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|---|--------------------------|--|
| Artistic Holiday Designs | Contract No. | 107502 |
| | Contract Date: | 5/24/2024 |
| Seller Address: 4417 SE 16th Place, Unit 13 Cape Coral FL 33904 708-223-8506 www.ArtisticHolidayDesigns.com Derek Norwood derekn@ArtisticHolidayDesigns.com | Contact: | Rebecca Pederson City of Waukesha |
| | Buyer Address: | 201 Delafield St Waukesha, WI 53188 |
| | Phone: | 262-524-3906 |
| | E-mail: | rpederson@waukesha-wi.gov |
| | Fax: | |
| Delivery Point: ATTN: Rebecca Pederson, City of Waukesha 201 Delafield St Waukesha, WI 53188 262-524-3906 rpederson@waukesha-wi.gov | Shipping Method: | Truck |
| | Shipping Terms: | Invoiced |
| | Delivery Date: | 11/6/24 - 11/15/24 |
| | Shipping Address: | TBD |
| | | Install 11/6/24-11/15/24 & Dismantle 1/29/25-1/31/24 |

| Notes | Reference # | Description | Quantity | Product Value Per Unit | Unit Purchase Price | Total Purchase Price |
|-------------------------------|-------------|----------------------------------|----------|------------------------|---------------------|----------------------|
| Purchase - 20% off New Item | 202803 | 3D Med Blue Ornament 4.6ft | 1 | \$ 4,133.76 | \$ 3,307.01 | \$ 3,307.01 |
| Purchase - 20% off Stock Item | 201753 | 2D/3D Enchanted Tree | 1 | \$ 2,994.55 | \$ 2,395.64 | \$ 2,395.64 |
| Purchase - 20% off New Item | 205008 | Blue Spritzer 15" | 5 | \$ 45.00 | \$ 45.00 | \$ 225.00 |
| Purchase - 20% off New Item | 205003 | Silver Spritzer 24" | 5 | \$ 55.00 | \$ 55.00 | \$ 275.00 |
| Purchase - 20% off New Item | | PW Icicle Light | 20 | \$ 20.00 | \$ 20.00 | \$ 400.00 |
| Total Purchase Price: | | | | | | \$ 6,602.65 |
| Notes | Reference # | Description | Quantity | Product Value Per Unit | Unit Lease Price | Total Lease Price |
| Lease - Stock | 410770 | Walk thru Snowflake Panels w/Orn | 1 | \$ 16,184.68 | \$ 6,473.87 | \$ 6,473.87 |
| Lease - New | 418785 | Bridge Crossing - Opt 3 | 6 | \$ 1,189.24 | \$ 648.68 | \$ 3,892.08 |
| Total Lease Price: | | | | | | \$ 10,365.95 |

| | | |
|---|------------------|---------------------|
| | Subtotal | \$ 16,968.60 |
| | Tax | \$ - |
| | Shipping | \$ 2,500.00 |
| *PRICING IS VALID FOR 14 DAYS FROM DATE OF CONTRACT/QUOTE. SIGNATURE CONFIRMS PRICING. | TOTAL DUE | \$ 19,468.60 |

BLOCKS, SANDBAGS AND/OR MOUNTING STAKES MAY NOT BE INCLUDED AND WILL BE BILLED SEPARATELY IF NEEDED.
 WARRANTY IS FOR PRODUCT DEFECT AND DOES NOT APPLY TO WIND DAMAGE OR DAMAGE DUE TO INSTALLATION, REMOVAL, STORAGE OR TRANSPORT

| Payment Terms: Lease Bundle | |
|--------------------------------|--------------|
| Due Upon Acceptance 25% | \$ 4,867.15 |
| Due upon Completion of Install | \$ 14,601.45 |
| | |

Payment Method:
 Check/Bank Information
 ACH Payment to:
 Artistic Holiday Designs LLC
 Routing: 263191387
 Account: 1100023303424

General Terms and Conditions

RECITALS

WHEREAS, Lessor is in the business of leasing holiday lighting and other decorative equipment to commercial customers (the "Business");

WHEREAS, Lessor desires to Lease to Lessee, and Lessee desires to lease from Lessor, the Equipment, as described below in more detail; and

WHEREAS, the parties have agreed that Lessor shall lease the Equipment to Lessor pursuant to and in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the foregoing, the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the parties agree as follows:

1. Equipment Lease.

(a) Lessor shall lease to Lessee, and Lessee shall lease from Lessor, on and subject to the terms and conditions of this Agreement, each item of equipment listed in Exhibit A attached hereto (together with all related accessories, manuals, and other items delivered with such equipment, the "Equipment"). If multiple pieces of Equipment are shipped in installments, each installment shall be deemed a separate rental, and Lessee shall pay rent for each such transaction per the terms of this Agreement. Lessor will, at its expense, obtain all necessary permits and licenses that may be required in order to utilize the Equipment.

