GLADSTONE, **ORDINANCE AUTHORIZING** THE CITY **OF** AN MISSOURI, TO ENTER INTO A PERSONAL PROPERTY LEASE PURCHASE AGREEMENT WITH FIRST BANK OF MISSOURI RELATED AND REFINANCING CERTAIN IMPROVEMENTS: TO FINANCING **CERTAIN ACTIONS** IN **APPROVING** AUTHORIZING AND CONNECTION WITH THE EXECUTION AND DELIVERY OF SAID **LEASE** AGREEMENT: **PURCHASE PROPERTY** PERSONAL AUTHORIZING PREPAYMENT OF A PROMISSORY NOTE; AND PRESCRIBING CERTAIN MATTERS IN CONNECTION THEREWITH.

WHEREAS, the City of Gladstone, Missouri (the "City"), desires to provide for the acquisition, construction and installation of various projects throughout the City, including improvements previously financed by the City (the "Projects") and for the leasing by the City of certain of the Projects with an option to purchase; and

WHEREAS, after considering various financial alternatives for providing for the Projects, the City hereby determines that it is in the City's best financial interest to provide for the refinancing and acquisition, construction and installation of the Projects through the lease-purchase arrangement described in this Ordinance; and

WHEREAS, in order to accomplish the foregoing, it is necessary and desirable for the City to enter into a Personal Property Lease Purchase Agreement (the "Lease"), substantially in the form presented to the City Council (a copy of which shall be filed in the records of the City), with First Bank of Missouri, as lessor (the "Lessor"), pursuant to which the City will lease, as lessee, certain of the Projects from the Lessor as described in the Lease, with an option to purchase, for a lease term ending in the year 2036 and for rental payments with aggregate principal components of \$4,383,000 and interest components of rental payments to be computed at a variable rate as described in the Lease; and

# NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, AS FOLLOWS:

**Section 1. Approval of Lease.** The Lease is hereby approved in substantially the form submitted to and reviewed by the governing body on the date hereof, with such changes therein and final payment terms as shall be approved by the City Manager of the City, the City Manager's execution thereof to be conclusive evidence of the approval thereof.

The City Manager is hereby authorized and directed to execute and deliver the Lease on behalf of and as the act and deed of the City.

**Section 2. Prepayment of Promissory Note.** Certain proceeds of the Lease, together with other legally available funds of the City as needed, will be used to prepay amounts due under the Promissory Note dated July 23, 2013, with the City as Borrower and the Lessor as Lender. The

proceeds of such Promissory Note were used by the City related to the Heights at Linden Square Project.

Section 3. Further Authority. The City shall, and the officials and agents of the City are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Lease and the Projects and to prepay the Promissory Note.

**Section 4. Severability**. If any one or more of the terms, provisions or conditions of this ordinance shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, none of the remaining terms, provisions or conditions of this ordinance shall be affected thereby and each provision of this ordinance shall be valid and enforceable to the fullest extent permitted by law.

**Section 5. Effective Date.** This ordinance shall take effect and be in full force from and after its adoption by the governing body.

PASSED, SIGNED AND MADE EFFECTIVE BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, THIS 14th DAY OF DECEMBER, 2015.

Bv:

Mayor Bill Garnos

Ruth Bocchino, City Clerk



## **All-America City**



TO:

Kirk Davis, City Manager

FROM:

Scott Wingerson, Assistant City Manager

DATE:

December 10, 2015

SUBJECT:

Personal Property Lease Purchase

The Heights/Northland Innovation Center

Please find enclosed documents related to a personal property lease purchase agreement.

This Lease Purchase is similar to past financings that funded the automated meter reading project, a fire truck, and similar capital equipment. In this case, the funds will be used to convert the exiting short term Heights Infrastructure Promissory Note to long term debt. Funds will also be used to relocate existing overhead utilities along 69<sup>th</sup> Street to underground, and to purchase unidentified real estate.

The total funds generated through this lease purchase is \$4,383,000. The term is anticipated to be January 2016 through January 2036. The initial interest rate is 3% for the first five years, thereafter the rate will adjust to the prime rate minus .25%. The maximum interest rate is 10%. The collateral for this lease is the public water mains installed as part of the Heights project.

If you should wish to discuss this matter in greater detail or desire additional information, please advise.



## CORPORATE AUTHORIZATION RESOLUTION

FIRST BANK OF MISSOURI MAIN BANK 7001 NORTH OAK TRFWY GLADSTONE, MO 64118

CITY OF GLADSTONE By: ATTN: ACCOUNTING KANSAS CITY MO 64188-0719

Referred to in this document as "Corporation"

