

# SUNTRUST EQUIPMENT FINANCE & LEASING CORP.

## MASTER LEASE/PURCHASE AGREEMENT (Lease No. 10481)

This MASTER LEASE/PURCHASE AGREEMENT, dated as of Jan 14, 2019, is made and entered into by and between SUNTRUST EQUIPMENT FINANCE & LEASING CORP., a Georgia corporation, as lessor ("Lessor"), and CITY OF CLEARWATER, a political subdivision of the State or Commonwealth of FL, as lessee ("Lessee").

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

### ARTICLE I. DEFINITIONS; SEPARATE FINANCINGS

**Section 1.1 Definitions.** The following terms have the meanings specified below.

"Acceptance Certificate" means an acceptance certificate in the form attached to any applicable Equipment Schedule.

"Act" has the meaning given in Section 13.10.

"Agreement" means this Master Lease/Purchase Agreement, including all exhibits and schedules attached hereto.

"Code" means the Internal Revenue Code of 1986, as amended, together with Treasury Regulations promulgated from time to time thereunder.

"Equipment" means all items of property described in Equipment Schedules and subject to this Agreement, together with all related software (embedded therein or otherwise) and all replacements, repairs, upgrades, additions, parts, accessories, substitutions and exchanges therefor and thereof and accessions thereto.

"Equipment Group" means each group of Equipment listed in a single Equipment Schedule.

"Equipment Schedule" means an Equipment Schedule in substantially the form attached hereto as Exhibit A, including all exhibits and schedules attached thereto.

"Event of Default" has the meaning given in Section 12.1.

"Event of Loss" shall have the meaning given in Section 7.4.

"Event of Nonappropriation" has the meaning given in Section 3.3.

"Event of Taxability" has the meaning given in Section 6.3.

"Lease" means, with respect to each Equipment Group, this Agreement and the Equipment Schedule relating thereto, which together shall constitute a separate contract between Lessor and Lessee relating to such Equipment Group.

"Lease Date" means, with respect to each Lease, the date so designated in the related Equipment Schedule. The parties agree that the Lease Date for each Lease will be the date the proceeds of the Lease are disbursed by Lessor to a Vendor or Lessee or into escrow. Lessee hereby authorizes Lessor to insert each such date as the Lease Date on the applicable Equipment Schedule and the other documents and instruments relating to the applicable Lease.

"Lease Term" means with respect to a Lease, the Original Term and all Renewal Terms. The Lease Term for each Lease hereunder shall be as set forth in the Payment Schedule for such Lease.

"Net Proceeds" means the amount remaining from the gross proceeds of any insurance claim, condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys' fees, incurred in the collection thereof.

"Original Term" means, with respect to a Lease, the period from the Lease Date until the end of the budget year of Lessee in effect on the Lease Date.

"Payment Date" means each date upon which a Rental Payment is due and payable as provided in a Payment Schedule.

"Payment Schedule" means the schedule of Rental Payments attached to an Equipment Schedule.

"Prepayment Price" means, with respect to a Lease that is by its terms prepayable, the amount so designated and set forth opposite a Payment Date in a Payment Schedule relating to such Lease indicating the amount for which Lessee may purchase the related Equipment Group as of such Payment Date after making the Rental Payment due on such Payment Date.

**“Renewal Terms”** means, with respect to a Lease, the renewal terms of the Lease, each having a duration of one year and a term coextensive with Lessee’s budget year, provided that the final Renewal Term shall be for the fraction of one year necessary to complete the Lease Term after the completion of the Original Term and all other Renewal Terms.

**“Rental Payment”** means each payment due from Lessee to Lessor on a Payment Date.

**“Specifications”** means the bid or purchase order specifications pursuant to which Lessee has ordered any Equipment from a Vendor.

**“State”** means the state or commonwealth in which Lessee is situated.

**“Vendor”** means each of the manufacturers or vendors from which Lessee has ordered or with which Lessee has contracted for the manufacture, delivery and/or installation of the Equipment.