(b) To the extent Lessee requires any assistance with or wishes to contract for the provision of any installation, dismantling, storage, maintenance or other equipment related services, the parties acknowledge and agree that, upon the request of Lessee, Lessor and Lessee, or its designated affiliated entity, shall enter into a separate contract with Lessee for the provision of any and all such services with respect or related to the Equipment.

2. Lease Term. The term of this Agreement shall commence on the date of this Agreement and shall continue until the first (1st) anniversary of the Effective Date (the "Initial Term"). If not sooner terminated pursuant to the terms hereof, this Agreement shall renew at the end of the Initial Term and shall thereafter continue for successive one (1) year periods (each, a "Renewal Term" and, collectively with the Initial Term, the "Term") until terminated by either party upon not less than sixty (60) days' written notice prior to the expiration of the then current Renewal Term or pursuant to Section 16. At the expiration of the Term and the return of the Equipment to Lessor, all of Lessee's obligations under the terms of this Agreement shall cease.

3. Rent Fee. Lessee shall pay to Lessor the rent set forth on Exhibit A (in aggregate, the "Rent") for the lease of the Equipment. The Rent is non-refundable. If Lessee fails to pay any Rent payment in full or its account otherwise becomes delinquent, then in addition to any other rights granted to Lessor herein, Lessor shall have the right to take possession of the Equipment. Lessor reserves the right to impose a fee if Lessor takes possession of any or all of the Equipment during the Term and thereafter Lessee requests continued rental of the Equipment through the end of the Term.

4. Inspection; Acceptance. Lessee shall have three days from its receipt of any piece of Equipment to inspect the Equipment and provide written notice to Lessor of any defect or nonconformity to Exhibit A of this Agreement. If Lessee does not provide written notice of any defect or nonconformity within such period, the Equipment shall be deemed to be delivered in good condition and Lessee shall be deemed to have accepted the Equipment in its current condition. Such written notice of a defect or nonconformity shall specify in reasonable detail the defect in the Equipment or the reasons why the Equipment does not conform to Exhibit A of this Agreement.

5. Return of Equipment.

(a) Upon the earliest of the termination of this Agreement for any reason and the expiration of the Term, Lessee shall, at Lessee's sole expense, return each piece of Equipment to Lessor in the same condition as

delivered, ordinary wear and tear excepted. If Lessee fails to so return any piece of Equipment, then Lessee shall, upon demand by Lessor, pay to Lessor the full replacement cost of such piece of Equipment. The Equipment shall be subject to inspection by Lessor before returned to Lessor.

(b) ALL EQUIPMENT MUST BE RETURNED IN GOOD OPERATING CONDITION AND REPAIR (REASONABLE WEAR AND TEAR EXCEPTED). LESSEE SHALL BE RESPONSIBLE FOR THE COST OF ALL MAINTENANCE OF THE EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, THE COST OF ALL REPAIRS AND REPLACEMENTS TO THE EQUIPMENT, DURING THE TERM NECESSARY TO KEEP AND MAINTAIN THE EQUIPMENT IN GOOD MECHANICAL CONDITION AND REPAIR AT ALL TIMES. FOR THE AVOIDANCE OF DOUBT, LESSEE SHALL BEAR THE COST OF REPAIRING ANY DAMAGE TO THE EQUIPMENT RESULTING FROM OR DUE TO STORMS, WIND, THEFT, VANDALISM, INCORRECT INSTALLATION PERFORMED BY LESSEE OR ANY THIRD-PARTY, INCORRECT DISMANTLING INSTALLATION PERFORMED BY LESSEE OR ANY THIRD-PARTY, OR ANY OTHER DAMAGE INCURRED DURING THE TERM THAT LEAVES ANY PIECE OF EQUIPMENT IN NON-OPERATING CONDITION. TO THE EXTENT ANY SUCH DAMAGE LEAVES ANY EQUIPMENT DAMAGED BEYOND REPAIR, LESSEE SHALL PAY OWNER THE COST OF REPLACING ANY SUCH EQUIPMENT. A REPRESENTATIVE OF LESSEE SHALL INITIAL BELOW TO EVIDENCE LESSEE'S ACKNOWLEDGMENT OF AND AGREEMENT TO THE REQUIREMENTS SET FORTH IN THIS SECTION 5(B).