Referred to in th	nis document as "Financial Institution"	Referred to in	this document as Corpo	
l.	, certify the	hat I am Secretary (clerk) of the above na	amed corporation organize	ed under the laws of
MISSOURI	, Federal Employer	I.D. Number 44-6005624	engaged in business unde	er the trade name of
CITY OF GLADST	FONE	and that the resolutions on this do	ocument are a correct cop 01/14/16	oy of the resolutions (date).
adopted at a meeting of the	he Board of Directors of the Corporation in the minutes of this meeting and have	duly and properly called and held on	02/22/20	(dato).
AGENTS Any Agent liste	ed below, subject to any written limitation	ns, is authorized to exercise the powers	granted as indicated belo	w:
	e and Title or Position	Signature		le Signature
Name	and the of tosidon	/ /	(if	used)
A. KIRK L DAVIS	5 L	Xull Na	x	
B. DEBORAH DAILY		X Willow World	, ×	
C. SCOTT C WINGER	RSON	× Scott Changers of	x	
D		×	X	
			X	
E		x		
F		= X	their name in the gree	hefore each nower
POWERS GRANTED (Atta Following each power ind	ach one or more Agents to each power licate the number of Agent signatures re	er by placing the letter corresponding to quired to exercise the power.)	Clear Haire at the area	
Indicate A, B, C, Descri D, E, and/or F	iption of Power			Indicate number of signatures required
ABC (1) E	xercise all of the powers listed in this re	solution.		1
(2) 0	open any deposit or share account(s) in t	the name of the Corporation.		
	indorse checks and orders for the payme vith this Financial Institution.	ent of money or otherwise withdraw or tr	ansfer funds on deposit	<del></del>
	Borrow money on behalf and in the name or other evidences of indebtedness.	of the Corporation, sign, execute and de	liver promissory notes	-
b s re	onds, real estate or other property now	edge bills receivable, warehouse receipts owned or hereafter owned or acquired boom ount the same, unconditionally guarantee to waive demand, presentment, protest, no	y the Corporation as payment of all bills	i.
(6) E	enter into a written lease for the purpose Deposit Box in this Financial Institution.	of renting, maintaining, accessing and to	erminating a Safe	
(7) C	Other			
-				
LIMITATIONS ON POWER	RS The following are the Corporation's	express limitations on the powers grante	d under this resolution.	
		s resolution dated If r		
adopt the resolutions on	page 2 and to confer the powers given	s, and at the time of adoption of this rese ed above to the persons named who ha	ve tall povvoi and lavviai	additionally to enterest
If checked, the Corpor	ration is a non-profit corporation. In	Witness Whereof, I have subscribed my he Corporation on JUN HUMY	name to this document	and affixed the seal (date).
	A A	ttest by One Other Officer	Secre	etary (page 1 of 2)
Expere	Bankers Systems, Inc., St. Cloud MN FAM FA 1, 5/1	12003,11		ipage 1 of 2)



## Unlawful Internet Gambling Enforcement Act (UIGEA) of 2006 Disclosure

The UIGEA, signed into law in 2006, prohibits any person engaged in the business of betting or wagering (as defined in the Act) from knowingly accepting payments in connection with the participation of another person in unlawful internet gambling. The Dept of Treasury and the Federal Reserve Board have issued a joint final rule, Regulation GG, to implement this Act.

As defined in Regulation GG, unlawful Internet gambling means to "place, receive or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received or otherwise made".

As a customer of First Bank of Missouri, these restricted transactions are prohibited from being processed through your account or banking relationship with us. If you do engage in an Internet gambling business and open a new account with us, we will ask that you provide evidence of your legal capacity to do so.

If you have questions concerning what specific types of transactions or activities are unlawful it is advised that you seek professional legal counsel.

## Commercial Customer Certification Regarding Internet Gambling

As an officer or owner of the business entity identified below, I have been notified that First Bank of Missouri is required by regulations implementing the Unlawful Internet Gambling Enforcement Act of 2006 to ensure that its commercial customers' accounts do not receive deposits or other credits derived from illegal Internet gambling.

I hereby certify that the business entity identified below does not engage in an Internet gambling business of any kind, either legal or illegal, and that I or a representative of the organization will notify First Bank of Missouri immediately if the entity engages in an Internet gambling business at any future time.

Business Entity: CITY OF GLADSTONE

Date:

01/14/16

Revision Date: April 29, 2010



## **Certification Regarding Internet Gambling**

The business entity identified below certifies that it does not engage in an Internet gambling business within the meaning of Federal Reserve Regulation GG.

**Business Entity** 

CITY OF GLADSTONE

Certification Regarding Internet Gambling Bankers Systems ™ Wolters Kluwer Financial Services © 2009



BRANCH: 1

SALES ID#: 0114161508

EMP: FBMBJB

INTERNET BANKING ENROLLMENT FORM

NET TELLER

ATTENTION PARENT AND/OR GUARDIAN: Children under the age of 13 should not be allowed access to the Net Teller online banking service.

CUSTOMER INFORMATION

Name: CITY OF GLADSTONE Address: ATTN: ACCOUNTING

City/St/ZIP: KANSAS CITY MO 64188-0719

Phone: (816) 436-2200 SS#: 446-00-5624

Account Number

Owners

Туре

1. 140150006607

CITY OF GLADSTONE

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NEW OR EXISTING:N

DATE: 01/14/16

CIF #: C000591

SIGNATURES: By signing below, I authorize the bank to issue a temporary PIN on my behalf which I will be forced to change to an new PIN the first time I log into the system. I understand that I remain responsible for all activity on my account. All terms and conditions that were disclosed to me when I opened my account continue to apply.

E-Mail Address:beths@gladstone.mo.us

The bank will use the above E-Mail address to periodically inform you of important bank information.

