

EQUIPMENT LEASE

This Equipment Lease (Lease) is made on **[date]** (Effective Date), by and between the City/Township of _____ (Lessor), whose address is _____ and (owner(s) name _____) and (business name _____) (Lessee), whose address is _____

Recital: Lessor desires to lease to Lessee and Lessee desires to lease from Lessor certain Equipment (as is defined in Section 1) on the terms and conditions set forth in this Lease.

For valid consideration received, the parties agree as follows:

1. *Lease of Equipment.* Lessor shall lease to Lessee, and Lessee shall lease from Lessor, subject to the terms, covenants, and conditions of this Lease, the items of tangible personal property described on the attached Schedule A and incorporated by reference (Equipment). The term "Equipment" shall include all replacement parts, accessories, or alterations incorporated into or made to the tangible personal property.
2. *Term.* On execution the Lease shall become effective as of the Effective Date. Subject to earlier termination as provided below, this Lease shall remain in effect for a period of **[number]** years from the Effective Date and shall automatically renew for additional **[number]**-year terms unless either party provides the other with written notice of its intention not to renew this Lease at least 30 days before the expiration of the current term.
3. *Rental.* Commencing on the first day of the term, Lessee agrees to pay Lessor as rent for the Equipment the amounts set forth on Schedule A. The sums payable under this Lease shall not entitle Lessee to any equity interest in the Equipment.
4. *Net Lease.* Lessee's obligation to pay all rent and other sums under this Lease shall be absolute and unconditional and shall not be subject to abatement, reduction, setoff, defense, counterclaims, interruption, deferment, or recoupment for any reason whatsoever.
5. *Ownership and Use.* The Equipment shall be the exclusive property of Lessor, except for Lessee's rights to use the Equipment in its normal business operations under this Lease. The Equipment is and shall remain personal property even if installed in or attached to real property. Lessee shall keep the Equipment at all times free and clear from all liens and encumbrances. Lessee shall give Lessor immediate notice of any attachment or other judicial process affecting any article of the Equipment. If requested by Lessor, Lessee will affix plates or markings on the Equipment and on any operating manuals and manufacturer's instruction indicating the interests of Lessor and its assigns in them, and Lessee will not allow any other indicia of ownership or other interest in the Equipment to be placed on the Equipment. Lessee shall not sublease the Equipment without Lessor's prior written consent. Lessee shall use the Equipment in a careful and proper manner and shall comply with all federal, state, and local laws. Lessee shall not make any alterations or improvements to the Equipment without Lessor's prior written consent.

6. *Repairs and Replacements.* Lessee shall keep the Equipment in good condition and, at its own cost and expense, make all repairs and replacements necessary. All replacements shall immediately become the property of Lessor.

7. *Insurance.* Lessee, at its own cost and expense, shall insure the Equipment against burglary, theft, fire, vandalism, and every cause whatsoever for not less than the replacement cost of the Equipment, by an insurance carrier(s) acceptable to Lessor. At its expense Lessee shall further provide and maintain comprehensive public liability insurance against claims for bodily injury, death, and/or property damage arising out of the use, ownership, possession, or operation of the Equipment and obtain public liability insurance with minimum limits, in the form and with the insurance companies that shall be satisfactory to Lessor. All insurance policies shall name both Lessee and Lessor as insured, and copies of the policies and the receipts for the payment of premiums shall be furnished to Lessor. Each damage policy shall provide for the payment of all losses directly to Lessor. Each liability policy shall provide that all losses be paid on behalf of Lessee and Lessor as their respective interests appear. Each insurance company shall agree that it will give Lessor 30 days' prior written notice of any alteration or cancellation of any policy.

8. *Risk of Loss.* Lessee shall at all times bear the entire risk of loss, theft, destruction, or damage, whether partial or complete and whether or not insured, of each article of the Equipment, and of any condemnation, confiscation, requisition, seizure, forfeiture, or other taking of title to or use of each article of Equipment, whether partial or complete, from any cause whatsoever (Loss or Damage). Lessee shall indemnify and defend Lessor and hold Lessor harmless from and against any and all Loss or Damage, until the article of Equipment shall have been returned to Lessor and received by Lessor in accordance with all terms and conditions of this Lease. No Loss or Damage shall release, impair, or otherwise affect Lessee's obligation to pay rent or any other obligation of Lessee under this Lease. In the event of any Loss or Damage to any article of Equipment, Lessee shall notify Lessor in writing within five days after the occurrence of Loss or Damage, and Lessee shall immediately, at Lessor's option and at Lessee's sole expense, (a) place the article of Equipment in good working order, condition, and repair, (b) replace the article of Equipment with like equipment in good working order, condition, and repair, having equivalent value and utility and with clear title in Lessor (which shall then be deemed substituted for the article of Equipment for all purposes), or (c) pay to Lessor an amount equal to the replacement cost of the article of Equipment.