Lessee Acknowledgement: _____ Date: _____

6. No Liens. Lessee shall keep the equipment free from all liens, charges, and encumbrances of any kind whatsoever.

7. Conflicting Terms. The terms of this Agreement shall apply to Lessee's rental of the Equipment and Lessor's provision of the Services, and in the event of a conflict between the terms of this Agreement and any conflicting terms set forth outside this Agreement, the terms of this Agreement shall control. Any different or additional terms proposed by Lessee (whether oral or written) in any acknowledgment form, purchase order, or other document are hereby rejected by Lessor unless Lessor explicitly accepts such different or additional terms in a separate writing other than the document that includes such different or additional terms.

8. Title. Title to the Equipment is, and shall at all times during the term of this Agreement, remain, in Lessor, and Lessee shall have no right, title, or interest therein, and no right to purchase or otherwise acquire title to or ownership of the Equipment. During the term of this Agreement, Lessee shall, at its expense, protect and defend Lessor's title against all persons claiming against or through Lessee, at all times keeping the Equipment free from any legal process or encumbrance whatsoever, including, but not limited to, liens, attachments, levies and executions, and shall give Lessor immediate written notice thereof and shall indemnify Lessor from any loss caused thereby. Lessor is entitled to identify itself as the owner on each piece of Equipment by stencil, plaque, label or other means, and Lessee will not remove, deface or otherwise obscure such identification. Lessee shall execute and deliver to Lessor, upon Lessor's request, such further instruments and assurances as Lessor deems necessary or advisable for the confirmation or perfection of Lessor's rights under this Agreement. The Equipment is, and shall at all times be and remain, personal property of Lessor, notwithstanding that any individual piece of Equipment may now be, or hereafter become, in any manner affixed or attached to real property or any improvements thereon.

9. Use of Equipment. Lessee shall use the Equipment only for the purposes and in the manner contemplated by the manufacturer thereof in accordance with all applicable documentation for such Equipment, as provided by Lessor. Lessee shall use the Equipment solely as instructed by Lessor and pursuant to the documentation applicable to such Equipment and with due care to prevent injury thereto or to any person or property, and in conformity with all applicable laws, ordinances, rules, regulations, and other requirements of any insurer or governmental body. Lessee shall use the Equipment only at the locations specified in Exhibit A, attached hereto.

10. Operation of Equipment. Lessee shall employ and have absolute control and supervision over the

operators of the Equipment and shall not permit any person to operate the Equipment unless such person is competent and able to operate the Equipment.

11. Inspection by Lessor. Lessor may, upon prior written notice to Lessee and during Lessee's regular business hours, inspect the Equipment wherever located, and Lessee shall facilitate any such inspection to the extent reasonably necessary.

12. Risk of Loss. Except to the extent set forth in Section 9, Lessor shall bear all risks of loss of and damage to the Equipment from any cause and occurrence of such loss or damage shall not relieve Lessor of any obligation under this Agreement. In the event of loss or damage, Lessor shall, at its option and sole discretion: (a) place the damaged Equipment in good repair, condition and working order; (b) replace lost or damaged Equipment with like equipment in good repair, condition and working order; or (c) reduce the Rent by a corresponding amount to account for the removal of any such damaged Equipment.

13. Insurance. Lessor recommends that Lessee carry public liability and property damage insurance covering the Equipment and its use. To the extent Lessee decides to obtain such coverage, all such insurance shall be in form and with companies approved by Lessor, shall name Lessor as an additional insured, and shall provide that the insurance company must give Lessor at least 30 days prior written notice of any alteration or cancellation of such policy. Lessee shall pay the premiums therefor and deliver said policies, or duplicates thereof or certificates of coverage thereunder, to Lessor. Insurance proceeds, at the option of Lessor, shall be applied (a) toward the replacement, restoration or repair of the Equipment; or (b) toward payment of the obligations of Lessee under this Agreement. Lessee shall be liable for any loss of or damage to the Equipment regardless of whether or not covered by insurance.

