claims, demands, expenses, damages, penalties and attorney's fees suffered or incurred by any Indemnified Party or Escrow Agent as a result of anything which it may do or refrain from doing in connection with this Escrow Agreement or any litigation or cause of action arising from or in conjunction with this Escrow Agreement or involving the subject matter hereof or Escrow Funds or monies deposited hereunder or for any interest upon any such monies, including, without limitation, arising out of the negligence of Escrow Agent; provided that the foregoing indemnification shall not extend to the gross negligence or willful misconduct of Escrow Agent.. This indemnity shall include, but not be limited to, all costs incurred in conjunction with any interpleader which the Escrow Agent may enter into regarding this Escrow Agreement.

2.5 Miscellaneous.

A. Escrow Agent shall make no disbursement, investment or other use of funds until and unless it has collected funds. Escrow Agent shall not be liable for collection items until the proceeds of the same in actual cash have been received or the Federal Reserve has given Escrow Agent credit for the funds.

B. Escrow Agent may resign at any time by giving written notice to the parties hereto, whereupon the parties hereto will immediately appoint a successor Escrow Agent. Until a successor Escrow Agent has been named and accepts its appointment or until another disposition of the subject matter of this Escrow Agreement has been agreed upon by all parties hereto, Escrow Agent shall be discharged of all of its duties hereunder save to keep the subject matter whole.

C. All representations, covenants, and indemnifications contained in this Article II shall survive the termination of this Escrow Agreement.

ARTICLE III
GENERAL PROVISIONS

3.1 Discharge of Escrow Agent. Upon the delivery of all of the subject matter or monies pursuant to the terms of this Escrow Agreement, the duties of Escrow Agent shall terminate and Escrow Agent shall be discharged from any further obligation hereunder.

3.2 Escrow Instructions. . Attached hereto as Schedule 1 (the "Security Schedule") is a list of authorized signatories (with signature identification) and authorized call-back persons for each of the parties to this Agreement (other than the Escrow Agent). In the event funds transfer instructions or other disbursement instructions or directions in the form of Exhibit A to this Agreement are given in writing, whether by telecopier or otherwise, which differ from the funds transfer instructions to disburse funds without a verifying call-back that are set out in Section 1.4, the Escrow Agent shall seek confirmation of such instructions or directions by telephone call-back to the person or persons designated on the Security Schedule, and the Escrow Agent may rely upon the confirmation of anyone purporting to be the person or persons so designated. The authorized signatures and the persons and telephone numbers for call-backs may be changed only in a writing actually received and acknowledged by the Escrow Agent, and in the case of an addition of an authorized signatory, accompanied by an incumbency certificate with signature identification certified by an existing authorized signatory. If the Escrow Agent is unable to contact any of the authorized representatives identified in the Security Schedule for call-back confirmation, the Escrow Agent is hereby authorized to seek confirmation of such instructions by telephone call-back to any one or more of the party's officers. Such officer shall deliver to the Escrow Agent a fully executed incumbency certificate certified by an existing authorized signatory, and the Escrow Agent may rely upon the confirmation of anyone purporting to be such officer.

3.3 Notice. Any payment, notice, request for consent, report, or any other communication required or permitted in this Escrow Agreement shall be in writing and shall be deemed to have been given when personally delivered to the party hereunder specified or when placed in the United States mail, registered or certified, with return receipt requested, postage prepaid and addressed as follows:

If to Escrow Agent:

BANCORPSOUTH BANK
P. O. Box 1231
Hattiesburg, MS 39403-1231
Attn: Ashley Read

If to City of Gautier:

CITY OF GAUTIER

3330 Hwy. 90

Gautier, MS 39553

Attn: City Manager

Any party may unilaterally designate a different address by giving notice of each such change in the manner specified above to each other party. Notwithstanding the foregoing, no notice to the Escrow Agent shall be deemed given to or received by the Escrow Agent unless actually delivered to an officer of the Escrow Agent having responsibility under this Escrow Agreement.

3.4 **Governing Law.** This Escrow Agreement is being made in and is intended to be construed according to the laws of the State of Mississippi. It shall inure to and be binding upon the parties hereto and their respective successors, heirs and assigns.

3.5 **Construction.** Words used in the singular number may include the plural and the plural may include the singular. The section headings appearing in this instrument have been inserted for convenience only and shall be given no substantive meaning or significance whatsoever in construing the terms and conditions of this Escrow Agreement.

3.6 **Amendment.** The terms of this Escrow Agreement may be altered, amended, modified or revoked only by an instrument in writing signed by the undersigned and Escrow Agent.

