

## LEASE PURCHASE AGREEMENT

No. 12726

This Lease Purchase Agreement (this "Agreement"), is executed on \_\_\_\_\_ by and between **TD EQUIPMENT FINANCE, INC.**, and its successors and permitted assigns ("Lessor"), and **the CITY OF POMPANO BEACH, FLORIDA**, a political subdivision of the State of Florida ("Lessee").

### RECITALS

WHEREAS Lessee desires to lease and acquire from Lessor the Equipment (as defined herein) subject to the terms and conditions hereof;

WHEREAS Lessee is authorized under the constitution and laws of the State of Florida (the "State") to enter into this Agreement for the purposes set forth herein;

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

### ARTICLE I LEASE, FUNDING AND ACQUISITION OF EQUIPMENT

Section 1.01 Lease. Lessor hereby agrees to sell, transfer and lease to Lessee, and Lessee hereby agrees to acquire, purchase and lease from Lessor the property described in the Equipment Schedule attached as Schedule "1" hereto and incorporated by reference herein, upon the terms and conditions set forth herein, together with all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto (the "Equipment").

Section 1.02 Funding. Upon satisfaction (or waiver by Lessor) of the conditions set forth in Section 1.03, Lessor will cause an amount necessary to pay all or a portion of the costs to acquire and install the Equipment and certain costs related to the execution and delivery of this Agreement as specified in the Payment Schedule attached as Schedule "2" hereto and incorporated by reference herein (the "Funding Amount") to be deposited into the account designated in writing by Lessee for the purpose of administering the Funding Amount pursuant to this Agreement.

Section 1.03 Conditions Precedent. Lessor's payment of the Funding Amount and the performance by Lessor of any of its obligations hereunder, are subject to the satisfaction the following:

(a) Lessor has received all of the following documents, which shall be reasonably satisfactory, in form and substance, to Lessor:

(i) a copy of the official action by Lessee duly authorizing the execution and delivery of this Agreement and the performance by Lessee of its obligations hereunder, in form and substance satisfactory to Lessor;

(ii) a certified copy of the resolution, ordinance or other required official action by Lessee's governing body, duly authorizing the execution and delivery of this Agreement and the performance by Lessee of its obligations hereunder and thereunder, substantially in the form attached hereto as Exhibit "A" or otherwise satisfactory to Lessor;

(iii) an incumbency certificate for the authorized official(s) of Lessee executing this Agreement and any related certificates, documents and instruments, dated the Closing Date and substantially in the form attached hereto as Exhibit "B" or otherwise satisfactory to Lessor;

(iv) evidence of insurance coverage or self-insurance as required by Article V;

(v) an opinion of counsel to Lessee, dated the Closing Date and substantially in the form attached hereto as Exhibit "C" or otherwise satisfactory to Lessor;

(vi) a properly completed and executed IRS Form 8038-G;

- (vii) Uniform Commercial Code financing statement(s) and any other documents required by Lessor to secure its interest in the Equipment and any other collateral with respect to this Agreement;
- (viii) waivers of third-party holders of interests in the real property where the Equipment will be located, as Lessor may deem necessary;
- (ix) copies of any filings required under State law, including any filings required to be made by Lessee with the State Division of Bond Finance; and
- (x) such other documents as may be reasonably requested by Lessor.

Section 1.04 Delivery, Installation and Acceptance of Equipment. Lessee shall order the Equipment, cause the Equipment to be delivered and installed at the location(s) specified in Equipment Schedule attached hereto and shall pay all taxes, delivery costs and installation costs, if any, in connection therewith. The Funding Amount shall be disbursed by Lessee. Lessee shall provide written notice promptly to Lessor of each disbursement of the Funding Amount by Lessee to the vendor, or reimbursement to Lessee from the Funding Amount, for Equipment costs, and closing costs related to this Agreement, specifying the amount thereof and the costs paid or reimbursed. When the Equipment is delivered, installed and accepted, Lessee shall promptly deliver to Lessor an Acceptance Certificate, executed by an authorized official of Lessee, in the form attached hereto as Exhibit "D". The insufficiency of the Funding Amount to pay all costs of the Equipment and any other costs related thereto shall not affect Lessee's obligations under this Section 1.04.

## **ARTICLE II      TERM; RENTAL PAYMENTS**

Section 2.01 Term. The term of this Agreement (the "Lease Term") shall commence on the Closing Date and shall continue until the end of the current fiscal year of Lessee (the "Original Term"); provided that the Lease Term may be continued, at the option of Lessee, at the end of the Original Term or any renewal term of this Agreement, each having a duration of one year and a term coextensive with Lessee's fiscal year or such earlier date specified in the Payment Schedule attached hereto (each a "Renewal Term"), up to the maximum Lease Term set forth in the Payment Schedule. At the end of the Original Term and at the end of each Renewal Term until the maximum Lease Term has been completed, Lessee shall be deemed to have exercised its option to continue this Agreement for the next Renewal Term, unless sooner terminated pursuant to this Agreement.

Section 2.02 Rental Payments. Lessee agrees to pay the rental payments in the amounts (the "Rental Payments") and on the dates (each a "Payment Date") as specified in the Payment Schedule. A portion of each Rental Payment is paid as interest and the balance is paid as principal, as specified in the Payment Schedule. All Rental Payments shall be paid to Lessor, at such place as Lessor may from time to time designate by written notice to Lessee. Lessee shall pay the Rental Payments in lawful money of the United States of America from moneys legally available therefor.

Section 2.03 Current Expense. The obligations of Lessee hereunder, including its obligation to pay the Rental Payments due in any fiscal year shall constitute a current expense of Lessee for such fiscal year and shall not constitute an indebtedness of Lessee within the meaning of the Constitution and laws of the State. THE RENTAL PAYMENTS ARE TO BE MADE ONLY FROM LESSEE'S LEGALLY AVAILABLE FUNDS APPROPRIATED ON AN ANNUAL BASIS, AND NEITHER LESSEE, THE STATE, NOR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY ANY SUMS DUE HEREUNDER FROM THE COMPELLED LEVY OF AD VALOREM OR OTHER TAXES EXCEPT FROM THOSE LEGALLY AVAILABLE FUNDS APPROPRIATED BY LESSEE ON AN ANNUAL BASIS. Nothing herein shall constitute a pledge by Lessee of the full faith and credit or taxing power of Lessee. The Lessee official in charge of preparing Lessee's budget will include in the budget request for each fiscal year the Rental Payments to become due during such fiscal year and will use all reasonable and lawful means available to secure the appropriation of money for such fiscal year sufficient to pay all Rental Payments coming due therein. Lessor acknowledges that appropriation for Rental Payments is a governmental function which Lessee cannot contractually commit itself in advance to perform. Lessee reasonably believes that moneys in an amount sufficient to make all Rental Payments can and will lawfully be appropriated and made available to permit Lessee's continued utilization of the Equipment in the performance of its essential functions during the Lease Term.