14. Indemnity. Lessee shall indemnify and hold Lessor harmless from and against all claims, losses, liabilities (including negligence, tort and strict liability), damages, judgments, suits, and all legal proceedings which accrue after the date of this Agreement, and any and all costs and expenses in connection therewith (including attorneys' fees) arising out of or in any manner connected with the delivery, rejection, non-delivery, possession, use, transportation, storage, operation, maintenance, repair, return or other disposition of the Equipment or with this Agreement, including, without limitation, (a) claims for injury to or death of persons and for damage to property and (b) claims relating to latent or other defects in the Equipment whether or not discoverable by Lessor. Lessee agrees to give Lessor prompt notice of any such claim or liability. The indemnification provisions set forth in this Section 15 shall survive the termination of this Agreement for a period of three years following the termination of this Agreement.

15. Default and Remedies.

(a) If: (i) Lessee ceases doing business as a going concern; (ii) Lessee fails to perform any of the terms, conditions, and covenants of this Agreement in the manner and at the time or times required, including, but not limited to, the payment in full of any Rent payment or the reimbursement of Lessor for any disbursement made hereunder; (iii) any proceeding in bankruptcy or insolvency is instituted by or against Lessee; (iv) reorganization of Lessee is sought under any statute, state or federal; or (v) Lessee makes an assignment for the benefit of creditors or makes an attempt to sell, secrete, convert, or remove the Equipment or if any distress, execution or attachment be levied thereon, Lessee shall be deemed to be in default under this Agreement and Lessor shall have the right to exercise any of the remedies set forth in Section 16(b).

(b) Upon the occurrence of any event of default stated in Section 16(a), Lessor shall be entitled to: (i) declare the entire balance of Rent hereunder immediately due and payable as to any Equipment covered hereby; (ii) sue for and recover all Rents, and other monies due, with respect to any or all items of Equipment to the extent permitted by law; (iii) require Lessee to return all Equipment to Lessor at Lessee's expense; or (iv) remove any physical obstructions for removal of the Equipment from the place where the Equipment is located and take possession of the Equipment, without demand or notice, wherever the same may be located, disconnecting, and separating all such Equipment from any other property, with or without court order or other process of law. Lessee hereby waives any and all damages occasioned by such retaking. Lessor may, at its option, use, ship, store, repair, or lease all Equipment so removed and sell or otherwise dispose of such Equipment at a private or public sale.

(c) All of Lessor's remedies hereunder are cumulative, are in addition to any other remedies provided for by law, and may, to the extent permitted by law, be exercised concurrently or separately. The exercise of any one remedy shall not be deemed to be an election of such remedy or preclude the exercise of any other remedy.

16. Performance by Lessor of Lessee's Obligations. If Lessee fails to comply with any provision of this Agreement, Lessor may perform any such action necessary to bring Lessee into compliance on behalf of Lessee upon ten (10) days prior written notice to Lessee. In such event, all monies expended by, and all expenses by Lessor in effecting such compliance shall be deemed to be additional Rent, and shall be paid by Lessee to Lessor at the time of the next periodic payment of Rent provided for under this Agreement.

17. Lessor's Warranties. Lessor warrants that the Equipment meets manufacturer's specifications. LESSOR DOES NOT MAKE ANY OTHER WARRANTY, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. Lessor's sole responsibility shall be to repair or replace rental equipment that is defective.

18. Lessee's Representations and Warranties.

(a) Lessee is a validly organized and existing legal entity and in good standing under the laws of its state of formation. Lessee is duly authorized to conduct its business and is in good standing under the laws of each jurisdiction where such qualification is required. Lessee has full power and authority and all licenses, permits, and authorizations necessary to carry on the businesses in which it is engaged and to own and use the properties owned and used by it.

(b) This Agreement, when executed and delivered by Lessee, shall be the valid and binding obligation of Lessee enforceable against Lessee in accordance with the terms of this Agreement. Lessee is not a party to, subject to or bound by any agreement or any judgment, order, writ, prohibition, injunction or decree of any court or other governmental body which would prevent the execution or delivery of this Agreement.

19. No Purchase Options. Unless otherwise specifically specified in writing by Lessor, Lessee shall not have the right to purchase or acquire title to the Equipment at the end of the rental thereof. Any such purchase option (if applicable) automatically shall be deemed void if Lessee defaults in its obligations as set forth in Section 16(a).

20. Miscellaneous.

(a) Governing Law and Venue. This Agreement shall be governed by, and interpreted in accordance with the laws of the State of Florida, without giving effect to principles of conflict of laws. Venue for any controversy or proceeding, judicial or otherwise, instituted by either party to this Agreement, shall be in applicable state or federal courts located in or governing the county in which the Lessor's principal place of business is then located, and each party hereby irrevocably accepts and submits to the exclusive in personam jurisdiction of such court with respect to any such action, suit, or proceeding.