SIGNATURE

DATE

SIGNATURE

DATE

SIGNATURE

DATE

SIGNATURE

DATE

## PERSONAL PROPERTY LEASE PURCHASE AGREEMENT

#### BETWEEN

FIRST BANK OF MISSOURI, As Lessor

AND

CITY OF GLADSTONE, MISSOURI, As Lessee

Dated: January 15, 2016

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#### PERSONAL PROPERTY LEASE PURCHASE AGREEMENT

THIS PERSONAL PROPERTY LEASE PURCHASE AGREEMENT (the "Agreement"), dated as of January 15, 2016, between FIRST BANK OF MISSOURI, a state banking corporation organized and existing under the laws of the State of Missouri, as Lessor ("Lessor"), and the CITY OF GLADSTONE, MISSOURI, a third class city and political subdivision existing under the laws of the State of Missouri, as Lessee ("Lessee"),

#### WITNESSETH:

WHEREAS, Lessor desires to lease the Personal Property, as hereinafter described, to Lessee, and Lessee desires to lease the Personal Property from Lessor subject to the terms and conditions of and for the purposes set forth in this Agreement; and

WHEREAS, Lessee is authorized under the constitution and laws of the Missouri to enter into this Agreement for the purposes set forth herein;

**NOW**, **THEREFORE**, for and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

#### ARTICLE I

#### **DEFINITIONS**

- Section 1.01. Definitions. The following terms will have the meanings indicated below unless the context clearly requires otherwise:
- "Agreement" means this Personal Property Lease Purchase Agreement and any other schedule, exhibit or escrow agreement made a part hereof by the parties hereto, together with any amendments to this Agreement.
  - "Code" means the Internal Revenue Code of 1986, as amended.
  - "Commencement Date" is the date of this Agreement.
- "Contract" means any contract or contract with the Vendor for the acquisition and installation of the Personal Property.
  - "Event of Default" means an Event of Default described in Section 12.01.
  - "Issuance Year" is the calendar year in which the Commencement Date occurs.
- "Lease Term" means the Original Term and all Renewal Terms, but ending on the occurrence of the earliest event specified in Section 3.03.
- "Lessee" means the entity described as such in the first paragraph of this Agreement, its successors and its assigns.

- "Lessor" means the entity described as such in the first paragraph of this Agreement, its successors and its assigns.
- "Maximum Lease Term" means the Original Term and all Renewal Terms through the Renewal Term including the last Rental Payment Date set forth on the Payment Schedule.
- "Net Proceeds" means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorneys' fees) incurred in the collection of such claim or award.
- "Original Term" means the period from the Commencement Date until the end of the fiscal year of Lessee in effect at the Commencement Date.
- "Payment Schedule" means the schedule of Rental Payments and Purchase Price set forth on Exhibit B.
- "Personal Property" means the property described on the Personal Property Schedule attached hereto as Exhibit A, and all replacements, repairs, restorations, modifications and improvements thereof or thereto.
- "Purchase Price" means the amount that Lessee may, at its option, pay to Lessor to purchase the Personal Property, as set forth on the Payment Schedule.
- "Renewal Terms" means the optional renewal terms of this Agreement, each having a duration of one year and a term co-extensive with Lessee's fiscal year.
  - "Rental Payments" means the basic rental payments payable by Lessee pursuant to Section 4.01.
  - "State" means the State of Missouri.
- "Vendor" means the manufacturer of the Personal Property as well as the agents or dealers of the manufacturer from whom Lessor purchased or is purchasing the Personal Property, as listed on Exhibit A.

#### **ARTICLE II**

#### REPRESENTATIONS AND COVENANTS OF LESSEE

- Section 2.01. Representations and Covenants of Lessee. Lessee represents, warrants and covenants for the benefit of Lessor:
  - (a) Lessee is a third class city and political subdivision duly organized and existing under the constitution and laws of the State. Lessee will do or cause to be done all things to preserve and keep in full force and effect its existence as a body corporate and politic. Lessee is a public body corporate and politic, duly organized and existing under the laws of the State, and has a substantial amount of one or more of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power.
  - (b) Lessee is authorized under the constitution and laws of the State to enter into this Agreement and the transaction contemplated hereby and to perform all of its obligations hereunder.

- (c) Lessee has been duly authorized to execute and deliver this Agreement by proper action and approval of its governing body at a meeting duly called, regularly convened and attended throughout by a requisite majority of the members thereof or by other appropriate official approval.
- (d) This Agreement constitutes the legal, valid and binding obligation of Lessee enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.
- (e) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the Commencement Date.
- (f) Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current fiscal year to make the Rental Payments scheduled to come due during the Original Term and to meet its other obligations for the Original Term, and such funds have not been expended for other purposes.
- (g) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic.
- (h) Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Personal Property hereunder.
- (i) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting Lessee, nor to the best knowledge of Lessee is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Agreement or any other document, agreement or certificate which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement.
- (j) All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by Lessee of this Agreement or in connection with the carrying out by Lessee of its obligations hereunder have been obtained.
- (k) The entering into and performance of this Agreement or any other document or agreement contemplated hereby to which Lessee is or is to be a party will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest of other encumbrance on any assets of Lessee or the Personal Property pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound, except as herein provided.
- (l) The Personal Property described in this Agreement is essential to the function of Lessee or to the service Lessee provides to its citizens. Lessee has an immediate need for, and expects to make immediate use of, substantially all the Personal Property, which need is not temporary or expected to diminish in the foreseeable future. The Personal Property will be used by Lessee only for the purpose of performing one or more of Lessee's governmental or proprietary functions consistent with the permissible scope of Lessee's authority.
- (m) Neither the payment of the Rental Payments hereunder nor any portion thereof is (i) secured by any interest in property used or to be used in a trade or business of a non-exempt person (within the meaning of Section 103 of the Code) or in payments in respect of such property

or (ii) derived from payments in respect of property, or borrowed money, used or to be used in a trade or business of a non-exempt person (within the meaning of Section 103 of the Code). No portion of the Personal Property will be used directly or indirectly in any trade or business carried on by any non-exempt person (within the meaning of Section 103 of the Code).