**Section 1.2 Separate Financings.** Each Equipment Schedule executed and delivered under this Agreement shall be a separate Lease distinct from each other Lease. Without limiting the foregoing, upon the occurrence of an Event of Default or an Event of Nonappropriation with respect to a Lease, Lessor shall have the rights and remedies specified herein with respect to the Equipment Group leased, and the Rental Payments, under such Lease, and Lessor shall have no rights or remedies with respect to Equipment Groups or Rental Payments under any other Lease unless an Event of Default or an Event of Nonappropriation has also occurred under such other Lease. If any term of an Equipment Schedule conflicts or is inconsistent with any term of this Agreement, the terms of such Equipment Schedule shall govern. This Agreement is not a commitment by Lessor or Lessee to enter into an Equipment Schedule or by Lessor to provide any financial accommodations to Lessee.

## **ARTICLE II. LEASE OF EQUIPMENT**

**Section 2.1 Lease; Possession and Use.** Lessor hereby leases the Equipment to Lessee, and Lessee hereby leases the Equipment from Lessor, upon the terms and conditions set forth herein and in the applicable Equipment Schedule. Lessor warrants that during the term of each Lease and so long as no Event of Default or Event of Nonappropriation has occurred thereunder, Lessor or anyone rightfully claiming an interest through Lessor shall not interfere with Lessee’s possession and use of the Equipment Group leased thereunder. Any actual or purported breach of such warranty shall not give rise to any abatement, but Lessee may bring a direct cause of action against Lessor for any actual damages directly resulting from any such breach.

**Section 2.2 Delivery, Installation and Acceptance of Equipment.** Lessee shall order each Equipment Group, shall cause the Equipment to be delivered and installed at the locations specified under the applicable Equipment Schedule and shall pay all taxes, delivery costs and installation costs, if any, in connection therewith. To the extent funds are deposited under an escrow agreement for the acquisition of the Equipment, such funds shall be disbursed as provided therein. The insufficiency of proceeds of any Lease to pay all costs of the Equipment Group subject thereto shall not affect Lessee’s obligations under this Section. When the Equipment Group described in such Equipment Schedule is delivered, installed and accepted as to the Specifications, Lessee shall promptly execute and deliver to Lessor an Acceptance Certificate for the Equipment Group.

## **ARTICLE III. TERM; NONAPPROPRIATION**

**Section 3.1 Term.** The term of each Lease shall commence on the Lease Date set forth in the applicable Equipment Schedule and shall terminate upon payment of the final Rental Payment thereunder and the end of lease payment obligation described in Section 5.1, unless sooner terminated pursuant to this Agreement or the Equipment Schedule.

**Section 3.2 Inclusion in Budget.** The person or entity in charge of preparing Lessee’s budget will include in the budget request for each budget year the Rental Payments to become due during such budget year, and will use all reasonable and lawful means available to secure the appropriation of money for such budget 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 acknowledges that this Agreement does not constitute such a commitment. However, 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 applicable Lease Terms. Although Lessee has made this covenant, no remedy is provided and Lessee shall not be liable for any damages for its failure to comply with the covenants set forth in this Section 3.2.

**Section 3.3 Nonappropriation.** If during the then current Original Term or Renewal Term, sufficient funds are not appropriated to make Rental Payments required under a Lease for the following budget year, Lessee shall be deemed not to have renewed such Lease for the following budget year, and the Lease shall terminate at the end of the then current Original Term or Renewal Term, and Lessee shall not be obligated to make Rental Payments under the Lease beyond the then current budget year for which funds have been appropriated. Upon the occurrence of such nonappropriation (an **“Event of Nonappropriation”**), Lessee shall, no later than the end of the budget year for which Rental Payments have been appropriated, return the Equipment Group subject to the Lease to Lessor in accordance with the requirements of Section 12.3. Lessee shall notify Lessor in writing within seven (7)

days after the failure of Lessee to appropriate funds sufficient for the payment of Rental Payments, but failure to provide such notice shall not operate to extend the Lease Term or result in any liability to Lessee.

**Section 3.4 Effect of Termination.** Upon termination of a Lease as provided in Section 3.3, all of Lessee's right, title and interest in and to the applicable Equipment Group shall terminate. If Lessee has failed to return the applicable Equipment Group or otherwise comply with Section 12.3, the termination shall nevertheless be effective, but Lessee shall be responsible for the payment of damages in an amount equal to the amount of the Rental Payments that would thereafter have come due if the Lease 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. In addition, Lessor may, by written instructions to any escrow agent who is holding proceeds of the Lease, instruct such escrow agent to release all such proceeds and any earnings thereon to Lessor.