(b) Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, the remaining provisions shall nonetheless be enforceable according to their terms. Further, if any provision is held to be overbroad as written, such provision shall be deemed amended to narrow its application to the extent necessary to make the provision enforceable according to applicable law and shall be enforced as amended.

(c) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. However, neither this Agreement nor any of the rights or obligations of the parties hereunder may be transferred or assigned by any party hereto; provided, however, that Lessor may assign its rights and obligations under this Agreement without the consent of Lessee in the event Lessor shall hereafter effectuate a reorganization, consolidate with, or merge into, any individual or entity or transfer all or substantially all of its properties or assets to any individual or entity. Any attempted transfer or assignment in violation of this Section 21(c) shall be void.

(d) Waiver. The failure of either party in any one or more instances to insist upon the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any right or privilege in this Agreement conferred, or the waiver of any breach of any of the terms, conditions or covenants of this

Agreement, shall not be construed as thereafter waiving any such terms, covenants, conditions, rights or privileges, all of which shall continue and remain in full force and effect, as if no such forbearance or waiver had occurred.

(e) No Third Party Beneficiaries. Nothing in this Agreement is intended, nor shall be deemed, to confer any rights, remedies, or benefits to, or be enforceable by, any person other than the parties hereto. This Agreement shall not be construed as creating, directly or indirectly, a partnership or joint venture.

(f) Notices. Any notice, demand, or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes upon: (i) the actual receipt by the recipient, if notice is given by personal delivery or any method not described below; (ii) one business day after deposit of notice, if notice is given by reputable overnight commercial courier service for next day delivery; (iii) four business days after mailing, if notice is given by U.S. mail, postage prepaid; and (iv) when sent, if notice is given by facsimile or e-mail and a confirmation copy of such notice is simultaneously sent by personal delivery, U.S. mail, or reputable overnight commercial courier service. Whenever any notice is required to be given by a party, a waiver thereof in writing, signed by the party entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

(g) Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto and contains all the agreements among such parties with respect to the subject matter hereof and supersedes any and all other agreements, either oral or written, between such parties with respect to the subject matter hereof. This Agreement may be amended only with the written consent of each of the parties hereto.

(h) Counterparts; Electronic Signatures. The parties may execute this Agreement in multiple counterparts, each of which shall be deemed an original copy of this Agreement and all of which, when taken together, shall constitute one and the same instrument. A facsimile of any executed counterpart transmitted electronically by e-mail or fax shall be as binding as an original signature.

(i) Waiver of Jury Trial. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby. Each party to this Agreement certifies and acknowledges that (i) no representative of the other party has represented, expressly or otherwise, that such other party would not seek to enforce the foregoing waiver in the event of a legal action; (ii) such party has considered the implications of this waiver; (iii) such party makes this waiver voluntarily; and (iv) such party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 21(i).

(j) No Strict Construction. The parties to this Agreement have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

LESSEE:

By: _____

Date: _____

Name: _____

Title: _____

General Terms and Conditions

RECITALS

WHEREAS, Lessor is in the business of leasing holiday lighting and other decorative equipment to commercial customers (the "Business");

WHEREAS, Lessor desires to Lease to Lessee, and Lessee desires to lease from Lessor, the Equipment, as described below in more detail; and

WHEREAS, the parties have agreed that Lessor shall lease the Equipment to Lessor pursuant to and in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the foregoing, the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the parties agree as follows:

1. Equipment Lease.

(a) Lessor shall lease to Lessee, and Lessee shall lease from Lessor, on and subject to the terms and conditions of this Agreement, each item of equipment listed in Exhibit A attached hereto (together with all related accessories, manuals, and other items delivered with such equipment, the "Equipment"). If multiple pieces of Equipment are shipped in installments, each installment shall be deemed a separate rental, and Lessee shall pay rent for each such transaction per the terms of this Agreement. Lessor will, at its expense, obtain all necessary permits and licenses that may be required in order to utilize the Equipment.

(b) To the extent Lessee requires any assistance with or wishes to contract for the provision of any installation, dismantling, storage, maintenance or other equipment related services, the parties acknowledge and agree that, upon the request of Lessee, Lessor and Lessee, or its designated affiliated entity, shall enter into a separate contract with Lessee for the provision of any and all such services with respect or related to the Equipment.

(c) Lessor shall deliver the Equipment to Lessee at the location in Waukesha, Wisconsin designated by the Lessee, at Lessor's sole expense. Delivery shall be no later than November 15, 2024.