#### ARTICLE III

#### LEASE OF PERSONAL PROPERTY

Section 3.01. Lease of Personal Property. Lessor hereby demises, leases and lets the Personal Property to Lessee, and Lessee rents, leases and hires the Personal Property from Lessor, in accordance with the provisions of this Agreement, for the Lease Term.

As additional consideration hereunder, Lessor will advance the amount of \$4,383,000 to or on behalf of Lessor for the purpose of (1) paying all amounts due under the Promissory Note dated July 23, 2013, with Lessee as Borrower and Lessor as Lender (the "Promissory Note"), (2) funding certain land acquisition costs, and (3) funding certain other costs of Lessor in connection with the Heights at Linden Square Project and in relation to the Northland Innovation Center.

Section 3.02. Lease Term. The Original Term of this Agreement will commence on the Commencement Date and will terminate on the last day of Lessee's current fiscal year. The Lease Term may be continued, solely at the option of Lessee, at the end of the Original Term or any Renewal Term for an additional Renewal Term up to the Maximum Lease Term. At the end of the Original Term and at the end of each Renewal Term until the Maximum Lease Term has been completed, Lessee will be deemed to have exercised its option to continue this Agreement for the next Renewal Term unless Lessee has terminated this Agreement pursuant to Section 3.03 or Section 10.01. The terms and conditions during any Renewal Term will be the same as the terms and conditions during the Original Term, except that the Rental Payments will be as provided in the Payment Schedule.

Section 3.03. Termination of Lease Term. The Lease Term will terminate upon the earliest of any of the following events:

- (a) the expiration of the Original Term or any Renewal Term of this Agreement and the nonrenewal of this Agreement in the event of nonappropriation of funds pursuant to **Section 3.05**;
- (b) the exercise by Lessee of the option to purchase the Personal Property granted under the provisions of  $Article\ X$  and payment of the Purchase Price and all amounts payable in connection therewith;
- (c) a default by Lessee and Lessor's election to terminate this Agreement under  $\mathbf{Article~XII};$  or
- (d) the payment by Lessee of all Rental Payments authorized or required to be paid by Lessee hereunder during the Maximum Lease Term.

Section 3.04. Continuation of Lease Term. Lessee currently intends, subject to the provisions of Section 3.05 and Section 4.04, to continue the Lease Term through the Original Term and all of the Renewal Terms and to pay the Rental Payments hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to make all Rental Payments during the Original Term and each of

the Renewal Terms can be obtained. The responsible financial officer of Lessee will do all things lawfully within his or her power to obtain and maintain funds from which the Rental Payments may be made, including making provision for such Rental Payments to the extent necessary in each proposed annual budget submitted for approval in accordance with applicable procedures of Lessee and to exhaust all available reviews and appeals in the event such portion of the budget is not approved. Notwithstanding the foregoing, the decision whether or not to budget or appropriate funds or to extend this Agreement for any Renewal Term is solely within the discretion of the then current governing body of Lessee.

Section 3.05. Nonappropriation. Lessee is obligated only to pay such Rental Payments under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current fiscal year. In the event sufficient funds will not be appropriated or are not otherwise legally available to pay the Rental Payments required to be paid in the next occurring Renewal Term, as set forth in the Payment Schedule, this Agreement will be deemed to be terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination at least 90 days prior to the end of the then current Original Term or Renewal Term, but failure to give such notice will not extend the Lease Term beyond such Original Term or Renewal Term. If this Agreement is terminated in accordance with this Section, Lessee agrees, at Lessee's cost and expense, to peaceably deliver the Personal Property to Lessor at the location or locations specified by Lessor.

#### ARTICLE IV

#### RENTAL PAYMENTS

- Section 4.01. Rental Payments. Lessee will pay Rental Payments, exclusively from legally available funds, in lawful money of the United States of America to Lessor in the amounts and on the dates set forth on the Payment Schedule. Rental Payments will be in consideration for Lessee's use of the Personal Property during the fiscal year in which such payments are due. Any Rental Payment not received on or before its due date will bear interest at the rate of 10% per annum or the maximum amount permitted by law, whichever is less, from its due date.
- Section 4.02. Interest Component. As set forth on the Payment Schedule, a portion of each Rental Payment is paid as, and represents payment of, interest.
- Section 4.03. Rental Payments To Be Unconditional. Except as provided in Section 3.05, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained herein shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Personal Property to be delivered or installed, any defects, malfunctions, breakdowns or infirmities in the equipment or any accident, condemnation or unforeseen circumstances.
- Section 4.04. Rental Payments to Constitute a Current Expense of Lessee. The obligation of Lessee to pay Rental Payments hereunder will constitute a current expense of Lessee, are from year to year and do not constitute a mandatory payment obligation of Lessee in any fiscal year beyond the then current fiscal year of Lessee's obligation hereunder will not in any way be construed to be an indebtedness of Lessee in contravention of any applicable constitutional, charter or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor will anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of Lessee.

