted by this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year «Present\_Year».

**Lessor:** «Lessor\_Name»

\_\_\_\_\_  
Authorized Signature  
345 Miron Dr.  
Southlake, TX 76092

Witness Signature: \_\_\_\_\_

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

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

**Lessee:** «Lessee»

\_\_\_\_\_  
«Lessee\_Authorized\_Signer»,  
«Lessee\_Authorized\_Signer\_Title»  
«Lessee\_Physical\_Address»  
«Lessee\_Physical\_City\_State\_Zip»

Witness Signature: \_\_\_\_\_

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

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

**EXHIBIT A**  
**DESCRIPTION OF PROPERTY**  
ARKANSAS LEASE-PURCHASE AGREEMENT No.«Deal\_Number» (THE "AGREEMENT")  
BY AND BETWEEN  
**Lessor**, «Lessor\_Name» and **Lessee**, «Lessee»  
Dated as of «AgreementContract\_Date»

QTY	DESCRIPTION
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«EQUIPMENT_IN_CAPS»
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SAMPLE

**PROPERTY LOCATION:**  
«Equipment\_property\_location»  
«Equipment\_Property\_Location\_address»  
«Equipment\_Property\_Location\_City\_State\_»

**EXHIBIT B**

**>> SCHEDULE OF PAYMENTS & OPTION TO PURCHASE PRICE <<**

ARKANSAS LEASE-PURCHASE AGREEMENT No. «Deal\_Number»  
(THE "AGREEMENT") BY AND BETWEEN

**Lessor:** «Lessor\_Name» and **Lessee:** «Lessee»

Dated as of «AgreementContract\_Date»

PMT NO.	PMT DATE MO. DAY YR	TOTAL PAYMENT	INTEREST PAID	PRINCIPAL PAID	OPTION TO PURCHASE after pmt on this line
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SAMPLE

Interest Rate: \_\_\_\_\_%

Accepted By Lessee: \_\_\_\_\_  
«Lessee\_Authorized\_Signer», «Lessee\_Authorized\_Signer\_Title»

# INCUMBANCY, INSURANCE, AND ESSENTIAL USE CERTIFICATES

ARKANSAS LEASE AGREEMENT No. «Deal\_Number» (THE "AGREEMENT")

BY AND BETWEEN

**Lessor**, «Lessor\_Name» and **Lessee**, «Lessee»

Dated as of «AgreementContract\_Date»

I, «Lessee\_Secretary», do hereby certify that I am the duly elected or appointed and acting «Lessee\_Secretary\_Title» (Keeper of the Records), of «Lessee», a political subdivision or agency duly organized and existing under the laws of the State of «Lessee\_State» that I have custody of the records of such entity, and that, as of the date hereof, the individual(s) named below are the duly elected or appointed officer(s) of such entity holding the office(s) set forth opposite their respective name(s). I further certify that (i) the signature(s) set opposite their respective name(s) and title(s) are their true and authentic signature(s), and (ii) such officers have the authority on behalf of such entity to enter into that certain LEASE Agreement dated as of «AgreementContract\_Date» between such entity and «Lessor\_Name».

Name	Title	Signature
«Lessee_Authorized_Signer»	«Lessee_Authorized_Signer_Title»	_____

IN WITNESS WHEREOF, I have duly executed this certificate hereto this \_\_\_\_ day of \_\_\_\_\_, «Present\_Year».

BY: \_\_\_\_\_  
«Lessee\_Secretary», «Lessee\_Secretary\_Title»

Lessee certifies that property and liability insurance, if applicable, have been secured in accordance with the Agreement and such coverage will be maintained in full force for the term of the Agreement. "Lessor or its Assigns" should be designated as loss payee until Lessee is notified, in writing, to substitute a new loss payee.

The following information is provided about insurance:

INSURANCE COMPANY/AGENT'S

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

POLICY NUMBER: \_\_\_\_\_

I, «Lessee\_Authorized\_Signer», «Lessee\_Authorized\_Signer\_Title», of «Lessee» ("Lessee"), hereby certify that the Equipment, to be leased to the undersigned under the certain Lease Agreement, dated as of «AgreementContract\_Date», between such entity and «Lessor\_Name» ("Lessor"), will be used by the undersigned Lessee for the following purpose: **(PLEASE FILL OUT PRIMARY USE BELOW)**

**PRIMARY USE:** \_\_\_\_\_

The undersigned hereby represents that the use of the Equipment is essential to its proper, efficient and economic operation.

IN WITNESS WHEREOF, I have set my hand this \_\_\_\_ day of \_\_\_\_\_, «Present\_Year».

**By Lessee:** \_\_\_\_\_  
«Lessee\_Authorized\_Signer», «Lessee\_Authorized\_Signer\_Title»

**For Lessee:** «Lessee»

## CERTIFICATE OF ACCEPTANCE

ARKANSAS LEASE-PURCHASE AGREEMENT No. «Deal\_Number» (THE "AGREEMENT")

BY AND BETWEEN

Lessor, «Lessor\_Name» and Lessee, «Lessee»

Dated as of «AgreementContract\_Date»

1. **ACCEPTANCE:** In accordance with the Agreement, Lessee hereby certifies that all of the Property described herein (i) has been received by Lessee, (ii) has been thoroughly examined and inspected to the complete satisfaction of Lessee, (iii) had been found by Lessee to be in good operating order, repair and condition, (iv) has been found to be of the size, design, quality, type and manufacture specified by Lessee, (v) has been found to be and is wholly suitable for Lessee's purposes, and (vi) is hereby unconditionally accepted by Lessee, in the condition received, for all purposes of this Agreement.

By Lessee:

\_\_\_\_\_  
«Lessee\_Authorized\_Signer», «Lessee\_Authorized\_Signer\_Title» (\*)

For Lessee: «Lessee»

ACCEPTED on this the \_\_\_\_\_ day of \_\_\_\_\_, «Present\_Year».

(\*) ACCEPTANCE MUST BE SIGNED **ONLY IF NO** ESCROW AGREEMENT IS INCLUDED

### 2. PROPERTY:

«EQUIPMENT\_IN\_CAPS», SEE ATTACHED EXHIBIT A.

3. **USE:** The primary use of the Property is as follows: **(PLEASE FILL OUT PRIMARY USE BELOW)**

**PRIMARY USE: X** \_\_\_\_\_

### 4. PROPERTY LOCATION:

«Equipment\_property\_location»  
«Equipment\_Property\_Location\_address»  
«Equipment\_Property\_Location\_City\_State\_»

5. **INVOICING:** Invoices shall be sent to the following address, including to whose attention invoices should be directed:

«Send\_Invoices\_To»  
«additional\_invoicing\_instructions»  
«Lessee\_Mailing\_Address»  
«Lessee\_Physical\_Address»  
«Lessee\_Physical\_City\_State\_Zip»

6. **INSURANCE:** Lessee certifies that property and liability insurance have been secured in accordance with the Agreement and such coverage will be maintained in force for the term of the Agreement. Lessor will be designated as loss payee until Lessee is notified, in writing, to substitute a new loss payee.

\_\_\_\_\_ Company Insured      \_\_\_\_\_ Election to self-insure (in accordance with Section 10 of the Agreement).

7. **MAINTENANCE:** In accordance with Section 6 of the Agreement, Lessee agrees to, at its own expense, service, repair and maintain the Property for the term of the Agreement as follows:

\_\_\_\_\_ Maintenance Contract      \_\_\_\_\_ Election to self-maintain