2. Lease Term. The term of this Agreement shall commence on the date of this Agreement and shall continue until the first (1st) anniversary of the Effective Date (the "Initial Term"). At the expiration of the Term and the return of the Equipment to Lessor, all of Lessee's obligations under the terms of this Agreement shall cease.

3. Rent Fee. Lessee shall pay to Lessor the rent set forth on Exhibit A (in aggregate, the "Rent") for the lease of the Equipment. Rent shall be reduced by \$500 for each day after November 15, 2024 that delivery of the Equipment has not been completed. Rent shall be payable 25% upon execution of this Agreement and the balance upon delivery and acceptance of the Equipment. If Lessee fails to pay any Rent payment in full or its account otherwise becomes delinquent, then in addition to any other rights granted to Lessor herein, Lessor shall have the right to take possession of the Equipment. Lessor reserves the right to impose a fee if Lessor takes possession of any or all of the Equipment during the Term and thereafter Lessee requests continued rental of the Equipment through the end of the Term.

4. Inspection; Acceptance. Lessee shall have 7 days from its receipt of any piece of Equipment to inspect the Equipment and provide written notice to Lessor of any defect or nonconformity to Exhibit A of this Agreement. If Lessee does not provide written notice of any defect or nonconformity within such period, the Equipment shall be deemed to be delivered in good condition and Lessee shall be deemed to have accepted the Equipment in its current condition. Such written notice of a defect or nonconformity shall specify in reasonable detail the defect in the Equipment or the reasons why the Equipment does not conform to Exhibit A of this Agreement.

5. Return of Equipment.

(a) Upon the earliest of the termination of this Agreement for any reason and the expiration of the Term, Lessee shall, at Lessee's sole expense, return each piece of leased Equipment to Lessor in the same

condition as delivered, ordinary wear and tear excepted. If Lessee fails to so return any piece of leased Equipment, then Lessee shall, upon demand by Lessor, pay to Lessor the full replacement cost of such piece of Equipment. The Equipment shall be subject to inspection by Lessor before returned to Lessor.

(b) ALL EQUIPMENT MUST BE RETURNED IN THE CONDITION IT WAS IN UPON DELIVERY AND ACCEPTANCE, (REASONABLE WEAR AND TEAR EXCEPTED).

6. No Liens. Lessee shall keep the equipment free from all liens, charges, and encumbrances of any kind whatsoever.

7. Conflicting Terms. The terms of this Agreement shall apply to Lessee's rental of the Equipment and Lessor's provision of the Services, and in the event of a conflict between the terms of this Agreement and any conflicting terms set forth outside this Agreement, the terms of this Agreement shall control. Any different or additional terms proposed by Lessee (whether oral or written) in any acknowledgment form, purchase order, or other document are hereby rejected by Lessor unless Lessor explicitly accepts such different or additional terms in a separate writing other than the document that includes such different or additional terms.

8. Title. Title to the Equipment is, and shall at all times during the term of this Agreement, remain, in Lessor, and Lessee shall have no right, title, or interest therein, and no right to purchase or otherwise acquire title to or ownership of the Equipment. During the term of this Agreement, Lessee shall, at its expense, protect and defend Lessor's title against all persons claiming against or through Lessee, at all times keeping the Equipment free from any legal process or encumbrance whatsoever, including, but not limited to, liens, attachments, levies and executions, and shall give Lessor immediate written notice thereof and shall indemnify Lessor from any loss caused thereby. Lessor is entitled to identify itself as the owner on each piece of Equipment by stencil, plaque, label or other means, and Lessee will not remove, deface or otherwise obscure such identification. Lessee shall execute and deliver to Lessor, upon Lessor's request, such further instruments and assurances as Lessor deems necessary or advisable for the confirmation or perfection of Lessor's rights under this Agreement. The Equipment is, and shall at all times be and remain, personal property of Lessor, notwithstanding that any individual piece of Equipment may now be, or hereafter become, in any manner affixed or attached to real property or any improvements thereon.

9. Use of Equipment. Lessee shall use the Equipment only for the purposes and in the manner contemplated by the manufacturer thereof in accordance with all applicable documentation for such Equipment, as provided by Lessor. Lessee shall use the Equipment solely as instructed by Lessor and pursuant to the documentation applicable to such Equipment and with due care to prevent injury thereto or to any person or property, and in conformity with all applicable laws, ordinances, rules, regulations, and other requirements of any insurer or governmental body. Lessee shall use the Equipment only at the locations specified in Exhibit A, attached hereto.