#### ARTICLE V

#### PERSONAL PROPERTY

- Section 5.01. Delivery, Installation and Acceptance of the Personal Property. Lessee will cause or has caused the Personal Property to be delivered and installed and pay any and all delivery and installation costs in connection therewith.
- Section 5.02. Enjoyment of Personal Property. Lessor hereby covenants to provide Lessee with quiet use and enjoyment of the Personal Property during the Lease Term, and Lessee will peaceably and quietly have and hold and enjoy the Personal Property during the Lease Term, without suit, trouble or hindrance from Lessor, except as otherwise expressly set forth in this Agreement.
- Section 5.03. Right of Inspection. Lessor will have the right at all reasonable times during regular business hours to enter into and upon the property of Lessee for the purpose of inspecting the Personal Property.
- Section 5.04. Use of the Personal Property. Lessee will not install, use, operate or maintain the Personal Property improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee will obtain all permits and licenses, if any, necessary for the installation and operation of the Personal Property. In addition, Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Personal Property) with all applicable laws, regulations and rulings of any legislative, executive, administrative or judicial body; provided, however, that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Personal Property or its interest or rights under this Agreement.
- Section 5.05. Maintenance of Personal Property. Lessee agrees that it will, at Lessee's own cost and expense, maintain, preserve and keep the Personal Property in good repair, working order and condition. Lessor will have no responsibility to maintain, or repair or to make improvements or additions to the Personal Property. If requested to do so by Lessor, Lessee will enter into a maintenance contract for the Personal Property with Vendor.

#### **ARTICLE VI**

#### TITLE TO PERSONAL PROPERTY; SECURITY INTEREST

Section 6.01. Title to the Personal Property. During the Lease Term, title to the Personal Property and any and all additions, repairs, replacements or modifications will vest in Lessee, subject to the rights of Lessor under this Agreement; provided that title will thereafter immediately and without any action by Lessee vest in Lessor, and Lessee will immediately surrender possession of the Personal Property to Lessor upon (a) any termination of this Agreement other than termination pursuant to Section 10.01 or (b) the occurrence of an Event of Default. It is the intent of the parties hereto that any transfer of title to Lessor pursuant to this Section will occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Lessee will, nevertheless, execute and deliver any such instruments as Lessor may request to evidence such transfer. Lessee, irrevocably designates, makes, constitutes and appoints Lessor and its assignee as Lessee's true and lawful attorney (and agent in-fact) with power, at such time of termination or times thereafter as Lessor in its sole and absolute discretion may determine, in Lessee's or Lessor's or such assignee's name, to endorse the name of Lessee upon any bill of sale,

document, instrument, invoice, freight bill, bill of lading or similar document relating to the Personal Property in order to vest title in Lessor and transfer possession to Lessor.

Section 6.02. Security Interest. To secure the payment of all of Lessee's obligations under this Agreement and to the extent permitted by law, Lessor retains a security interest constituting a first lien on the Personal Property and on all additions, attachments and accessions thereto and substitutions therefor and proceeds therefrom. Lessee agrees to execute such additional documents in form satisfactory to Lessor, that Lessor deems necessary or appropriate to establish and maintain its security interest. Lessee agrees that financing statements may be filed with respect to the security interest granted herein.

Section 6.03. Personal Property. Lessor and Lessee agree that the Personal Property is and will remain personal property. The Personal Property will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Personal Property or any part thereof may be or hereafter become in any manner physically affixed or attached to such real estate or any building thereon. Upon the request of Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Personal Property from any party having an interest in any such real estate or building.

#### ARTICLE VII

#### ADDITIONAL COVENANTS

Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee will keep the Personal Property free and clear of all liens, charges and encumbrances, except those created under this Agreement. The parties to this Agreement contemplate that the Personal Property will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Personal Property will be exempt from all property taxes. If the use, possession or acquisition of the Personal Property is found to be subject to taxation in any form, Lessee will pay all taxes and governmental charges lawfully assessed or levied against or with respect to the Personal Property. Lessee will pay all utility and other charges incurred in the use and maintenance of the Personal Property. Lessee will pay such taxes and charges as the same become due; provided that, with respect to any such taxes and charges that may lawfully be paid in installments over a period of years, Lessee will be obligated to pay only such installments that accrue during the Lease Term.

Section 7.02. Insurance. At its own expense, Lessee will maintain (a) casualty insurance insuring the Personal Property against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Lessor in an amount at least equal to the then applicable Purchase Price of the Personal Property, (b) liability insurance that protects Lessor from liability in all events in form and amount satisfactory to Lessor, and (c) workers' compensation coverage as required by the laws of the State; provided that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a) and (b). All insurance proceeds from casualty losses will be payable as hereinafter provided. Lessee will furnish to Lessor certificates evidencing such coverage throughout the Lease Term.

All such casualty and liability insurance will be with insurers that are acceptable to Lessor, will name Lessee and Lessor as insureds and will contain a provision to the effect that such insurance will not be cancelled or modified materially without first giving written notice thereof to Lessor at least ten days in advance of such cancellation or modification. All such casualty insurance will contain a provision making any losses payable to Lessee and Lessor, as their respective interests may appear.