## **ARTICLE IV. RENTAL PAYMENTS**

**Section 4.1 Rental Payments.** Lessee agrees to pay the Rental Payments due as specified in each Payment Schedule. A portion of each Rental Payment is paid as interest as specified in each Payment Schedule, and the first Rental Payment will include interest accruing from the date specified in the Equipment Schedule. All Rental Payments shall be paid to Lessor, or to assignee(s) of Lessor, at such places as Lessor or such assignee(s) may from time to time designate by written notice to Lessee. Lessee shall pay the Rental Payments with lawful money of the United States of America from moneys legally available therefor.

**Section 4.2 Current Expense.** The obligations of Lessee, including its obligation to pay the Rental Payments due in any budget year of a Lease Term, shall constitute a current expense of Lessee for such budget year and shall not constitute an indebtedness of Lessee within the meaning of the Constitution and laws of the State. Nothing herein shall constitute a pledge by Lessee of the full faith and credit or taxing power of the Lessee. Upon appropriation of Rental Payments for a budget year, the Rental Payments for such budget year, and only the Rental Payments for such budget year, shall be a binding obligation of Lessee; provided that such obligation shall not include a pledge of the taxing power of Lessee.

**Section 4.3 Unconditional Rental Payments.** Subject in all cases to Section 3.3 hereof: (a) Lessee's obligation to make Rental Payments and any other payments hereunder shall be absolute and unconditional; (b) Lessee shall make these payments when due and shall not withhold any of these payments pending final resolution of any disputes; (c) Lessee shall not assert any right of set-off, counterclaim, recoupment, deduction, defense or other right against its obligation to make these payments; (d) Lessee's obligation to make Rental Payments or other payments shall not be abated for any reason, including 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 of it by 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 V. END OF LEASE PAYMENT OBLIGATION; PREPAYMENT; RELEASE**

**Section 5.1 End of Lease Payment Obligation.** On the last day of the Lease Term for the Lease, if the Lease is still in effect on such day, Lessee shall pay to Lessor one dollar (\$1) in addition to all other Rental Payments and other amounts then due thereunder (including the Rental Payment due on such date).

### **Section 5.2 Prepayment.**

(a) Lessee shall have the option to prepay its obligations under any Lease in whole but not in part on any Payment Date as set forth in the applicable Payment Schedule, but only if and to the extent the Payment Schedule permits such prepayment. Lessee shall give written notice to Lessor of its intention to exercise its option not less than thirty (30) days prior to the applicable Payment Date and shall pay to Lessor no later than such Payment Date an amount equal to the applicable Prepayment Price set forth in the Payment Schedule together with all Rental Payments and any other amounts then outstanding under such Lease (including the Rental Payment due on such Payment Date). In the event that all such amounts are not received by Lessor on such Payment Date, such notice by Lessee of exercise of its option to prepay shall be void and the Lease shall continue in full force and effect.

(b) If Lessee elects pursuant to Section 7.4 to prepay its obligations under a Lease with respect to an item of Equipment subject to an Event of Loss, Lessee shall pay to Lessor on the Payment Date immediately following the receipt of the Net Proceeds of such Event of Loss an amount equal to the portion of the Prepayment Price on such Payment Date allocable to such item of Equipment (as reasonably determined by Lessor). Any amounts paid pursuant to this Section 5.2(b) shall be applied first to unpaid fees (including the prepayment fee), late charges and enforcement costs, if any, which have accrued under the Lease, then to overdue Rental Payments, and then proportionately to the principal component of each Rental Payment thereafter due under the Lease. If the Lease is being prepaid in part, Lessor shall provide Lessee with a revised Payment Schedule which shall reflect the revised principal balance and the reduced Rental Payments under the Lease.

(c) Lessee's obligations under a Lease shall be prepaid in part from the excess proceeds of the Lease on the terms set forth in any escrow agreement pursuant to which proceeds of the Lease are being held together with a prepayment premium on the amount prepaid equal to the percentage by which the Prepayment Price on the Payment Date immediately following such prepayment exceeds the outstanding principal balance (after payment of the Rental Payment due on such Payment Date) on such Payment Date.