Section 2.04 Nonappropriation. If during the then current fiscal year of Lessee, sufficient funds are not appropriated to pay the Rental Payments required hereunder for the following fiscal year (an "Event of Nonappropriation"), Lessee shall be deemed not to have renewed this Agreement for the following fiscal year, and this Agreement shall terminate at the end of the then current fiscal year, and Lessee shall not be obligated to pay Rental Payments beyond the then current fiscal year for which funds have been appropriated. Upon an Event of Nonappropriation, Lessee shall return the Equipment to Lessor in accordance with the requirements of Section 10.03. Lessee shall notify Lessor in writing no later than thirty (30) consecutive days following an Event of Nonappropriation, but failure to provide such notice shall not operate to extend the Lease Term. If Lessee fails to return the Equipment or otherwise comply with Section 10.03, the termination shall nevertheless be effective, but Lessee shall be responsible for the payment of an amount equal to the Rental Payments that would thereafter have come due if this Agreement had not been terminated and which are attributable to the number of days after which Lessee fails to comply with Lessor's instructions and for any other loss suffered by Lessor as a result of Lessee's failure to take such actions as required hereunder. In addition, upon an Event of Nonappropriation, Lessor shall pay to Lessor any undisbursed portion of the Funding Amount and any earnings thereon.

Section 2.05 Unconditional Rental Payments. Subject to Sections 2.03 and 2.04 hereof, (a) Lessee's obligation to make Rental Payments and any other payments hereunder shall be absolute and unconditional; (b) Lessee shall make such payments when due and shall not withhold any of such payments pending final resolution of any disputes; (c) Lessee shall not assert any right of set-off or counterclaim against its obligation to make such payments; (d) Lessee's obligation to make Rental Payments or other payments shall not be abated through accident, unforeseen circumstances, failure of the Equipment to perform as desired, damage or destruction to the Equipment, loss of possession of the Equipment or obsolescence of the Equipment; and (e) Lessee shall be obligated to continue to make payments required under this Agreement if title to, or temporary use of, the Equipment or any part thereof shall be taken under exercise of the power of eminent domain.

### **ARTICLE III PURCHASE AND PREPAYMENT**

Section 3.01 End of Lease Term. Lessee shall have the option to purchase all of the Equipment upon the expiration of the Lease Term and payment in full of all Rental Payments then due and all other amounts then owing hereunder, and the payment of one dollar (\$1.00) to Lessor.

Section 3.02 Optional Prepayment. Lessee shall have the option to prepay its obligations hereunder in whole, but not in part, on any Payment Date. Lessee shall give written notice to Lessor of its intention to exercise its option not less than thirty (30) consecutive days prior to the Payment Date on which the option will be exercised and shall pay to Lessor not later than such Payment Date an amount equal to all Rental Payments and any other amounts then due or past due hereunder, including the Rental Payment due on the Payment Date on which the option shall be effective, and the applicable Purchase Price set forth in the Payment Schedule attached hereto (the "Purchase Price").

Section 3.03 Mandatory Prepayment from Excess Funding Amount. Any portion of the Funding Amount not applied to the costs of the Equipment on the earlier of (a) the expiration of the Acquisition Period (as defined in the Payment Schedule) and (b) the date on which Lessee executes the final Acceptance Certificate, shall be applied by Lessor on any Rental Payment date to all or a portion of the Rental Payment due and owing in the succeeding twelve (12) months and any remaining amounts shall be applied by Lessor as prepayment to the remaining principal balance owing hereunder [in the inverse order of Rental Payment dates].

Section 3.04 Release of Lessor's Interest. Upon timely receipt of all amounts required for the purchase of the Equipment pursuant to Section 3.01 or Section 3.02, this Agreement shall terminate, all of Lessor's interest in the Equipment shall terminate, and Lessor shall deliver to Lessee all such documents and instruments as Lessee may reasonably request to evidence the termination of this Agreement and Lessor's interest in the Equipment, without warranty by or recourse to Lessor.

### **ARTICLE IV REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 4.01 Representations and Warranties. Lessee represents and warrants to Lessor as of the Closing Date as follows:

(a) Lessee is a political subdivision of the State within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the "Code"), duly organized and existing under the Constitution and laws of the State and is authorized under the Constitution and laws of the State to enter into this Agreement and the transactions contemplated hereby, and to perform all of its obligations under this Agreement.

(b) The execution and delivery of this Agreement have been duly authorized by all necessary action of Lessee's governing body and such action is in compliance with all public bidding and other State and federal laws applicable to this Agreement and the acquisition and financing of the Equipment by Lessee.

(c) This Agreement has been duly executed and delivered by and constitute the valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms.

(d) The execution, delivery and performance of this Agreement by Lessee does not (i) violate any State or federal law or local law or ordinance, or any order, writ, injunction, decree, or regulation of any court or other governmental agency or body applicable to Lessee, or (ii) conflict with or result in the breach or violation of any term or provision of, or constitute a default under, any note, bond, mortgage, indenture, agreement, deed of trust, lease or other obligation to which Lessee is bound.

(e) There is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of Lessee's knowledge, threatened against or affecting Lessee, challenging Lessee's authority to enter into this Agreement or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of this Agreement.

(f) Lessee or Lessee's governing body has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments during Lessee's current fiscal year, and such moneys will be applied in payment of all Rental Payments due and payable during such current fiscal year.

(g) Lessee has an immediate need for, and expects to make immediate use of, the Equipment, which need is not temporary or expected to diminish during the Lease Term.