3.7 **Force Majeure.** Escrow Agent shall not be liable to the undersigned for any loss or damage arising out of any acts of God, strikes, equipment or transmission failure, war, terrorism, or any other act or circumstance beyond the reasonable control of Escrow Agent.

3.8 **Written Agreement.** This Escrow Agreement represents the final agreement between the parties, and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

EXECUTED as of the dates set forth below.

City of Gautier, Mississippi

Date: 04/04/2014

By: Samantha D. Abell

Name: Samantha D. Abell

Title: City Manager

BANCORPSOUTH BANK, Escrow Agent, hereby accepts its appointment as Escrow Agent as described in the foregoing Escrow Agreement, subject to the terms and conditions set forth therein.

BANCORPSOUTH BANK

Date:_____

By:_____

Name: _____

Title: _____

EXHIBIT A

DISBURSEMENT REQUEST

Pursuant to that certain Escrow Agreement dated effective _____ among _____ and BANCORPSOUTH BANK, the parties hereto hereby request disbursement of funds in the amount and manner described below from account number _____ styled " City of Gautier" Escrow Account.

Please disburse to: _____.

Amount to disburse: _____

Form of disbursement: _____

_____

IN WITNESS WHEREOF: the parties hereto have executed this Agreement in multiple counterparts, each of which is and shall be considered an original for all intents and purposes, effective as of the date first written above.

By: _____

Name: _____

Title: _____

Date: _____

Schedule 1

SECURITY SCHEDULE

Telephone Number(s) for Call-Backs and Person(s) Designated to Confirm Funds Transfer Instructions and Execute Instructions, and Other Documents in Connection with this Escrow Agreement (Acquisitions)

If to City of Gautier:

Name	Telephone Number	Signature Identification
Samantha D. Abell	228.497.8000	Samantha D. Abell
2.		
3.		

EQUIPMENT LEASE-PURCHASE AGREEMENT

This Equipment Lease-Purchase Agreement (the "Agreement") dated as of April 4, 2014 is entered into between BancorpSouth Equipment Finance, a division of BancorpSouth Bank (the "Lessor"), whose Principal Office (herein so called) is located at Hattiesburg, Mississippi and the City of Gautier, Mississippi, (the "Lessee"), acting by and through it's city council, the Governing Body of the Lessee.

1. Agreement to Lease. In consideration of the rental provided herein, and the other covenants contained herein, Lessor hereby agrees to lease and rent to Lessee, and Lessee hereby agrees to lease and rent from Lessor, all the machinery, equipment and other personal property ("Equipment") described in Equipment Lease Schedule(s) ("Equipment Schedules") now or hereafter executed by Lessor and Lessee and attached hereto and incorporated herein by reference as Exhibit B upon the terms and conditions set forth in this Agreement, as supplemented by the terms and conditions set forth in the appropriate Equipment Schedule identifying such item of Equipment and such other Equipment Schedules as may be executed by Lessor and Lessee and attached hereto and incorporated herein by reference.

2. Lease Term. The obligations of Lessor and Lessee under this Agreement will commence upon the execution hereof by Lessor and Lessee and will end upon the full performance and observance of each and every term, condition, and covenant contained herein, each Schedule hereto and any extensions thereof. The rental term of the Equipment listed in each Equipment Schedule shall commence on the date that the rental payment is due as provided in the Equipment Schedule and shall terminate on the last day of the term stated in such Equipment Schedule. This Agreement shall be automatically renewed on a year-to-year basis except as provided for in Paragraph 4.

3. Rental Payments. The rent for the Equipment described in each Equipment Schedule shall be the total sum stated on such Equipment Schedule, in installments, and shall be due and payable on the dates set forth therein. A portion of each such rental payment is paid as, and represents a payment of interest and each Equipment Schedule sets forth the applicable interest rate and interest component of each rental payment; provided however such interest component is subject to change as provided in Paragraph 12 hereof. Such rent shall be payable from legally available funds of the Lessee in lawful money of the United States of America, without notice or demand, at the Principal Office of the Lessor or its assigns (or at such other place as Lessor may from time to time designate in writing). The receipt of any check or other item on account of any rental payment will not be considered as payment thereof until such check or other item is honored when presented for payment. All rental payments shall be made by the Lessee without abatement, setoff, or deduction of any amounts whatsoever. The obligations of Lessee to pay rent hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of an indebtedness by Lessee.