Section 7.03. Advances. In the event Lessee fails to maintain the insurance required by this Agreement or fails to keep the Personal Property in good repair and operating condition, Lessor may (but

will be under no obligation to) purchase the required policies of insurance and pay the premiums on the same and make such repairs or replacements as are necessary and pay the cost thereof. All amounts so advanced by Lessor will become additional rent for the then current Original Term or Renewal Term. Lessee agrees to pay such amounts with interest thereon from the date paid at the rate of 10% per annum or the maximum permitted by law, whichever is less. In accordance with Section 427.120 of the Revised Statutes of Missouri, unless Lessee provides evidence of the insurance coverage required by this Agreement, Lessor may purchase insurance at Lessee's expense to protect Lessor's interests hereunder. This insurance may, but need not, protect Lessee's interests. The coverage that Lessor may purchase may not pay any claim that Lessee may make or any claim that may be made against Lessee in connection with the Personal Property. Lessee may later cancel any insurance purchased by Lessor, but only after providing evidence that Lessee has obtained insurance as required by this Agreement. If Lessor purchases insurance for the Personal Property, Lessee will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges Lessor may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance will be added as additional rent. The costs of the insurance may be more than the cost of insurance Lessee may be able to obtain on its own.

Section 7.04. Financial Information. Lessee will annually provide Lessor with current financial statements, budgets, proofs of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue this Agreement as may be requested by Lessor.

Section 7.05. Release and Indemnification. To the extent permitted by law, Lessee will indemnify, protect and hold harmless Lessor from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of cause thereof, and expenses in connection therewith (including, without limitation, counsel fees and expenses and any federal income tax and interest and penalties connected therewith imposed on interest received) arising out of or as the result of (a) the entering into this Agreement, (b) the ownership of any item of the Personal Property, (c) the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Personal Property (d) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Personal Property resulting in damage to property or injury or death to any person or (e) the breach of any covenant herein or any material misrepresentation contained herein. The indemnification arising under this paragraph will continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

#### ARTICLE VIII

# DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 8.01. Risk of Loss. Lessee assumes, from and including the Commencement Date, all risk of loss of or damage to the Personal Property from any cause whatsoever. No such loss of or damage to the Personal Property nor defect therein nor unfitness or obsolescence thereof will relieve Lessee of the obligation to make Rental Payments or to perform any other obligation under this Agreement.

Section 8.02. Damage, Destruction and Condemnation. If (a) the Personal Property or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or (b) title to, or the temporary use of, the Personal Property or any part thereof or the interest of Lessee or Lessor in the Personal Property or any part thereof will be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the

prompt replacement, repair, restoration, modification or improvement of the Personal Property, unless Lessee has exercised its option to purchase the Personal Property pursuant to Section 10.01. Any balance of the Net Proceeds remaining after such work has been completed will be paid to Lessee.

Section 8.03. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 8.01, Lessee will either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) purchase Lessor's interest in the Personal Property pursuant to Section 10.01. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after purchasing the Personal Property will be retained by Lessee. If Lessee will make any payments pursuant to this Section, Lessee will not be entitled to any reimbursement therefor from Lessor nor will Lessee be entitled to any diminution of the amounts payable under Article IV.

#### ARTICLE IX

#### WARRANTIES

Section 9.01. Disclaimer of Warranties. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR USE OR PURPOSE OF THE PERSONAL PROPERTY OR AGAINST INFRINGEMENT, OR ANY OTHER WARRANTY OR REPRESENTATION WITH RESPECT THERETO. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY ACTUAL, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR LESSEE'S USE OR MAINTENANCE OF ANY PERSONAL PROPERTY OR SERVICES PROVIDED FOR IN THIS AGREEMENT.

Section 9.02. Vendor's Warranties. Lessee may have rights under the contract evidencing the purchase of the Personal Property; Lessee is advised to contact the Vendor for a description of any such rights. Lessor hereby assigns to Lessee during the Lease Term all warranties running from Vendor to Lessor. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee will not be in default hereunder, to assert from time to time whatever claims and rights (including without limitation warranties) related to the Personal Property that Lessor may have against the Vendor. Lessee's sole remedy for the breach of any such warranty, indemnification or representation will be against the Vendor, and not against Lessor. Any such matter will not have any effect whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representation or warranties whatsoever as to the existence or availability of such warranties by the Vendor.

#### ARTICLE X

#### **OPTION TO PURCHASE**

Section 10.01. Purchase Option. Lessee will have the option to purchase the Personal Property, upon giving written notice to Lessor at least 30 days before the date of purchase, at the following times and upon the following terms:

- (a) On any date, upon payment in full of the Rental Payments then due hereunder plus the accrued interest component of Rental Payments to the purchase date plus any other amounts then due hereunder plus the then applicable Purchase Price to Lessor; or
- (b) In the event of substantial damage to or destruction or condemnation (other than by Lessee or any entity controlled by or otherwise affiliated with Lessee) of substantially all of the Personal Property, on the day Lessee specifies as the purchase date in Lessee's notice to Lessor of its exercise of the purchase option, upon payment in full of the Rental Payments and any other amounts then due hereunder plus (i) the Purchase Price designated on the Payment Schedule for such purchase date if such purchase date is a Rental Payment Date or the Purchase Price for the immediately preceding Rental Payment Date if such purchase date is not a Rental Payment Date, and (ii) if such day is not a Rental Payment Date, an amount equal to the portion of the interest component of the Rental Payment scheduled to come due on the following Rental Payment Date accrued from the immediately preceding Rental Payment Date to such purchase date, computed on the basis of a 360-day year of twelve 30-day months.

Upon the exercise of the option to purchase set forth above, title to the Personal Property will be vested in Lessee, free and clear of any claim by or through Lessor.