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

(i) The estimated total costs of the Equipment will not be less than the Funding Amount; (ii) the Equipment has been ordered or is expected to be ordered within six months after the Closing Date and the Equipment will be delivered and installed, and the Vendor fully paid, within eighteen (18) months from the Closing Date; (iii) Lessee will pursue the acquisition of the Equipment and the expenditure of the Funding Amount with due diligence; (iv) no sinking, debt service, reserve or similar fund will be maintained by Lessee with respect to the Rental Payments or pledged as security therefor; (v) the Equipment has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last Payment Date; (vi) there are no other obligations of Lessee which are being sold within fifteen (15) days of the Closing Date or are being sold pursuant to the same plan of financing as this Agreement, and are expected to be paid from substantially the same source of funds; (vii) Lessee made a declaration of its intention to reimburse the costs of the Equipment to be reimbursed with the Funding Amount not later than sixty (60) days after the date on which payment is made; (viii) the officer or official who has executed this Agreement on Lessee's behalf is familiar with Lessee's expectations regarding the use and expenditure of the Funding Amount; and (ix) the facts and estimates set forth in this paragraph are accurate and the expectations of Lessee set forth in this paragraph are reasonable.

(j) None of this Agreement, Lessee's financial statements furnished to Lessor, or any other agreement, document, certificate or written statement furnished to Lessor by or on behalf of Lessee in connection with the transactions contemplated by this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in any material respect. There is no fact that Lessee has not disclosed in writing to Lessor that would cause a material adverse change in the business, assets, operations or condition, financial or otherwise, of Lessee.

#### Section 4.02 Tax Covenants.

(a) Lessee covenants and agrees that it will (i) comply with all provisions of the Code and the Treasury Department regulations applicable to establishing and maintaining the excludability of the interest component of the Rental Payments from federal gross income pursuant to Section 103 of the Code; (ii) not permit the Equipment to be directly or indirectly used for a private business use within the meaning of Section 141 of the Code including, without limitation, use by private persons or entities pursuant to contractual arrangements which do not satisfy Internal Revenue Service ("IRS") guidelines for permitted management contracts, as the same may be amended from time to time; (iii) invest and reinvest moneys related to this Agreement from time to time in a manner that will not cause this Agreement to be classified as an "arbitrage bond" within the meaning of Section 148(a) of the Code; (iv) rebate an amount equal to excess earnings on invested proceeds of this Agreement to the federal government if required by, and in accordance with, Section 148(f) of the Code and make the determinations and maintain the records required by the Code; and (v) complete and timely file an IRS Form 8038-G with the IRS in accordance with Section 149(e) of the Code.

(b) If Lessor either (i) receives notice, in any form, from the IRS; or (ii) reasonably determines, based on an opinion of independent tax counsel selected by Lessor and reasonably acceptable to Lessee, that Lessor may not exclude the interest component of any Rental Payment from gross income for federal income tax purposes, then Lessee shall pay to Lessor, within thirty (30) consecutive days after Lessor notifies Lessee of such determination, the amount which, with respect to Rental Payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the interest component of all Rental Payments due through the date of such event) that are imposed on Lessor as a result of the loss of the exclusion, will restore to Lessor the same after tax yield on the transaction evidenced by this Agreement (assuming tax at the highest marginal corporate tax rate) that it would have realized had the exclusion not been lost. Additionally, Lessee agrees that upon the occurrence of such an event, it shall pay additional rent to Lessor on each succeeding Payment Date an amount that will maintain such after-tax yield to Lessor. Lessor's determination of the amount necessary to maintain its after-tax yield as provided in this Section 4.02(b) shall be conclusive (absent manifest error).

### **ARTICLE V     INSURANCE**

Section 5.01 Liability and Property Insurance. Lessee shall, at its own expense, procure and maintain continuously in effect during the Lease Term: (a) public liability insurance for death or injuries to persons, or damage to property arising out of or in any way connected to the Equipment sufficient to protect Lessor and its assigns from liability in all events, with a coverage of not less than one million dollars (\$1,000,000.00) per occurrence, and (b) insurance against such hazards as Lessor may require, including, but not limited to, all-risk casualty and property insurance, in an amount equal to the greater of the full replacement cost of the Equipment or the applicable Purchase Price.

Section 5.02 Insurance Requirements. All insurance policies required by Section 5.01 shall be taken out and maintained with insurance companies rated not less than "A" by A.M. Best Company and otherwise acceptable to Lessor and shall contain a provision that thirty (30) consecutive days prior to any change in the coverage (including cancellation) the insurer must provide written notice to the insured parties. No insurance shall be subject to any co-insurance clause. Each liability insurance policy shall be endorsed to name Lessor and its assigns as an additional insured party and each casualty and property insurance policy shall be endorsed to name Lessor and its assigns as lender's loss payee, in each case regardless of any breach of warranty or other act or omission of Lessee. Lessee may self-insure against the risks described in Section 5.01 with the prior written consent of Lessor.

## ARTICLE VI ADDITIONAL OBLIGATIONS

Section 6.01 Use and Maintenance of Equipment. Lessee shall, at its own expense, maintain the Equipment in good condition and proper working order, and shall make all necessary repairs and replacements to keep the Equipment in such condition. The Equipment will be used by Lessee only for the purpose of performing Lessee's essential governmental functions. Lessee shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any manufacturer's guidelines or in violation of any applicable law or regulation or in a manner contrary to that contemplated by this Agreement. Lessee shall obtain and maintain all permits and licenses necessary for the installation and operation of the Equipment. Lessee shall have sole responsibility to maintain and repair the Equipment. Lessee shall keep (or in the case of Equipment constituting motor vehicles, house) the Equipment at the address specified in the Equipment Schedule attached hereto; provided that Lessee may change the location at which any Equipment is kept (or housed) with thirty (30) consecutive days prior written notice to Lessor specifying the address of the new location. Lessee shall provide Lessor access at all reasonable times to examine and inspect the Equipment and provide Lessor with such access to the Equipment as may be reasonably necessary to perform maintenance on the Equipment in the event of failure by Lessee to perform its obligations hereunder. If Lessor reasonably determines that Lessee is not maintaining any of the Equipment in accordance with this Section 6.01, Lessor may (in addition to any other remedies it may have) require Lessee to enter into maintenance contracts for such Equipment in form approved by Lessor and with approved providers.

Section 6.02 Taxes. Lessee shall pay all taxes, assessments and other charges which are assessed or levied against the Equipment or any part thereof, during the Lease Term, whether assessed against Lessee or Lessor. With respect to any taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the then current fiscal year of the Lease Term.

Section 6.03 Modification of Equipment. Lessee will not, without the prior written consent of Lessor, affix or install any accessory equipment or device on any of the Equipment if such addition will adversely affect the originally intended value, function or use of the Equipment.