4. Continuation of Lease by Lessee. (a) Lessee intends to comply with each term, condition and covenant of this Agreement during the term hereof and to pay the rent due hereunder. Lessee reasonably believes that legally available funds of an amount sufficient to make all rent

payments due hereunder shall be obtained. Lessee agrees to include in its budget for each fiscal year during the term of this Agreement all rent payments due hereunder and to do all other things necessary and lawfully within its power to have such portion of the budget approved to obtain and provide for funds to pay its obligations due hereunder. It is Lessee's intent to make rental payments for the full term of this Agreement if funds are legally available therefor and in that regard Lessee represents that the use of the Equipment is essential to its proper efficient and economic operation.

(b) In the event no funds or insufficient funds are appropriated or otherwise available by any means whatsoever in any fiscal year for rental payments due under this Agreement, then the Lessee shall immediately notify Lessor or its assignee of such occurrence and this Agreement shall create no further obligation of Lessee as to such fiscal year and shall be null and void, except as to the portions of rental payments for which funds shall have been appropriated and budgeted. In such event, this Agreement shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to Lessee of any kind whatsoever. Subsequent to such termination of this Agreement, Lessee shall have no continuing obligation to make rental payments under this Agreement. No right of action or damages shall accrue to the benefit of Lessor, or its assignee, as to that portion of this Agreement which may so terminate except as specifically provided in the last paragraph of this Paragraph. In the event of such termination, Lessee agrees to peaceably surrender possession of the Equipment to Lessor or its assignee on the date of such termination, packed for shipment in accordance with manufacturer specifications and freight prepaid and insured to any location in the continental United States of America designated by Lessor. Lessor shall have all legal and equitable rights and remedies to take possession of the Equipment.

(c) Notwithstanding the foregoing, Lessee agrees

(i) that it will not cancel this Agreement under the provisions of subparagraph (b) above if any funds are appropriated to it, or by it, for the acquisition, retention or operation of the Equipment, and

(ii) that it will not during the term of this Agreement give priority in the application of funds to any other functionally similar equipment or services.

5. Purchase and Installation. Lessee will select the type, quantity and supplier of each item of Equipment and in reliance thereon Lessor will either order such Equipment from such supplier or accept an assignment of any existing purchase order (the "Purchase Order") therefor. The Equipment so ordered shall be delivered to Lessee by the supplier thereof. Lessee shall accept such Equipment when and if delivered and placed in good repair and working order and hereby authorizes Lessor to add to this Agreement the serial number of each item of Equipment so delivered. Any delay in such delivery shall not affect the validity of this Agreement. Lessee shall have 30 days from the date of delivery to accept such Equipment and deliver an executed Equipment Acceptance Notice in the form attached hereto as Exhibit C. Notice of any defects must be given to Lessor within 30 days of delivery. In the event the Equipment is not accepted by the Lessee within 30 days from the date of delivery and such acceptance is unreasonably withheld by Lessee, Lessor, at Lessor's option, shall have the right to cancel this Agreement. Subject to the conditions set forth in this paragraph, upon delivery of the Equipment to Lessee, payment will be made by Lessor for the balance due and owing for the Equipment, and, notwithstanding any defect

in or failure of the Equipment, Lessee will, upon payment of any amount by Lessor at the request of Lessee (whether down payment, deposit, or full purchase price), become fully and completely liable under this Agreement with respect to the Equipment until such time as this Agreement expires by its terms. Lessor shall have no liability for any delay in delivery or failure by the supplier to fill the Purchase Order or meet the conditions thereof. Lessee, at its expense, will pay all taxes, duties and expenses of packing, transportation, installation, testing and other charges in connection with the delivery, installation, and use of the Equipment.

Lessor's obligation to purchase and lease-purchase Equipment under this Agreement is subject to the fulfillment, to Lessor's reasonable satisfaction, of the following conditions precedent:

(a) Lessor shall have received a full warranty bill of sale satisfactory to Lessor, executed by the supplier in favor of Lessor, covering such item of Equipment;

(b) Lessor shall have received an invoice describing such item of Equipment, all material components thereof and the purchase price payable to supplier in respect thereof;

(c) Lessor shall have received opinions of counsel to Lessee in form and substance satisfactory to Lessor, to the effect that such counsel has examined this Agreement and such other documents and matters as he deemed necessary to reach the conclusions stated in such opinion, which conclusions shall include the following:

(i) the representations and warranties of Lessee contained in this Agreement are true and correct on the date thereof;

(ii) this Agreement has been duly authorized, executed and delivered by Lessee, and constitutes a valid and binding obligation of Lessee enforceable in accordance with its terms;

(iii) there are no pending or threatened actions or proceedings before any court, administrative agency or other tribunal or body against Lessee which may materially affect Lessee's financial condition or operations, or which could have any effect whatsoever upon the validity, performance, or enforceability of this Agreement;

(iv) the interest portion of the rental payments due hereunder is exempt from federal income taxation pursuant to Paragraph 103(a) of the Internal Revenue Code of 1986, as amended, and the Treasury regulations and rulings thereunder (the "Code");

(v) The Lessee is a fully constituted political subdivision or agency of the State where the Equipment is located as set forth herein and is authorized by the Constitution and laws of the State of Mississippi (the "State") and its own internal or administrative procedure to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder; and

(vi) such other matters as Lessor may reasonably request.