Section 10.02. Determination of Fair Purchase Price. Lessee and Lessor hereby agree and determine that the Rental Payments hereunder during the Original Term and each Renewal Term represent the fair value of the use of the Personal Property and that the amount required to exercise Lessee's option to purchase the Personal Property pursuant to Section 10.01 represents, as of the end of the Original Term or any Renewal Term, the fair purchase price of the Personal Property. Lessee hereby determines that the Rental Payments do not exceed a reasonable amount so as to place Lessee under a practical economic compulsion to renew this Agreement or to exercise its option to purchase the Personal Property hereunder. In making such determinations, Lessee and Lessor have given consideration to (a) the costs of the Personal Property, (b) the uses and purposes for which the Personal Property will be employed by Lessee, (c) the benefit to Lessee by reason of the acquisition and installation of the Personal Property and the use of the Personal Property pursuant to the terms and provisions of this Agreement, and (d) Lessee's option to purchase the Personal Property. Lessee hereby determines and declares that the acquisition and installation of the Personal Property and the leasing of the Personal Property pursuant to this Agreement will result in equipment of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition and installation of the Personal Property were performed by Lessee other than pursuant to this Agreement. Lessee hereby determines and declares that the Maximum Lease Term does not exceed the useful life of the Personal Property.

#### ARTICLE XI

#### ASSIGNMENT AND SUBLEASING

Section 11.01. Assignment by Lessor. Lessor's interest in, to and under this Agreement and the Personal Property may be assigned and reassigned in whole or in part to one or more assignees by Lessor without the necessity of obtaining the consent of Lessee; provided that any assignment will not be effective until Lessee has received written notice, signed by the assignor, of the name, address and tax identification number of the assignee. Lessee will retain all such notices as a register of all assignees and will make all payments to the assignee or assignees designated in such register. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements that may be reasonably requested by Lessor or any assignee to protect its interest in the Personal Property and in this Agreement and agrees to the filing of financing statements with respect to the Personal Property and this Agreement.

Lessee will not have the right to and will not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor.

Section 11.02. Assignment and Subleasing by Lessee. None of Lessee's right, title and interest in, to and under this Agreement and in the Personal Property may be assigned or encumbered by Lessee for any reason, except that Lessee may sublease all or part of the Personal Property if Lessee obtains the prior written consent of Lessor. Any such sublease of all or part of the Personal Property will be subject to this Agreement and the rights of Lessor in, to and under this Agreement and the Personal Property.

#### ARTICLE XII

#### EVENTS OF DEFAULT AND REMEDIES

Section 12.01. Events of Default Defined. Subject to the provisions of Section 3.05, any of the following will be "Events of Default" under this Agreement:

- (a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein;
- (b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in **Section 12.01(a)**, for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to Lessee by Lessor, unless Lessor will agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected:
- (c) Any statement, representation or warranty made by Lessee in or pursuant to this Agreement or its execution, delivery or performance will prove to have been false, incorrect, misleading or breached in any material respect on the date when made;
- (d) Any provision of this Agreement will at any time for any reason cease to be valid and binding on Lessee, or will be declared to be null and void, or the validity or enforceability thereof will be contested by Lessee or any governmental agency or authority if the loss of such provision would materially adversely affect the rights or security of Lessor, or Lessee will deny that it has any further liability or obligation under this Agreement;
- (e) Lessee will (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 or insolvency proceeding; or
- (f) An order, judgment or decree will be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of 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 will continue unstayed and in effect for any period of 30 consecutive days.

Section 12.02. Remedies on Default. Whenever any Event of Default exists, Lessor will have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

- (a) By written notice to Lessee, Lessor may declare all Rental Payments and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term to be due;
- (b) With or without terminating this Agreement, Lessor may enter the premises where the Personal Property is located and retake possession of the Personal Property or require Lessee at Lessee's expense to promptly return any or all of the Personal Property to the possession of Lessor at a place specified by Lessor, and sell or lease the Personal Property or, for the account of Lessee, sublease the Personal Property, holding Lessee liable for the difference between (i) the Rental Payments and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term, and (ii) the net proceeds of any such sale, lease or sublease (after deducting all expenses of Lessor in exercising its remedies under this Agreement, including without limitation, all expenses of taking possession, storing, reconditioning and selling or leasing the Personal Property and all brokerage, auctioneers' and attorneys' fees); and
- (c) Lessor may take whatever other action at law or in equity may appear necessary or desirable to enforce its rights as the owner of the Personal Property.

In addition, Lessee will remain liable for all covenants and indemnities under this Agreement and for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.

Section 12.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy will be cumulative and will be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default will impair any such right or power or will be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article it will not be necessary to give any notice, other than such notice as may be required in this Article.

#### ARTICLE XIII

#### **MISCELLANEOUS**

Section 13.01. Notices. All notices, certificates or other communications hereunder will be sufficiently given and will be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto will designate in writing to the other for notices to such party), to any assignee at its address as it appears on the register maintained by Lessee.

Section 13.02. Binding Effect. This Agreement will inure to the benefit of and will be binding upon Lessor and Lessee and their respective successors and assigns.

Section 13.03. Severability. In the event any provision of this Agreement will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

Section 13.04. Entire Agreement. This Agreement constitutes the entire agreement between Lessor and Lessee.