9. *Taxes and Fees.* Lessee agrees that during the term, in addition to the rental payments and all other amounts provided to be paid, it will promptly pay all taxes, assessments, and other governmental charges (including penalties and interest) levied or assessed

(a) on the interest of Lessee in the Equipment or on the use or operation of the Equipment or on the earnings of Lessee arising from the Equipment and

(b) against Lessor on account of its acquisition or ownership of the Equipment, or the use or operation of the Equipment or the leasing to Lessee of the Equipment, or the monthly rent provided for, or the earnings of Lessor arising from the monthly rent; provided, however, that Lessee will not be responsible for any taxes based on

the net income of Lessor or for any taxes based on gross income of Lessor. Lessee agrees to file, on behalf of Lessor and if permitted by the taxing authorities, all required personal property tax returns and reports concerning the Equipment with all appropriate governmental agencies.

10. *Indemnity.* Lessee shall indemnify and defend Lessor and its agents, employees, officers, and directors and hold them harmless from and against any and all claims, liabilities, losses, damages, and expenses, including, without limitation, all court costs and attorney and expert witness fees and costs, arising from or in connection with or based on (a) the possession, inspection, condition, operation, or use (by whomever operated or used) of any of the Equipment or (b) the performance or enforcement of any of the terms, or any noncompliance or nonperformance of any condition, of this Lease. Lessee shall satisfy, pay, and discharge any and all settlements, judgments, and fines that may be recovered against Lessor. Lessor shall give Lessee prompt written notice of any claim. The indemnities contained in this section shall survive the termination of this Lease.

11. *Inspection.* Lessee inspected the Equipment before commencing the Lease and acknowledges that the Equipment is in good operating condition. The agents of Lessor may at any time enter Lessee's premises to inspect the Equipment and the manner in which it is being used.

12. *Warranties.* LESSOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN OR CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, OR ITS FITNESS OR CAPACITY OR DURABILITY FOR ANY PARTICULAR PURPOSE, OR THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE EQUIPMENT, AND, AS TO LESSOR, LESSEE LEASES THE EQUIPMENT "AS IS." Lessor shall have no liability for any damages, whether direct, indirect, general, special, incidental, exemplary, or consequential, incurred by Lessee as a result of any defect or malfunction of the Equipment.

13. *Return.* At the end of the term of this Lease, Lessee shall at its own expense return the Equipment to Lessor at the location specified by Lessor, in as good condition as when received, except for reasonable wear and tear.

14. *Assignment.* Lessee expressly covenants and agrees that it shall not assign, mortgage, hypothecate, or encumber this Lease or sublet or lend any of the Equipment or permit any of the Equipment to be used by anyone other than Lessee. No assignment or sublease by Lessee shall in any event relieve or release Lessee of or from any debt, duty, obligation, or liability under this Lease, and Lessee shall remain primarily liable under this Lease. Lessor, in its sole and absolute discretion, may sell, assign, transfer, pledge, hypothecate, grant security interests in, or otherwise encumber or dispose of this Lease or any interest in it, as a whole or in part, without notice to Lessee. Notwithstanding any assignment by Lessor, Lessor warrants that so long as Lessee is not in default under this Lease, Lessee shall quietly enjoy use of the Equipment subject to its terms and conditions and, as part of any assignment, the assignee shall agree that Lessee's rights under the Lease in and to the Equipment shall not be disturbed so long as Lessee is not in default. Lessor shall notify Lessee in writing of any transfer of this Lease by Lessor,

and Lessee agrees to acknowledge receipt of and comply with any notice given by Lessor in writing and to provide Lessor or its assignee with agreements, consent, conveyances, documents, and certificates that may be reasonably requested by Lessor or its assignee to effect, facilitate, or perfect any assignment by Lessor. Subject to the foregoing, this Lease shall inure to the benefit of and bind Lessor, Lessee, and their respective heirs, legatees, personal representatives, successors, and assigns.

15. *Default.* Any of the following shall constitute a Default under this Lease:

(a) Lessee fails to pay when due any rent or any other sum required to be paid under this Lease and the failure continues for 10 days following written notice from Lessor.

(b) Lessee fails to observe, keep, or perform any other term, covenant, or condition of this Lease and the failure continues for 30 days following written notice from Lessor.

(c) Lessee becomes insolvent or admits in writing its inability to pay or fails to pay its debts as they become due; makes an assignment for the benefit of its creditors; or applies for or acquiesces in the appointment of a receiver, trustee, or other custodian for any of its properties or assets.

(d) Any proceeding is commenced by or against Lessee for any relief that includes, or might result in, any modification of the obligations of Lessee under this Lease or relief under any bankruptcy or insolvency laws or other laws relating to the relief of debtors, adjustment of indebtedness, reorganization, composition, or extension, unless, in the case of an involuntary proceeding not consented to or acquiesced in by Lessee, the proceeding is dismissed within 90 days after the same is commenced (provided that this Lease terminates automatically if Lessee fails to pay any rent when due under the Lease after a proceeding has been commenced by or against Lessee under the U.S. Bankruptcy Code).

(e) Lessee voluntarily or involuntarily, by operation of law or otherwise, removes, sells, transfers, assigns, grants any security interest in, pledges, hypothecates, encumbers, parts with possession of, or sublets this Lease or any Equipment, or attempts to do so, except only as and to the extent expressly permitted by this Lease.