(d) On the date thereof, no default (as defined in Paragraph 23 hereof), and no event

which with notice or lapse of time, or both, would become a default, shall have occurred and be continuing hereunder.

(e) All representations and warranties of Lessee made herein shall be true and correct in all material respects on the date thereof;

(f) A financing statement, in form and substance satisfactory to Lessor, in respect of such Equipment shall have been executed and filed in the appropriate offices;

(g) Lessor shall have received from Lessee written notice of acceptance of the Equipment; and

(h) Lessor shall have received all other documents, instruments, certificates, opinions, and evidences as Lessor may reasonably request.

6. Representations and Warranties of Lessee. Lessee represents, warrants and covenants to Lessor that:

(a) Lessee has been duly authorized by all necessary action on the part of the Lessee, its governing body or other appropriate governing bodies and officials to execute, deliver, and perform the terms of this Agreement and further represents that all requirements and procedures have occurred that are necessary to ensure the enforceability of this Agreement, including Lessee's compliance with any applicable public bidding requirements;

(b) This Agreement constitutes a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms and does not contravene any lease, indenture, credit agreement or other agreement to which Lessee is a party or by which it is bound;

(c) There are no pending or threatened actions or proceedings before any court, administrative agency or other body which may materially affect Lessee's financial condition or operations or which could have any effect whatsoever upon the validity, performance, or enforceability of the terms of this Agreement;

(d) No consent, approval, or authorization of, registration with, or declaration to any agency or authority is required in connection with the execution and delivery of this Agreement;

(e) Lessee is not in default (nor has any event occurred which, with notice or lapse of time, or both, would constitute a default) under any agreement or instrument to which Lessee is a party or under which Lessee or any of its assets is bound which could have any effect whatsoever upon the validity, performance, or enforceability of the terms of this Agreement;

(f) There are no outstanding or unpaid judgments against Lessee;

(g) Lessee has furnished to Lessor a copy of current financial statements and except for transactions directly related to, or specifically contemplated by, this Agreement and transactions heretofore disclosed in writing to Lessor, since the dates of such financial statements, there have been no changes in the financial condition and operations of Lessee from that shown in such

financial statements through the date hereof which would have any effect whatsoever upon the validity, performance, or enforceability of the terms of this Agreement and there is no significant material fact or condition relating to the financial condition or business operations of Lessee which has not been related, in writing, to Lessor. Lessee shall furnish to Lessor within 120 days of the close of its fiscal year during the term of this Agreement audited financial statements and such other financial statements as the Lessor may request from time to time during the terms of this Agreement. Any financial statements furnished or to be furnished to Lessor by Lessee (whether audited or unaudited) shall be prepared in accordance with generally accepted accounting principles consistently applied and fairly present the financial condition and results of operations of Lessee at the dates and for the periods indicated therein;

(h) Lessee is not leasing the Equipment for the purpose of putting, and does not intend to put, the Equipment to any consumer use within the meaning of any applicable truth-in-lending or similar laws; and

(i) Lessee acknowledges and agrees that the rental payments have been calculated by Lessor assuming that the interest portion of each rental payment is exempt from federal income taxation. Lessee will do or refrain from doing all things necessary or appropriate to insure that the interest portion of the rental payment is exempt from federal income taxation, including, but not limited to, executing and filing all information statements required by Paragraph 149(e) of the Code and timely paying, to the extent of available funds, amounts, if any, required to be rebated to the United States of America pursuant to Paragraph 148(f) of the Code.

Lessee acknowledges that the representations, covenants and warranties set forth in Paragraph 6(i) and 7 shall survive the expiration of this Agreement and that Lessor may pursue any applicable remedies for the breach of such representations, covenants and warranties at any time.