Section 13.05. Amendments. This Lease may be amended, changed or modified in any manner by written agreement of Lessor and Lessee. Any waiver of any provision of this Lease or any right or remedy hereunder must be affirmatively and expressly made in writing and will not be implied from inaction, course of dealing or otherwise.

Section 13.06. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

Section 13.07. 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 or sections of this Agreement.

Section 13.08. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State.

Section 13.09. Electronic Transactions. The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in their corporate names by their duly authorized officers as of the date first above written.

[SEAE]

City Clerk

#### FIRST BANK OF MISSOURI

By: Way of S. Kindigst Title: Senior Vice President

CITY OF GLADSTONE, MISSOURI

# EXHIBIT A TO PERSONAL PROPERTY LEASE PURCHASE AGREEMENT PERSONAL PROPERTY SCHEDULE

#### Description:

Waterlines financed by the City with the proceeds of the Promissory Note and as identified with the wide black lines in the attached drawing.

# EXHIBIT B TO PERSONAL PROPERTY LEASE PURCHASE AGREEMENT PAYMENT SCHEDULE

Rental payments will be made in accordance with Section 4.01 and this Payment Schedule.

Commencement Date: January 15, 2016

Interest rate initially used to calculate Interest Portions of Rental Payments: 3.00%

Date	Principal	Coupon	Interest	Total P+I
07/01/2016	219,238.66	3.000%	60,631.50	279,870.16
01/01/2017	(a)	3	62,456.42	62,456.42
07/01/2017	154,957.32	3.000%	62,456.42	217,413.74
01/01/2018	(#):		60,132.06	60,132.06
07/01/2018	159,606.04	3.000%	60,132.06	219,738.10
01/01/2019	(2)		57,737.97	57,737.97
07/01/2019	164,394.23	3.000%	57,737,97	222,132.20
01/01/2020		42	55,272.06	55,272,06
07/01/2020	169,326.05	3,000%	55,272.06	224,598.11
01/01/2021	<b>.</b>		52,732.17	52,732.17
07/01/2021	174,405.83	3.000%	52,732.17	227,138.00
01/01/2022			50,116.08	50,116.08
07/01/2022	179,638.01	3.000%	50,116.08	229,754.09
01/01/2023	117,000.01	16	47,421.51	47,421.51
01/01/2025			,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	,
07/01/2023	185,027.15	3.000%	47,421.51	232,448.66
01/01/2024	100,027110		44,646.10	44,646.10
07/01/2024	190,577,96	3.000%	44,646.10	235,224.06
01/01/2025	*		41,787,43	41,787.43
07/01/2025	196,295.30	3.000%	41,787.43	238,082.73
				20.042.00
01/01/2026	020		38,843,00	38,843.00
07/01/2026	202,184.16	3.000%	38,843.00	241,027.16
01/01/2027	0.00		35,810.24	35,810.24
07/01/2027	208,249.69	3.000%	35,810,24	244,059.93
01/01/2028	950	÷.	32,686.49	32,686.49
07/01/2028	214,497.18	3,000%	32,686.49	247,183.67
01/01/2029	i i i i i i i i i i i i i i i i i i i	547	29,469.04	29,469.04
07/01/2029	220,932.09	3,000%	29,469.04	250,401.13
01/01/2030	300	(#):	26,155.05	26,155.05
07/01/2030	227,560.06	3.000%	26,155.05	253,715.11
01/01/2031	2 <b>=</b> /	340.	22,741.65	22,741.65
07/01/2031	234,386.86	3.000%	22,741.65	257,128.51
01/01/2032	(6)	20	19,225.85	19,225.85
07/01/2032	241,418.46	3.000%	19,225.85	260,644.31
01/01/2033			15,604.57	15,604.57
07/01/2033	248,661.02	3.000%	15,604.57	264,265.59
01/01/2034	240,001.02	2,00070	11,874.66	11,874.66
07/01/2034	256,120.85	3.000%	11,874.66	267,995.51
	230,120.03	3,00070	•	
01/01/2035	( ·	(B)	8,032.85	8,032.85

Total	\$4,383,000.00	ē	\$1,494,273.46	\$5,877,273.46
01/01/2036 07/01/2036	- 271,718.61	3.000%	4,075.78 4,075.78	4,075.78 275,794.39
07/01/2035	263,804.47	3.000%	8,032.85	271,837.32

#### Recalculation of Payment Schedule

The initial interest rate used to calculate the Interest Portions of Rental Payments under the Lease is 3.00% which shall be the applicable interest rate under this Lease through January 15, 2021. Thereafter, the applicable interest rate shall be the U.S. Prime Rate as published in the Wall Street Journal and effective as of January 15 of each year, less .25%. (For example, the applicable interest rate for the period of January 16, 2021 through January 15, 2022 shall be the rate in effect on January 15, 2020, less .25%). If publication of the U.S. Prime Rate in The Wall Street Journal is discontinued for any reason, the applicable prime rate shall mean the interest rate per annum publicly announced from time to time by Bank of America, or any successor thereto, as its "prime rate." Notwithstanding the foregoing, the applicable interest rate under this Lease shall never exceed 10% or be below 3.0%. Upon the determination of the new interest rate, Lessor and Lessee shall cause the Payment Schedule to be recalculated such that total payments in each calendar year are substantially level and are sufficient to repay the amount due hereunder not later than the year 2036, with the assumption that the then applicable rate will stay in effect through the Maximum Term. Interest shall be calculated hereunder on a 365/360 basis.