10. Operation of Equipment. Lessee shall employ and have absolute control and supervision over the operators of the Equipment and shall not permit any person to operate the Equipment unless such person is competent and able to operate the Equipment.

11. Inspection by Lessor. Lessor may, upon prior written notice to Lessee and during Lessee's regular business hours, inspect the Equipment wherever located, and Lessee shall facilitate any such inspection to the extent reasonably necessary.

12. Risk of Loss. Except to the extent set forth in Section 9, Lessor shall bear all risks of loss of and damage to the Equipment from any cause and occurrence of such loss or damage shall not relieve Lessor of any obligation under this Agreement. In the event of loss or damage, Lessor shall, at its option and sole discretion: (a) place the damaged Equipment in good repair, condition and working order; (b) replace lost or damaged Equipment with like equipment in good repair, condition and working order; or (c) reduce the Rent by a corresponding amount to account for the removal of any such damaged Equipment.

13. Insurance. Lessor recommends that Lessee carry public liability and property damage insurance covering the Equipment and its use.

14. Indemnity. Lessee shall indemnify and hold Lessor harmless from and against all claims, losses, liabilities (including negligence, tort and strict liability), damages, judgments, suits, and all legal proceedings which accrue after the date of this Agreement, and any and all costs and expenses in

connection therewith (including attorneys' fees) arising out of Lessee's or any employee of Lessee's negligence; however, Lessee does not waive any immunity or liability limitation provided to it by law. Lessor agrees to give Lessee prompt notice of any such claim or liability. The indemnification provisions set forth in this Section 14 shall survive the termination of this Agreement for a period of three years following the termination of this Agreement.

15. Default and Remedies.

(a) If: (i) Lessee ceases doing business as a going concern; (ii) Lessee fails to perform any of the terms, conditions, and covenants of this Agreement in the manner and at the time or times required, including, but not limited to, the payment in full of any Rent payment or the reimbursement of Lessor for any disbursement made hereunder; (iii) any proceeding in bankruptcy or insolvency is instituted by or against Lessee; (iv) reorganization of Lessee is sought under any statute, state or federal; or (v) Lessee makes an assignment for the benefit of creditors or makes an attempt to sell, secrete, convert, or remove the Equipment or if any distress, execution or attachment be levied thereon, Lessee shall be deemed to be in default under this Agreement and Lessor shall have the right to exercise any of the remedies set forth in Section 16(b).

(b) Upon the occurrence of any event of default stated in Section 16(a), Lessor shall be entitled to: (i) declare the entire balance of Rent hereunder immediately due and payable as to any Equipment covered hereby; (ii) sue for and recover all Rents, and other monies due, with respect to any or all items of Equipment to the extent permitted by law; (iii) require Lessee to return all Equipment to Lessor at Lessee's expense; or (iv) remove any physical obstructions for removal of the Equipment from the place where the Equipment is located and take possession of the Equipment, without demand or notice, wherever the same may be located, disconnecting, and separating all such Equipment from any other property, with or without court order or other process of law. Lessee hereby waives any and all damages occasioned by such retaking. Lessor may, at its option, use, ship, store, repair, or lease all Equipment so removed and sell or otherwise dispose of such Equipment at a private or public sale.

(c) All of Lessor's remedies hereunder are cumulative, are in addition to any other remedies provided for by law, and may, to the extent permitted by law, be exercised concurrently or separately. The exercise of any one remedy shall not be deemed to be an election of such remedy or preclude the exercise of any other remedy.

16. Performance by Lessor of Lessee's Obligations. If Lessee fails to comply with any provision of this Agreement, Lessor may perform any such action necessary to bring Lessee into compliance on behalf of Lessee upon ten (10) days prior written notice to Lessee. In such event, all monies expended by, and all expenses by Lessor in effecting such compliance shall be deemed to be additional Rent, and shall be paid by Lessee to Lessor at the time of the next periodic payment of Rent provided for under this Agreement.

17. Lessor's Warranties. Lessor warrants that the Equipment meets manufacturer's specifications. LESSOR DOES NOT MAKE ANY OTHER WARRANTY, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. Lessor's sole responsibility shall be to repair or replace rental equipment that is defective.

18. Lessee's Representations and Warranties.

(a) Lessee is a validly organized and existing legal entity and in good standing under the laws of its state of formation. Lessee is duly authorized to conduct its business and is in good standing under the laws of each jurisdiction where such qualification is required. Lessee has full power and authority and all licenses, permits, and authorizations necessary to carry on the businesses in which it is engaged and to own and use the properties owned and used by it.