7. Tax Exemption. Lessee acknowledges that Lessor has agreed to enter into this Agreement on the condition that a certain exemption from non-deductibility of interest expense under Section 265(b) of the Code is available. Said exception is subject to certain conditions relating to Lessee's use of the Equipment and to Lessee's issuance of tax-exempt obligations. In that regard, Lessee represents, covenants and warrants that:

(a) The Equipment will not be used, directly or indirectly in a "trade or business" carried on by any person other than a governmental unit, except for such use as a member of the general public, all as defined in section 141 and 145 of the code;

(b) No portion of the rental payments payable hereunder: (i) will be secured, directly or indirectly, by property used or to be used in a trade or business carried on by a person other than a governmental unit, except for such use as a member of the general public, or by payments in respect of such property; or (ii) will be derived from payments, whether or not to Lessee, in respect of property or borrowed money used or to be used for a trade or business carried on by any person other than a governmental unit;

(c) No portion of the gross proceeds of the Agreement will be used (directly or indirectly) to make or finance loans to persons other than governmental units;

(d) The Agreement is hereby designated as a qualified tax-exempt obligation for the purposes of Section 265(b) of the Code; and

(e) Lessee reasonably anticipates that the amount of qualified tax-exempt obligations to be issued by Lessee (together with qualified tax-exempt obligations issued by any entity from which Lessee derives its issuing authority or any entity which has substantial control over Lessee or any subordinate entity deriving its issuing authority from Lessee or any subordinate entity subject to substantial control by Lessee) during the current calendar year 2014 shall not exceed $10,000,000.

8. **Title; Personal Property; Encumbrances**. Upon acceptance of the Equipment covered by an Equipment Schedule hereto by Lessee hereunder and satisfaction of all conditions precedent for purchase and lease-purchase of such Equipment by Lessor as provided in Paragraph 5 hereof, title to such Equipment and any and all additions, repairs, replacements or modifications will vest in Lessee and for purposes of laws governing taxation and conditional sales, title to the Equipment shall be deemed to be in Lessee; provided, however, that (i) in the event of termination of this Agreement or of an Equipment Schedule which covers such Equipment in accordance with Paragraph 4 hereof, or (ii) upon the occurrence of an Event of Default hereunder, and as long as such event of Default is continuing, title will, upon written notice from Lessor to Lessee, immediately vest in Lessor or its assignee.

Each item of the Equipment subject to this Agreement is and shall remain personal property and shall not be deemed to be affixed to or a part of the real estate on which it is situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real property or any building thereon. Lessor may at any time and from time to time require Lessee to obtain, and Lessee shall obtain and deliver to Lessor, a waiver of any interest in the Equipment by any present or future landlord, owner, or mortgagee of such real estate.

Lessee agrees to keep each item of Equipment at all times free and clear from all claims, levies, liens, and process other than those in favor of Lessor pursuant to this Agreement. Lessee will not attempt to sell, assign, transfer, sublease, loan, part with possession of, conceal, mortgage, encumber, or otherwise dispose of any of the Equipment or the interest therein, or permit any lien, attachment, levy or execution of any of its creditors to become effective thereon (if any such lien, charge, claim or encumbrance should arise at any time, Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge same) ; provided, however, Lessee may deliver possession of any item of Equipment to the manufacturer or supplier thereof for testing or other similar purposes or to any person or company for service, repair, maintenance, or overhaul work on such item of Equipment or for alterations or modifications or additions to such item of Equipment to the extent required or permitted by any provision of this Agreement. Lessee, at its expense, will protect and defend title to the Equipment.

9. Location. The Equipment shall be delivered to the location specified in the applicable Equipment Schedule and shall not be removed from such location without the prior

written consent of Lessor. While the equipment will be delivered to one place, the equipment will be installed in many and numerous places city-wide.

10. Use: Repairs. Lessee shall use the Equipment in a careful manner and shall comply with all laws, ordinances and regulations relating to, and shall pay all costs, claims, damages, fees and charges arising out of its possession, use or maintenance. Lessee, at its expense, shall keep the Equipment in good repair and furnish all parts, mechanisms and devices required therefor.