Section 6.04 Liens. Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any Lien with respect to the Equipment, other than the respective rights of Lessor and Lessee as herein provided. Lessee shall promptly, at its own expense, take such actions as may be necessary duly to discharge or remove any such Lien if the same shall arise at any time.

Section 6.05 Financial Information. Lessee shall deliver to Lessor (i) its annual audited financial statements within two hundred and seventy (270) consecutive days after the end of each fiscal year, (ii) its annual budget for each fiscal year promptly following approval thereof, including written evidence that the Rental Payments for such fiscal year have been appropriated, and (iii) such other financial statements and information relating to the ability of Lessee to satisfy its obligations under this Agreement as may be reasonably requested by Lessor from time to time.

Section 6.06 Advances. If Lessee shall fail to perform any of its obligations under Section 6.01, Section 6.02 or Section 6.04, or shall fail to maintain the insurance required by Article V, Lessor may (but shall not be required to) take such action to cure such failure, including the advancement of money, and Lessee shall be obligated to repay all such advances on demand, with interest at the Default Rate (as defined herein), from the date of the advance to the date of repayment.

Section 6.07 Filing of Agreement. Lessee shall not file or submit, or permit the filing or submission, of all or any portion this Agreement, any document related to this Agreement, any default, event of acceleration, termination event, waiver, modification of terms or other similar events relating to this Agreement or any summary of the foregoing with the Municipal Securities Rulemaking Board ("MSRB") (or any successor to the MSRB or similar entity or service) unless such document or portion thereof has been provided to the Lessor in advance for review and redaction to the extent required by Lessor and otherwise permitted under applicable MSRB rules or federal securities law, if any. Lessor is not responsible for the Lessee's or any other entity's compliance with any continuing disclosure obligations under any applicable securities law or related agreement or undertaking.

## **ARTICLE VII TITLE; NO WARRANTIES BY LESSOR**

Section 7.01 Title. During the Lease Term, legal title to all Equipment shall be in Lessee, subject to Lessor's interests under this Agreement. Upon the occurrence of an Event of Default or upon termination of this Agreement due to an Event of Nonappropriation, title shall immediately vest in Lessor, free and clear of any right, title or interest of Lessee.

Section 7.02 Reserved.

Section 7.03 Personal Property. The Equipment is and shall at all times be and remain personal property and not fixtures.

Section 7.04 No Warranties. Lessee acquires and leases the Equipment "AS IS." Lessee acknowledges that Lessor did not manufacture the Equipment. Lessor does not represent the manufacturer, supplier, owner or dealer, and Lessee selected the Equipment based upon Lessee's own judgment. Lessor makes no warranties, express or implied, including warranties of merchantability or fitness for a particular purpose or otherwise or as to the Equipment's value, design, condition, use, capacity or durability. Lessee agrees that regardless of cause, Lessor is not responsible for, and Lessee will not make any claim against Lessor for, any damages, whether consequential, direct, special or indirect incurred by Lessee in connection with the Equipment. Neither the manufacturer, supplier or dealer nor any salesperson, employee or agent of the manufacturer, supplier or dealer is Lessor's agent or has any authority to speak for Lessor or to bind Lessor in any way. For and during the Lease Term, Lessor assigns to Lessee any manufacturers or supplier's product warranties, express or implied, applicable to any Equipment and Lessor authorizes Lessee to obtain the customary services furnished in connection with such warranties at Lessee's sole expense. Lessee agrees that (a) all Equipment will have been purchased in accordance with Lessee's specifications from suppliers selected by Lessee, (b) Lessor is not a manufacturer or dealer of any Equipment and has no liability for the delivery or installation of any Equipment, (c) Lessor assumes no obligation with respect to any manufacturer's or supplier's product warranties or guaranties, (d) no manufacturer or supplier or any representative of said parties is an agent of Lessor, and (e) any warranty, representation, guaranty or agreement made by any manufacturer or supplier or any representative of said parties shall not be binding upon Lessor.

## **ARTICLE VIII RISK OF LOSS; CASUALTY**

Section 8.01 Risk of Loss. As between Lessee and Lessor, Lessee bears the entire risk of loss, theft, damage or destruction of any Equipment in whole or in part for any reason whatsoever. No loss to the Equipment shall relieve Lessee from the obligation to make any Rental Payments or to perform any other obligation hereunder. Proceeds of any insurance recovery will be applied to Lessee's obligations under this Article VIII.

Section 8.02 Notice of Loss. If a casualty occurs to the Equipment, Lessee shall immediately notify Lessor of the same and Lessee shall, unless otherwise directed by Lessor, immediately repair the same.

Section 8.03 Application of Proceeds. If Lessor determines that any item of Equipment has suffered a casualty loss that is beyond repair, then Lessee shall either: (a) immediately replace such Equipment with similar equipment in good repair, condition and working order free and clear of any Liens and deliver to Lessor a purchase order, bill of sale or other evidence of sale to Lessee covering the replacement equipment, in which event such replacement equipment shall automatically be Equipment hereunder, or (b) on the next scheduled Payment Date, pay Lessor (i) all amounts owed by Lessee hereunder, including the Rental Payment due on such date, plus (ii) an amount equal to the applicable Purchase Price. If the net proceeds of any insurance are insufficient to pay in full the cost of any repair, restoration, modification or improvement of the Equipment, Lessee shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of available insurance proceeds, or (b) pay or cause to be paid to Lessor the amount of the then applicable Purchase Price for the Equipment. If Lessee makes any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article II.

Section 8.04 Claims and Expenses. To the extent permitted by Law Lessee shall bear the risk of loss for, shall pay directly and shall defend against any and all claims, liabilities, proceedings, actions, expenses (including reasonable attorney's fees), damages or losses arising under or related to any Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof. These obligations of Lessee shall survive any expiration or termination of this Agreement. Lessee shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses (including attorneys' fees), damages or losses which arise directly from events occurring after any Equipment has been returned by Lessee to Lessor in accordance with the terms hereof or which arise directly from the gross negligence or willful misconduct of Lessor.