(b) This Agreement, when executed and delivered by Lessee, shall be the valid and binding obligation of Lessee enforceable against Lessee in accordance with the terms of this Agreement. Lessee is not a party to, subject to or bound by any agreement or any judgment, order, writ, prohibition, injunction or decree of any court or other governmental body which would prevent the execution or delivery of this Agreement.

19. No Purchase Options. Unless otherwise specifically specified in writing by Lessor, Lessee shall not have the right to purchase or acquire title to the leased Equipment at the end of the rental thereof. Any

such purchase option (if applicable) automatically shall be deemed void if Lessee defaults in its obligations as set forth in Section 16(a).

20. Miscellaneous.

(a) **Governing Law and Venue.** This Agreement shall be governed by, and interpreted in accordance with the laws of the State of Wisconsin, without giving effect to principles of conflict of laws. Venue for any controversy or proceeding, judicial or otherwise, instituted by either party to this Agreement, shall be in Wisconsin Circuit Court for Waukesha County, and each party hereby irrevocably accepts and submits to the exclusive in personam jurisdiction of such court with respect to any such action, suit, or proceeding.

(b) **Severability.** If any provision of this Agreement is held invalid by a court of competent jurisdiction, the remaining provisions shall nonetheless be enforceable according to their terms. Further, if any provision is held to be overbroad as written, such provision shall be deemed amended to narrow its application to the extent necessary to make the provision enforceable according to applicable law and shall be enforced as amended.

(c) **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. However, neither this Agreement nor any of the rights or obligations of the parties hereunder may be transferred or assigned by any party hereto; provided, however, that Lessor may assign its rights and obligations under this Agreement without the consent of Lessee in the event Lessor shall hereafter effectuate a reorganization, consolidate with, or merge into, any individual or entity or transfer all or substantially all of its properties or assets to any individual or entity. Any attempted transfer or assignment in violation of this Section 21(c) shall be void.

(d) **Waiver.** The failure of either party in any one or more instances to insist upon the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any right or privilege in this Agreement conferred, or the waiver of any breach of any of the terms, conditions or covenants of this Agreement, shall not be construed as thereafter waiving any such terms, covenants, conditions, rights or privileges, all of which shall continue and remain in full force and effect, as if no such forbearance or waiver had occurred.

(e) **No Third Party Beneficiaries.** Nothing in this Agreement is intended, nor shall be deemed, to confer any rights, remedies, or benefits to, or be enforceable by, any person other than the parties hereto. This Agreement shall not be construed as creating, directly or indirectly, a partnership or joint venture.

(f) **Notices.** Any notice, demand, or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes upon: (i) the actual receipt by the recipient, if notice is given by personal delivery or any method not described below; (ii) one business day after deposit of notice, if notice is given by reputable overnight commercial courier service for next day delivery; (iii) four business days after mailing, if notice is given by U.S. mail, postage prepaid; and (iv) when sent, if notice is given by facsimile or e-mail and a confirmation copy of such notice is simultaneously sent by personal delivery, U.S. mail, or reputable overnight commercial courier service. Whenever any notice is required to be given by a party, a waiver thereof in writing, signed by the party entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

(g) **Entire Agreement.** This Agreement constitutes the entire agreement among the parties hereto and contains all the agreements among such parties with respect to the subject matter hereof and supersedes any and all other agreements, either oral or written, between such parties with respect to the subject matter hereof. This Agreement may be amended only with the written consent of each of the parties hereto.

(h) **Counterparts; Electronic Signatures.** The parties may execute this Agreement in multiple counterparts, each of which shall be deemed an original copy of this Agreement and all of which, when taken together, shall constitute one and the same instrument. A facsimile of any executed counterpart transmitted electronically by e-mail or fax shall be as binding as an original signature.

(i) **Waiver of Jury Trial.** Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions

contemplated hereby. Each party to this Agreement certifies and acknowledges that (i) no representative of the other party has represented, expressly or otherwise, that such other party would not seek to enforce the foregoing waiver in the event of a legal action; (ii) such party has considered the implications of this waiver; (iii) such party makes this waiver voluntarily; and (iv) such party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 21(i).

(j) No Strict Construction. The parties to this Agreement have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

(k) Construction and Interpretation. If any conflict exists between this Agreement and any exhibits, purchase orders, or other documents executed by the parties in the performance of this Agreement, it shall be resolved in favor of the terms of this Agreement.

LESSEE:

By: _____

Date: _____

Name: _____

Title: _____