11. Taxes. Lessee agrees to pay, promptly when due, all assessments, license and registration fees, taxes, if any (including sales, use, excise, personal property, ad valorem, stamp, documentary and other taxes) and all other governmental charges, fees, fines or penalties whatsoever, whether payable by Lessor or Lessee, on or relating to the Equipment, or the purchase, ownership, possession, leasing, operation, use or disposition thereof, and on or relating to this Agreement for the rent or other payments hereunder (excluding taxes on or measured by the net income of Lessor and excluding any sales or use tax payable to the supplier or manufacturer or the State of Mississippi by the Lessor on the acquisition of the Equipment and for which a credit is allowable under Section 27-65-23 of the Mississippi Code of 1972, as amended, against sales taxes collected by the Lessor from the Lessee on the periodic rental payments) and to prepare and file promptly with the appropriate office any and all returns required to be filed with respect thereto (sending copies thereof to Lessor) or, if requested by Lessor, to notify Lessor of such requirement and furnish Lessor with all information required by Lessor so that it may effect such filing. If Lessee fails to pay said charges and taxes when due, Lessor shall have the right, but shall not be obligated, to pay said charges and taxes. If Lessor pays any taxes, assessments, fees, or other governmental charges for which Lessee is responsible or liable pursuant to the foregoing, Lessee shall reimburse Lessor therefor within 45 days after demand by Lessor. All amounts under this paragraph (other than interest) payable to Lessor shall be computed on an "after tax" basis so that such payments shall be in an amount which, when reduced by the increase in the income tax liability or liabilities of Lessor, if any, as a result of such payment by Lessee, shall equal the after-tax cost of the tax, assessment, fee or other governmental charge paid by the Lessor.

12. Exemption from Federal Taxation. The Lessor has entered into this Agreement contemplating that the interest portion of rental payments will be exempt from income taxation. In the event any governmental taxing authority successfully imposes tax treatment, under this Agreement or any other lease of the Lessor which, in the opinion of Lessor's counsel, will be determinative of the tax treatment under this Agreement, which differs from the tax treatment contemplated to be taken by the Lessor hereto at the inception of this Agreement or which effectively denies to the Lessor the use or benefit of such tax treatment as contemplated, (including, but not limited to, the taxability of the interest portion of the rental payments caused by the non-applicability of Code Section 103(a) or the denial under Code Section 265(b), of a deduction for a portion of interest expense of Lessor, the affiliated group (as defined in Code Section 1504(a) of which Lessor is a member, or any separate member of the affiliated group of which Lessor is a member) then Lessee agrees to pay rents with an interest factor equal to the maximum rate of interest which, under applicable law, Lessor is permitted to charge, retroactively from the effective date of imposition of the change of tax treatment through the term of this Agreement during which the change of tax treatment is imposed, with credit being given for rental payments having already been made by Lessee during the period for which the change is imposed, and subsequently thereto, as rental payments would otherwise become due, until the end of the lease term. Any retroactive

payments of rent, payable in accordance with appropriation of funds, under this paragraph shall be due and payable at the date that Lessor gives notice to Lessee of imposition of the change of tax treatment

Lessee agrees to pay its pro-rata share of attorney's fees that may reasonably be incurred by Lessor in the event legal action or administrative action is taken by the Lessor to secure the tax treatment intended to be taken by Lessor under this Agreement or any other lease which in the opinion of Lessor's counsel will be determinative of the tax treatment under this Agreement whether such action is successful or not. Lessee's pro-rata share shall be determined by the percentage that the Lessor's original cost of the Equipment bears to the total original cost of leased equipment for all other similar leases of the Lessor involving similar issues of fact or law. In the event the Lessor is successful in securing the tax treatment intended to be taken by Lessor, Lessor shall refund to Lessee the total amount of increased interest (as hereinabove provided) which has been paid by Lessee and rental payments for the remainder of the lease term shall be the original rentals as specified in the Equipment Schedules to the extent Mississippi state law allows.

13. Use of Equipment; Inspections. Lessee may possess and use the Equipment in accordance with this Agreement, provided that any such use is in conformity with all applicable laws, regulations, ordinances, any insurance policies and any warranties of the manufacturer or supplier with respect to the Equipment. Lessee will not use or operate any item of Equipment other than in a manner and for the use contemplated by the manufacturer or supplier thereof, or permit any person other than the Lessee's authorized agents or employees to operate the Equipment.

Lessor or Lessor's agent shall have the right upon reasonable prior written notice to the Lessee and during the Lessee's regular business hours to inspect the Equipment at the premises of the Lessee or wherever the Equipment may be located. Lessee shall promptly notify Lessor of all details arising out of any change in location of the Equipment, any alleged encumbrances thereon, any accident allegedly resulting from the use or operation thereof, or any materially defective, improper or malfunctioning item of Equipment and any claim or demand involving or relating thereto.