## **ARTICLE IX    ASSIGNMENT**

Section 9.01 Assignment by Lessor. Lessor may assign its rights, title and interest in and to this Agreement, and the Equipment and/or may grant or assign a security interest in this Agreement and the Equipment, in whole or in part, without obtaining the consent of Lessee, but no such assignment, transfer or conveyance shall be effective as against Lessee unless and until Lessor has delivered to Lessee written notice thereof that discloses the name and address of the assignee and such assignment, transfer or conveyance shall be made only to banks, insurance companies or other financial institutions or their affiliates. LESSEE AGREES NOT TO ASSERT AGAINST ANY ASSIGNEE ANY CLAIMS, ABATEMENTS, SETOFFS, COUNTERCLAIMS, RECOUPMENT OR ANY OTHER SIMILAR DEFENSES WHICH LESSEE MAY HAVE AGAINST LESSOR. Lessee shall keep a complete and accurate record of all such assignments in the form necessary to comply with Section 149(a) of the Code. Lessee agrees to acknowledge in writing any such assignments if so requested.

Section 9.02 Assignment and Subleasing by Lessee. Neither this Agreement nor the Equipment may be assigned, subleased, sold, transferred, pledged or mortgaged by Lessee.

## **ARTICLE X    EVENTS OF DEFAULT; REMEDIES**

Section 10.01 Events of Default. The occurrence of any of the following events shall constitute an Event of Default hereunder:

(a) Lessee's failure to pay any Rental Payment or other amount required to be paid to Lessor hereunder within ten (10) days following the due date thereof, other than by reason of an Event of Nonappropriation;

(b) Lessee's failure to maintain insurance as required herein;

(c) With the exception of the above clauses (a) or (b), Lessee's failure to perform or abide by any condition, agreement or covenant hereunder for a period of thirty (30) consecutive days after written notice by Lessor to Lessee specifying such failure and requesting that it be remedied, unless Lessor shall agree in writing to an extension of time prior to its expiration;

(d) Any statement, representation or warranty made by Lessee in this Agreement or in any writing delivered by Lessee pursuant hereto or in connection herewith proves at any time to have been false, misleading or erroneous in any material respect as of the time when made; or

(e) Reserved

(f) Lessee shall be in default under any other financing agreement executed at any time with Lessor or any Lessor affiliate; or

(g) Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization, moratorium or insolvency proceeding; or



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

Section 10.02 Remedies on Default. Upon the occurrence of any Event of Default, Lessor shall have the right, at its option and without any further demand or notice to one or more or all of the following remedies:

(a) Lessor, with or without terminating this Agreement, may declare all Rental Payments payable hereunder to the end of the then-current fiscal year of Lessee to be immediately due and payable by Lessee, whereupon such Rental Payments shall be immediately due and payable;

(b) To the extent permitted by law, Lessor may terminate this Agreement and by written notice to Lessee direct Lessee to deliver the Equipment in the manner provided in Section 10.03. Lessor may thereafter dispose of the Equipment. If Lessor terminates this Agreement and disposes of any or all of the Equipment, Lessor shall apply the proceeds of any such disposition to pay the following items in the following order: (i) all costs and expenses (including, but not limited to, attorneys' fees) incurred in securing possession of the Equipment; (ii) all costs and expenses incurred in completing the disposition of the Equipment; (iii) any sales or transfer taxes incurred in the disposition of the Equipment; (iv) any Rental Payments payable hereunder to the end of the then-current fiscal year of Lessee; (v) the outstanding principal component of Rental Payments; and (vi) any other amounts then due hereunder. Any disposition proceeds remaining after the requirements of clauses (i), (ii), (iii), (iv), (v) and (vi) have been met shall be paid to Lessee. No deficiency shall be allowed against Lessee, except with respect to any unpaid Rental Payments to the end of the then-current fiscal year of Lessee and unpaid costs and expenses incurred by Lessor in connection with the repossession and disposition of the Equipment;

(c) By written notice to the Lessee, Lessor may direct the Lessee to pay any additional undisbursed portion of the Funding Amount and any earnings thereon to Lessor, such sums to be credited to payment of Lessee's obligations hereunder; and

(d) Lessor may exercise any other remedy available, at law or in equity, with respect to such Event of Default.

Section 10.03 Return of Equipment; Release of Lessee's Interest. Upon termination of this Agreement prior to the payment of all Rental Payments or the Purchase Price (whether as result of an Event of Nonappropriation or Event of Default), Lessee shall, within ten (10) consecutive days after such termination, at its own expense: (a) perform any testing and repairs required to place the related Equipment in the condition required by Section 6.01; (b) if deinstallation, disassembly or crating is required, cause the Equipment to be deinstalled, disassembled and crated by an authorized manufacturer's representative or such other service person as is satisfactory to Lessor; and (c) return the Equipment to a location in the continental United States specified by Lessor, freight and insurance prepaid by Lessee. In addition, Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of such legal title to Lessor and the termination of Lessee's interest therein.

With respect to any provision of the Agreement requiring Lessee to return all or any portion of the Equipment to Lessor or to transfer title to all or any portion of the Equipment to Lessor, Lessee agrees to voluntarily do so. In the event that Lessee fails or refuses to return or transfer the Equipment or title thereto voluntarily as set forth above, Lessor acknowledges that the Agreement does not and shall not create a right in Lessor to involuntarily dispossess Lessee of title to or possession of all or any item of the Equipment. In lieu of such right Lessor shall be entitled to and Lessee agrees to pay to Lessor immediately, but only from legally available funds, the Purchase Price, plus any Rental Payments accrued and unpaid as of the date of such payment.

Section 10.04 Late Charge. To the extent permitted by applicable law, Lessee shall pay Lessor a charge on any Rental Payment or any other amount payable hereunder not paid on the date such payment is due at a rate equal to the interest rate set forth on the Payment Schedule, plus five percent (5%) per annum, or the maximum amount permitted by law, whichever is less (the "Default Rate"), from such date.

Section 10.05 No Remedy Exclusive. Each of the rights and remedies under this Agreement is cumulative and may be enforced separately or concurrently. No course of dealing or conduct between Lessor and Lessee shall be effective to amend, modify or change any provisions of this Agreement. No failure or delay by Lessor to insist upon the strict performance of any term, covenant or agreement of the Agreement, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Lessor from exercising any such right, power or remedy at any later time or times.