16. *Remedies.* On any Default under this Lease by Lessee, Lessor shall have the right, but shall not be obligated, to exercise at any time or from time to time any one or more of the following rights and remedies, any of which may be exercised by Lessor without notice to or demand on Lessee:

(a) If Lessee has paid any rent under this Lease in advance of the due date, Lessor may apply any or all of it to any obligation of Lessee under this Lease.

(b) Lessor may recover all rent and other amounts due as of the date of the default and recover all rent and other sums as they accrue.

(c) Lessor may proceed by appropriate court action, either at law or in equity, to enforce performance by Lessee of the terms and conditions of this Lease or to recover damages for the breach of this Lease or to regain possession of the Equipment.

(d) Lessor may pursue any other remedy available to Lessor at law or in equity.

(e) Any of the actions by Lessor under subsections (a), (b), (c), or (d) shall not constitute a termination of this Lease or any of Lessee's obligations under this Lease unless expressly stated by Lessor in writing to Lessee.

(f) Lessor may terminate this Lease.

If on any termination of this Lease Lessee fails or refuses to immediately deliver the Equipment to Lessor, Lessor shall have the right to enter Lessee's premises and take possession of and remove the Equipment without legal process. Lessee releases any claim or right of action for trespass or damages caused by the entry and removal. Under all circumstances, Lessee shall also pay to Lessor, on demand, an amount equal to any and all incidental damages sustained by Lessor, including, without limitation, all costs of collection, repossession, transportation, storage, repair, reconditioning, resale, or other disposition of the Equipment; all attorney, expert witness and accountant fees and costs (whether or not suit is commenced); court costs; and other costs and expenses incurred in exercising any rights or remedies under or in enforcing any of the terms or conditions of this Lease. The provisions of this section shall not prejudice Lessor's right to recover or prove damages for unpaid rent accrued before default. No remedy referred to in this section is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity and may be exercised concurrently or consecutively. The exercise or beginning of exercise by Lessor of any one or more of these remedies shall not preclude the simultaneous or later exercise by Lessor of any or all other remedies. Lessor's remedies shall be available to Lessor's successors and assigns.

17. *Title; Further Assurances.* Lessor is authorized by Lessee, at Lessor's expense, to file this Lease or any document or instrument as may be permitted by law showing the interest of Lessor in the Equipment, including filing financing statements and continuation statements pursuant to the Uniform Commercial Code. Lessee will promptly execute and deliver to Lessor any additional documents and assurances and take further action as Lessor may from time to time reasonably request in order to more effectively carry out the intent and purposes of this Lease and to establish and protect the rights, interests, and remedies intended to be created in favor of Lessor.

18. *Performance by Lessor of Lessee's Obligations.* If Lessee fails promptly to perform any of its obligations under this Lease, Lessor, on written notice to Lessee, may (but shall not be obligated to and shall not incur any liability or obligation to Lessee or any third party for failure to) perform the same for the account of Lessee without waiving Lessee's failure as a default. All sums paid or expenses or liabilities incurred by Lessor in such performance (including reasonable legal fees) shall be promptly reimbursed by Lessee on demand of

Lessor, together with interest from the date paid by Lessor to the date reimbursed by Lessee at the annual rate of 7% or, if lower, the maximum rate that Lessor may lawfully charge.

19. *Right to revoke.* Lessor shall have the absolute right to revoke and terminate the lease at any time and have the equipment delivered to them forthwith.

20. *Waiver; Amendment.* This Lease may be amended only by an instrument in writing signed on behalf of each of Lessor and Lessee. No amendment, supplement, modification, or waiver of this Lease will be binding unless executed in writing by the party to be bound by it. No waiver of any of the provisions of this Lease will be deemed or will constitute a waiver of any other provision (whether or not similar), nor will the waiver constitute a continuing waiver unless otherwise expressly stated.

21. *Governing Law.* This Lease will be governed by and construed in accordance with the laws of the State of Michigan without regard to its conflict-of-law principles.

22. *Binding Effect; Benefits.* This Lease shall inure to the benefit of and be binding on the parties and their respective heirs, successors, and assigns. Nothing in this Lease, express or implied, is intended to, or shall confer on, any person other than the parties to this Lease any rights, benefits, or remedies of any nature whatsoever under or by reason of this Lease.

23. *Severability.* If any one or more of the provisions of this Lease is for any reason held invalid, illegal, or unenforceable, the remaining provisions of this Lease will be unimpaired and will remain enforceable.

24. *Counterparts; Facsimile.* This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Lease may be executed and delivered by facsimile transmission or electronic mail, and a facsimile or electronic version of this Lease or of a signature of a party will be effective as an original.

The parties have executed this Lease as of the Effective Date listed on the first page.

LESSOR:

City/Township name
Its:

LESSEE:

Owner(s) name
Business name
Its:

SCHEDULE A Equipment

Description of Equipment:

Term Rent: \$1 (one dollar)