14. Acceptance. Lessee acknowledges and agrees that:

(a) each item of the Equipment is of a size, design, capacity and manufacture selected by Lessee;

(b) Lessee is satisfied that the Equipment, and each component thereof, is suitable for its purpose;

(c) Lessor is not the manufacturer of the Equipment nor a dealer in property of such kind;

(d) Lessor shall have no obligation to accept any item of the Equipment from any seller thereof until that item of Equipment is accepted by Lessee; and

(e) the foregoing notwithstanding, Lessee shall indemnify Lessor and hold Lessor harmless from and against any and all losses and liabilities which may arise from Lessee's

failure for any reason to accept any item of the Equipment to the extent the state of Mississippi law allows.

15. Maintenance. Lessee will pay for and provide all utilities consumed by or required for the Equipment or use thereof, including, but not limited to, water, gas, electrical power, oil, gasoline, and lubricants. Lessee, at its sole expense, at all times during the term of this Agreement, shall maintain the Equipment and all additions, attachments and accessions thereto in good operating order, repair, condition, and appearance, and keep the same protected from the elements, ordinary wear and tear resulting from authorized use thereof alone excepted and shall make all necessary repairs and replacements to the Equipment. If the manufacturer of the Equipment has provided Lessee with a standard maintenance schedule, such schedule will constitute minimum maintenance compliance and Lessee upon request, will furnish Lessor with satisfactory evidence of such compliance. In furtherance of the maintenance of the Equipment, Lessee agrees, if requested by Lessor and in compliance with all state laws, to enter into and maintain in force a Maintenance Agreement with the manufacturer or a person (who may be a supplier) approved by the manufacturer providing for the maintenance of the Equipment (or specified items of Equipment). In the event Lessee is requested to enter into such a Maintenance Agreement, Lessee agrees to do all things within its power to cause such Maintenance Agreement to be complied with in all respects by Lessee, and the other party thereto; and Lessor hereby authorizes such other party thereto to accept the direction of Lessee in respect to such Maintenance Agreement. All maintenance and service charges, whether pursuant to such Maintenance Agreement or otherwise, shall be borne by Lessee.

16. Alterations and Repairs. Lessee shall not, without the prior written consent of Lessor (which may be withheld with or without cause), make any repair or alteration to or install any accessory, equipment, or device on the Equipment or any component thereof which interferes with the normal and satisfactory operation or maintenance thereof, or creates a safety hazard, or which might result in the creation of mechanic's or material man's lien with respect thereto. All parts and attachments (whether new or replaced) at any time installed in or affixed to the Equipment shall constitute accessions thereto and shall be the property of Lessor (except items which are furnished or affixed by Lessee and may be removed without in any way affecting or impairing the original intended function or use of the Equipment or any component thereof and are readily removable by Lessee without causing material damage to the Equipment).

17. Disclaimer of Warranties; Exclusion of Liability. LESSOR, NOT BEING THE MANUFACTURER OF THE EQUIPMENT NOR THE MANUFACTURER'S AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE EQUIPMENT, INCLUDING BUT NOT LIMITED TO; THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE; THE DESIGN OR CONDITION OF THE EQUIPMENT; THE QUALITY OR CAPACITY OF THE EQUIPMENT; THE PERFORMANCE OF THE EQUIPMENT; THE WORKMANSHIP OR MATERIAL IN THE EQUIPMENT; COMPLIANCE OF THE EQUIPMENT WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; PATENT INFRINGEMENT; OR LATENT DEFECTS. AS TO LESSEE, LESSOR LEASES THE EQUIPMENT "AS IS." Lessor shall have no obligation to accept any item of Equipment from any supplier thereof until that item of Equipment is accepted by Lessee. Lessor hereby assigns to Lessee, for and during the term of this Lease, applicable factory warranties, if any, express or implied, issued with respect to the Equipment and each component thereof, and Lessee

will be subrogated to Lessor's claims, if any, against the manufacturer or supplier of the Equipment for breach of any warranty or representation with respect thereto. Lessor authorizes Lessee to obtain the customary services furnished in connection with such warranties and guarantees at Lessee's expense. Lessor authorizes Lessee to enforce in its own name any warranty, representation or other claim enforceable against the manufacturer. Lessor assumes no responsibility for shipment, delivery, installation or maintenance and all claims of Lessee with respect thereto, whether for delay, damage or otherwise, shall be made against supplier. Lessor, at its option, may provide in its Purchase Order that supplier agrees that any of such claims may be made by Lessee directly against suppliers. The obligation of Lessee to pay the rental payments shall not be abated, impaired or reduced by reason of any claims of the Lessee with respect to Equipment condition, quality, workmanship, delivery, shipment, installation, defects or otherwise. Notwithstanding the foregoing, Lessee's obligations to pay the rentals or otherwise under this Lease shall be and are absolute and unconditional except as provide in paragraph 4 of the agreement. All proceeds of any such warranty recovery from the manufacturer or supplier of the Equipment shall be first used to repair the affected Equipment. In no event shall Lessor be liable to Lessee for loss of anticipatory profits or any other direct, indirect, special or consequential damages.