Section 10.06 Costs and Attorneys' Fees. Upon the occurrence of an Event of Default, Lessee agrees to pay to Lessor or reimburse Lessor for, in addition to all other amounts payable hereunder, all of Lessor's costs of collection, including reasonable attorneys' fees, whether or not suit or action is filed thereon. Any such costs shall be immediately due and payable upon written notice and demand given to Lessee, shall be secured by this Agreement until paid, and shall bear interest at the Default Rate. In the event suit or action is instituted to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial and on appeal of such suit or action or in any bankruptcy proceeding, in addition to all other sums provided by law.

## **ARTICLE XI MISCELLANEOUS PROVISIONS**

Section 11.01 Notices. All notices, requests and other communications to either party hereunder shall be in writing and shall be given to such party at its address or telecopier number set forth on the signature pages hereof or such other address or telecopier number as such party may hereafter specify. Each such notice, request or other communication shall be effective (a) if given by certified mail, seventy-two (72) hours after such communication is deposited with the United States Postal Service with first class postage prepaid, addressed as aforesaid or (b) if given by any other means, including e-mail or facsimile, when delivered at the address, email address or telecopier number specified on the signature pages hereto or to such other addresses or telecopier numbers as specified in writing by a party to the other party hereunder, as evidenced by a confirmation report.

Section 11.02 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of Lessor and Lessee and their respective successors and assigns. Specifically, as used herein the term "Lessor" means any person or entity to whom Lessor has assigned its right to receive Rental Payments hereunder.

Section 11.03 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.04 Rules of Construction. Unless the context otherwise requires, (a) the singular of each term used in this Agreement includes the plural and the plural of each such term includes the singular, (b) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications set forth herein), and shall include all exhibits, schedules, annexes and other attachments thereto, (c) the words "hereto," "herein," "hereof" and "hereunder," and words of similar import when used in this Agreement, shall be construed to refer to this Agreement in its entirety and not to any particular provision thereof, (d) any reference herein to any person shall be construed to include such person's successors and permitted assigns, (e) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, (f) the terms "Article" and "Section" refer to an article or section of this Agreement and the terms "Exhibit" and "Schedule" refer to an exhibit or schedule to this Agreement, and (g) the symbol "\$" refers to United States dollars or such coin or currency as at the time of payment is legal tender for the payment of public and private debts in the United States of America

Section 11.05 Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties with respect to the subject matter thereof and supersedes all prior and contemporaneous writings, understandings, agreements, solicitation documents and representations, express or implied. This Agreement may be amended or modified only by written documents duly authorized, executed and delivered by Lessor and Lessee.

Section 11.06 Further Assurances and Corrective Instruments. Lessor and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required to perfect, confirm, establish, reestablish, continue or complete the interests of Lessor in this Agreement, to consummate the transactions contemplated hereby and thereby, and to carry out the purposes and intentions of this Agreement.

Section 11.07 Governing Law. Agreement must be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement will be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit will be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida

Section 11.08 Waiver of Jury Trial. To the extent permitted by applicable law, Lessor and Lessee hereby waive any right to trial by jury in any action or proceeding with respect to, in connection with or arising out of this Agreement.

Section 11.09 Usury. It is the intention of the parties hereto to comply with any applicable usury laws; accordingly, it is agreed that, notwithstanding any provisions to the contrary herein, in no event shall this Agreement require the payment or permit the collection of interest or any amount in the nature of interest or fees in excess of the maximum amount permitted by applicable law. Any such excess interest or fees shall first be applied to reduce principal, and when no principal remains, refunded to Lessee. In determining whether the interest paid or payable exceeds the highest lawful rate, the total amount of interest shall be spread through the Lease Term so that the interest is uniform through such term.

Section 11.10 USA Patriot Act Compliance Notification. Lessor hereby notifies Lessee that pursuant to the requirements of the USA PATRIOT Act (the "Patriot Act"), it is required to obtain, verify and record information that identifies Lessee, which information includes the name and address of Lessee and other information that will allow Lessor to identify Lessee in accordance with the Patriot Act. Lessee shall, promptly upon Lessor's request, provide all documentation and other information that Lessor requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

Section 11.11 Relationship of Parties. Lessee acknowledges and agrees that (i) this Agreement and the transactions related thereto is an arm's-length commercial transaction between Lessor and Lessee, (ii) in connection therewith and with the discussions, undertakings, and procedures leading up to the consummation of this transaction, Lessor is and has been acting solely as a principal and is not acting as the agent, advisor or fiduciary of Lessee, (iii) Lessor has not assumed an advisory or fiduciary responsibility in favor of Lessee with respect to the transactions contemplated hereby or the discussions, undertakings, and procedures leading thereto (regardless of whether Lessor or any affiliate thereof has provided other services or is currently providing other services to Lessee on other matters) and Lessor has no obligation to Lessee with respect to the transactions contemplated hereby except the obligations expressly set forth in this Agreement, and (iv) Lessee has consulted its own legal, financial, and other advisors to the extent it has deemed appropriate.

Section 11.12 Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions, Articles, Sections or clauses hereof.

Section 11.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and in making proof of this Agreement it shall not be necessary to produce or account for more than one such counterpart.

Section 11.14 Electronic Signatures. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties agree that any electronically signed document (including this Agreement) shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or "printouts", if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business

records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, "electronic signature" means a manually signed original signature or a signature affixed by DocuSign that is then transmitted by electronic means ; "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a "pdf" (portable document format) or other replicating image attached to an e mail message; and, "electronically signed document" means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

Section 11.15 Sovereign Immunity. Nothing in this Agreement shall constitute a waiver by the City of its sovereign immunity limits as set forth in section 768.28, Florida Statutes. Nothing herein shall be construed as consent from either party to be sued by third parties.

Section 11.16 Scrutinized Companies. By execution of this Agreement, in accordance with the requirements of F.S. 287.135 and F.S. 215.473, Lessor certifies that Lessor is not participating in a boycott of Israel. Lessor further certifies that Lessor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in Iran Terrorism Sectors List, nor has Lessor been engaged in business operations in Syria. Subject to limited exceptions provided in state law, the City will not contract for the provision of goods or services with any scrutinized company referred to above. In accordance with Section 287.135, Florida Statutes as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local government entity for goods or services of:

(a) Any amount if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or

(b) One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:

1. Is on the Scrutinized Companies with Activities in Sudan List of the Scrutinized Companies with Activities in Iran Terrorism Sectors List, created pursuant to Section 215.473, Florida Statutes; or
2. Is engaged in business operations in Syria.

(c) Submitting a false certification or being placed on a list created pursuant to Section 215.473, Florida Statutes relating to scrutinized active business operations in Iran after Lessor has submitted a certification, shall be deemed a material breach of contract. Lessee shall provide notice, in writing, to Lessor of the Lessee's determination concerning the false certification. Lessor shall have five (5) consecutive days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, Lessor shall have ninety (90) consecutive days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If Lessor does not demonstrate that the Lessee's determination of false certification was made in error then Lessee shall have the right to terminate the contract and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time.

Section 11.17 Affidavit of Compliance with Anti-Human Trafficking Laws. In accordance with section 787.06 (13), Florida Statutes, the undersigned, on behalf of the entity listed below ("Entity"), hereby attests under penalty of perjury that:

(a) Entity does not use coercion for labor or services as defined in Section 787.06, Florida Statutes, entitled "Human Trafficking".

Section 11.18 Affidavit of Compliance with Foreign Entity Laws. The undersigned, on behalf of the entity listed below ("Entity"), hereby attests under penalty of perjury as follows:

- (a) Entity is not owned by the government of a foreign country of concern as defined in Section 287.138, Florida Statutes.
- (b) The government of a foreign country of concern does not have a controlling interest in Entity.
- (c) Entity is not organized under the laws of, and does not have a principal place of business in, a foreign country of concern.
- (d) Entity is not owned or controlled by the government of a foreign country of concern, as defined in Section 692.201, Florida Statutes.
- (e) Entity is not a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country of concern, as defined in Section 692.201, Florida Statutes, or a subsidiary of such entity.
- (f) Entity is not a foreign principal, as defined in Section 692.201, Florida Statutes.
- (g) Entity is in compliance with all applicable requirements of Sections 692.202, 692.203, and 692.204, Florida Statutes.

[The remainder of this page is intentionally blank. Signature page follows.]

Witnesses:

“LESSOR”: TD EQUIPMENT FINANCE, INC.

\_\_\_\_\_

Print Name

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

Alison L. Sauter, Senior Manager  
12000 Horizon Way, 4<sup>th</sup> Floor  
Mount Laurel, NJ 08054

Signature

(SEAL)

Print Name

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, **by means of** ☐ **physical presence** or ☐ **online notarization**, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Alison L. Sauter, Senior Manager on behalf of TD EQUIPMENT FINANCE, INC. She is personally known to me pr who has produced \_\_\_\_\_ (type of identification) as identification.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF NEW YORK

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

Witnesses:

**“LESSEE”: CITY OF POMPANO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
Rex Hardin, Mayor

\_\_\_\_\_

By: \_\_\_\_\_  
Gregory P. Harrison, City Manager

Attest:

\_\_\_\_\_  
Kervin Alfred, City Clerk

(SEAL)

Approved As To Form:

\_\_\_\_\_  
Mark E. Berman, City Attorney

**STATE OF FLORIDA**  
**COUNTY OF BROWARD**

The foregoing instrument was acknowledged before me, **by means of** ☐ **physical presence or** ☒ **online notarization**, this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by REX HARDIN as Mayor, GREGORY P. HARRISON as City Manager and ASCELETA HAMMOND as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me

NOTARY’S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

**Equipment Schedule**

Equipment Description and Location

See attached equipment list



[illegible]

**Payment Schedule**

1. Closing Date: February 4, 2025
2. Funding Amount: \$8,600,000.00
3. Acquisition Period: Period ending February 4, 2027
4. Interest Rate: 3.8390%
5. Rental Payments:

	Payment Date	Lease Payment	Interest	Principal	Outstanding Balance
Lease	2/4/2025				\$ 8,600,000.00
1	5/1/2025	\$ 944,103.15	\$ 79,787.22	\$ 864,315.93	\$ 7,655,896.85
2	11/1/2025	\$ 944,103.15	\$ 148,486.46	\$ 795,616.69	\$ 6,711,793.70
3	5/1/2026	\$ 944,103.14	\$ 133,214.59	\$ 810,888.55	\$ 5,767,690.56
4	11/1/2026	\$ 944,103.15	\$ 117,649.59	\$ 826,453.56	\$ 4,823,587.41
5	5/1/2027	\$ 944,103.14	\$ 101,785.81	\$ 842,317.33	\$ 3,879,484.27
6	11/1/2027	\$ 944,103.14	\$ 85,617.53	\$ 858,485.61	\$ 2,935,381.13
7	5/1/2028	\$ 944,103.15	\$ 69,138.90	\$ 874,964.25	\$ 1,991,277.98
8	11/1/2028	\$ 944,103.15	\$ 52,343.96	\$ 891,759.19	\$ 1,047,174.83
9	5/1/2029	\$ 944,103.14	\$ 35,226.64	\$ 908,876.50	\$ 103,071.69
10	11/1/2029	\$ 944,103.15	\$ 17,780.76	\$ 926,322.39	\$ -
<b>Grand Totals</b>		<b>\$ 9,441,031.46</b>	<b>\$ 841,031.46</b>	<b>\$ 8,600,000.00</b>	

6. Purchase Price: The Purchase Price is an amount equal to the greater of (i) 101% of the outstanding principal balance of the Rental Payments or (ii) the outstanding principal balance of the Rental Payments plus the Yield Maintenance Fee. As used herein, "Yield Maintenance Fee" means an amount equal to (i) the outstanding principal amount of the Rental Payments multiplied by (ii) the Interest Rate set forth above minus the bond equivalent yield for United States Treasury securities with a maturity date closest to the remaining Lease Term and multiplied by (iii) the number of days in remaining in the Lease Term and divided by 360.

LESSEE RESOLUTION

Form of  
INCUMBENCY CERTIFICATE

The undersigned, authorized representative of the City of Pompano Beach, Florida ("Lessee") certifies as follows:

1. The individuals identified below are the duly elected or appointed officers of Lessee holding the offices set forth opposite their respective names.
2. The individuals identified below have the authority on behalf of Lessee to enter into that certain Lease Purchase Agreement, dated as of February 4, 2025 (the "Agreement") between such entity and TD Equipment Finance, Inc., and the documents, instruments and certificates contemplated therein.

<u>Name</u>	<u>Title</u>	<u>Signature</u>
<u>Rex Hardin</u>	<u>Mayor</u>	<u></u>
<u>Allison Feurtado</u>	<u>Finance Director</u>	<u></u>
<u>Patricia White</u>	<u>Controller</u>	<u></u>

3. Attached hereto as Exhibit "A" is a true and accurate copy of the resolution of Lessee dated as of January 29, 2025 approving the acquisition and financing of the property as described in the Agreement. The resolution is in full force and effect, have not been in any respect modified, revoked or rescinded and reflect all action taken by Lessee in connection with the approval of the financing contemplated by the Agreement.