18. Risk of Loss. All risk of loss, theft, damage or destruction to each item of Equipment shall be borne by Lessee. No such loss, theft, damage or destruction of the Equipment, in whole or in part, shall impair the obligations of Lessee under this Agreement, all of which shall continue in full force and effect, and Lessee, at Lessor's option, shall either:

(a) place the affected Equipment in good repair, condition and working order;

(b) replace the same with like Equipment in good repair, condition and working order (with documentation establishing clear title therein in Lessor); or

(c) pay to Lessor an amount equal to the purchase option price as prescribed in Paragraph 21 hereof, less the net amount of the recovery, if any, actually received by Lessor from insurance or otherwise for such loss, theft, damage or destruction.

19. Insurance. Lessee shall keep the Equipment insured against loss, theft, damage or destruction from every cause whatsoever for not less than full replacement value thereof, and shall carry public liability and property damage insurance covering the Equipment and its use with companies approved by the Lessor. All such insurance shall be in the joint names of Lessor and Lessee, with Lessor and Lessee named as loss payees, as their interests may appear, shall provide that Lessor shall receive not less than 30 days' notice of any termination, cancellation or alteration of the terms thereof and that the coverage afforded Lessor shall not be rescinded, impaired or invalidated by any act or neglect of Lessee, and otherwise shall be in form and amount and with companies approved by Lessor. Lessee shall pay the premiums therefor and delivery said policies, or duplicates thereof or certificates of coverage thereunder, to Lessor. The proceeds of hazard insurance shall, at the option of Lessor, be applied toward the repair or replacement of the Equipment or the payment of the obligations of Lessee hereunder, as set forth in Paragraph 18. The proceeds of any public liability or property damage insurance shall be payable first to Lessor to the extent of its liability, if any, and the balance to Lessee. Lessee hereby appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of, and execute or endorse all documents, checks or drafts for loss or damage under any such policy.

20. License and Taxes. In addition to other payments to be made pursuant to this Agreement, Lessee shall pay Lessor, as additional payment, on demand, an amount equal to, all license, assessments, sales, use, real or personal property, gross receipts or other assessments, taxes, levies, imposts, duties and charges, if any together with any penalties, fines or interest thereon imposed against or on Lessor, Lessee or the Equipment by any governmental authority upon or with respect to the Equipment or the purchase, ownership, possession, operation, return or sale of, or receipt of payments for, the Equipment, 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 Equipment or any interest therein.

21. **Prepayment Purchase**. At the end of the lease term for Equipment covered by an Equipment Schedule, provided all rental payments have been made under such Equipment Schedule and there is no default or event which with the giving of notice or lapse of time, or both, could become a default under the Agreement, any interest of Lessor to the Equipment subject to such Equipment Schedule shall be transferred to the Lessee or released. Provided all rental payments under this Agreement are paid to date, Lessee may prepay for Equipment under an Equipment Schedule and purchase the interest of Lessor in the Equipment at the end of any month during the lease term by payment of:

(a) the outstanding principal balance due under the Amortization Schedule attached to the applicable Equipment Schedule (or any substitute amortization schedule in effect in accordance with Paragraph 12) plus accrued interest to date;

(b) the cost of any required inspections, examinations, or certifications of the Equipment; and

(c) the cost of any repairs, modifications, or adjustments required as a result of the inspections, examinations, or certifications referred to in (b) above.

Such option shall be exercisable by written notice to Lessor not less than 30 days prior to the prepayment purchase date. The closing shall be held on the specified prepayment purchase date, or on the next following business day if such day is a Saturday, Sunday or legal holiday, at the Principal Offices of Lessor, at which time Lessor shall deliver to Lessee a release of any interest of the Lessor in the Equipment subject to such Equipment Schedule to Lessee. Upon payment in full of all amounts due with respect to all Equipment identified in a particular Equipment Schedule and release of any interest by the Lessor of its interest in such Equipment to the Lessee, this Agreement shall terminate with respect to such Equipment for which payment has been made in full (but shall remain in force with respect to any other Equipment identified in another Equipment Schedule for which payment in full has not been made.)

22. Security Interest. To secure all of its obligations hereunder Lessee grants to Lessor a first and prior security interest in any and all right and interest of Lessee in the Equipment, the Agreement and payments due under this Agreement, agrees that this Agreement may be filed as a