IN WITNESS WHEREOF, I have duly executed this certificate as of \_\_\_\_\_, 2025.

By: \_\_\_\_\_  
Name: Kevin Alfred  
Title: City Clerk

Form of

**OPINION OF COUNSEL TO LESSEE**  
[Place on Letterhead of Counsel to Lessee]

February 4, 2025

TD Equipment Finance, Inc.  
12000 Horizon Way, 4th Floor  
Mount Laurel, NJ 08054

Re: Lease Purchase Agreement, dated as of February 4, 2025, between TD Equipment Finance, Inc. and the City of Pompano Beach, Florida

Ladies and Gentlemen:

[I][We] have acted as counsel to the City of Pompano Beach, Florida ("Lessee") in connection with the above-referenced transaction. In such capacity, [I][We] have reviewed (a) an executed counterpart of that certain Lease Purchase Agreement, dated as of February 4, 2025 (the "Agreement"), by and between TD Equipment Finance, Inc. ("Lessor") and Lessee, which, among other things, provides for the lease of certain property described therein (the "Equipment"), (b) an ordinance(s) or resolution(s) of the governing body of Lessee which, among other things, authorize(s) Lessee to execute the Financing Documents and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. Terms capitalized in this opinion but not defined herein shall have the meanings assigned to them in the Agreement. Based upon foregoing, it is [my][our] opinion that:

1. Lessee is a political subdivision of the State of Florida (the "State") within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended, and is duly organized, existing and operating under the Constitution and laws of the State.
2. Lessee has the requisite power and authority to lease and acquire the Equipment and to execute and deliver the Financing Documents and to perform its obligations thereunder.
3. Each of the Financing Documents has been duly authorized, executed and delivered by and on behalf of Lessee, and is a legal, valid and binding obligation of Lessee enforceable in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency and other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.
4. The authorization and execution of the Financing Documents and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all applicable open meeting, public records, public bidding and all other laws, rules and regulations of the State.
5. The execution of the Agreement and the appropriation of moneys to pay the Rental Payments coming due thereunder do not and will not result in the violation of any constitutional, statutory or other limitation relating to the manner, form or amount of indebtedness which may be incurred by Lessee.
6. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Financing Documents or the interest of Lessor or its assigns, as the case may be, in the Equipment.

This opinion may be relied upon by the addressee hereof and its successors and assignees of interests in the Agreement.

Very truly yours,

**Form of  
ACCEPTANCE CERTIFICATE**

TD Equipment Finance, Inc.  
12000 Horizon Way, 4th Floor  
Mount Laurel, NJ 08054

Re: Lease Purchase Agreement dated as of February 4, 2025 (the "Agreement") between TD Equipment Finance, Inc. and the City of Pompano Beach, Florida ("Lessee")

Ladies and Gentlemen:

I, the undersigned, hereby certify that I am the duly qualified and acting officer of Lessee and, with respect to the above-referenced Agreement, that:

1. The Equipment subject to the Agreement has been delivered and installed, is in good working order and is fully operational and has been fully accepted by Lessee on or before the date hereof.
2. Attached hereto are true and correct copies of the manufacturers' and dealers' invoices for the Equipment.
3. Lessee has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments required to be paid under the Agreement during the current fiscal year of Lessee. Such moneys will be applied in payment of all such Rental Payments due and payable during such current fiscal year.
4. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists on the date hereof.

Date: \_\_\_\_\_

CITY OF POMPANO BEACH, FLORIDA  
Lessee

By: \_\_\_\_\_  
Name: Rex Hardin  
Title: Mayor

### INSURANCE AUTHORIZATION

**\*\*\*Please be advised that we are unable to release any funds to you or your vendor(s) unless we have a valid Certificate of Insurance. Please contact your agent and have them forward a Certificate to our office immediately. If you have any questions, please call me at (856) 685-5259**

To Whom It May Concern:

This is to advise you that \_\_\_\_\_  
Insurance Agent AND contact name

\_\_\_\_\_  
Address City State Zip Code  
\_\_\_\_\_ is my authorized agent.

Telephone and Fax Number

**Please contact your agent and ask them to provide a Certificate of Insurance showing the coverage provided, the expiration date, policy number and the equipment covered.**

**Our insurance requirements are as follows:**

**I. INSURED:**

**TD Equipment Finance, Inc., its successors and assigns ("Lessor")**

12000 Horizon Way, 4<sup>th</sup> Floor

Mount Laurel, NJ 08054

Phone: (856) 685-5259

***Required:***

**I. VEHICLES LICENSED FOR USE ON PUBLIC ROADWAYS:**

**a. Automobile Liability Insurance**

- i. Lessor **must** be named Additional Insured as their interests may appear. **\$1,000,000** Auto Liability is required.

**b. Physical Damage Insurance: Collision and Comprehensive Coverage.**

- i. Lessor **must** be named as Loss Payee. The insurance is required in an amount equal to your equipment cost of **\$8,600,000.00** or actual cash value, whichever is the greater.

**II. EQUIPMENT:**

**a. General Liability Insurance**

- i. Lessor **must** be named Additional Insured as their interests may appear. **\$1,000,000** General Liability is required.

**b. Property / Physical Damage Insurance:**

- i. Lessor **must** be named as Lender's Loss Payee. The insurance is required in an amount equal to your equipment cost of **\$8,600,000.00** or replacement cost value, whichever is the greater.

**III. IF A DEDUCTIBLE OR RETENTION IS APPLICABLE, IT MUST BE INCLUDED ON THE CERTIFICATE.**

**IV. NOTICE OF CANCELLATION:**

- a. 30-Days Notice of Cancellation is required.

**V. DESCRIPTION OF EQUIPMENT:**

- a. A Description of Equipment Covered **must** be provided on the Certificate or please reference **Lease #50001114**. Attach a copy of the Schedule I, if applicable.

**By signing below, we signify that we have contacted our insurance agent and will provide the above coverage and evidence of same will be forwarded to you immediately.**

**LESSEE: CITY OF POMPANO BEACH, FLORIDA**

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

**Name:** Rex Hardin

**Title:** Mayor