**Section 5.3 Release of Lessor's Interest.** Upon timely receipt, in collected funds, of all amounts required pursuant to Section 5.1 or the prepayment in whole of any Lease pursuant to Section 5.2, such Lease shall terminate, all of Lessor's right, title and interest in and to the Equipment Group shall terminate, and Lessor shall deliver to Lessee all such documents and instruments as Lessee may reasonably request to evidence the termination of the Lease and Lessor's interest in the Equipment Group, as-is, where is, without warranty by or recourse to Lessor.

## **ARTICLE VI. REPRESENTATIONS AND WARRANTIES; TAX PROVISIONS**

**Section 6.1 Representations and Warranties of Lessee.** Lessee shall be deemed to make the following representations and warranties to Lessor with respect to each Lease, in each case as of the Lease Date for such Lease:

(a) Lessee is a state or political subdivision of the State within the meaning of Section 103(c) of 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, the Lease and the transactions contemplated hereby and thereby, and to perform all of its obligations under this Agreement and the Lease.

(b) The execution and delivery of this Agreement and the Equipment Schedule 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 and the Equipment Schedule have been duly executed and delivered by and constitute the valid and binding obligations of Lessee, enforceable against Lessee in accordance with their respective terms.

(d) The execution, delivery and performance of this Agreement and the Equipment Schedule by Lessee do 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 the Equipment Schedule or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of this Agreement or the Equipment Schedule.

(f) Except as otherwise disclosed in writing by Lessee to Lessor, Lessee has not at any time during the past ten (10) years defaulted under, or terminated as a result of insufficient funds being appropriated, any lease, rental agreement, lease-purchase agreement, payment agreement, contract for purchase, loan or bond.

(g) 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 the current budget year, and such moneys will be applied in payment of all Rental Payments due and payable during such current budget year.

(h) 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 applicable Lease Term.

(i) Lessee's exact legal name is as set forth on the first page of this Agreement.

**Section 6.2 Tax Related Representations, Warranties and Covenants.** Lessee shall be deemed to make the following representations and warranties to, and covenants with, Lessor with respect to each Lease, in each case as of the Lease Date for such Lease:

(a) Lessee will comply with all applicable provisions of the Code, including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder, from time to time proposed or in effect, in order to maintain the excludability from gross income for federal income tax purposes of the interest component of Rental Payments under the Lease and will not use or permit the use of the Equipment in such a manner as to cause a Lease to be a "private activity bond" under Section 141(a) of the Code. Lessee covenants and agrees that it will use the proceeds of the Lease as soon as practicable and with all reasonable dispatch for the purpose for which the Lease has been entered into, and that no part of the proceeds of any Lease shall be invested in any securities, obligations or other investments except for the temporary period pending such use or used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the Lease Date, would have caused any portion of the Lease to be or

become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the Lease Date.

(b) (i) The estimated total costs, including taxes, freight, installation, and cost of issuance, of the Equipment under the Lease will not be less than the total principal amount of the Rental Payments; (ii) the Equipment under the Lease has been ordered or is expected to be ordered within six months after the Lease Date and the Equipment is expected to be delivered and installed, and the Vendor fully paid, within eighteen months from the Lease Date; (iii) Lessee will pursue the acquisition of the Equipment and the expenditure of the net proceeds of the Lease with due diligence; (iv) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (A) that is reasonably expected to be used to pay the Rental Payments under the Lease, or (B) that may be used solely to prevent a default in the payment of the Rental Payments under the Lease; (v) the Equipment under the Lease 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 maturity of the Rental Payments under the Lease; (vi) there are no other obligations of Lessee which (A) are being sold within 15 days of the Lease Date for the Lease, or (B) are being sold pursuant to the same plan of financing as the Lease, or (C) are expected to be paid from substantially the same source of funds; and (vii) the officer or official who has executed the Lease on Lessee's behalf is familiar with Lessee's expectations regarding the use and expenditure of the proceeds of the Lease. To the best of Lessee's knowledge, information and belief, the facts and estimates set forth in this Section 6.2(b) are accurate and the expectations of Lessee set forth in this Section 6.2(b) are reasonable. The representations and warranties set forth in any arbitrage or tax certificate executed and delivered by Lessee in connection with the Lease shall govern to the extent they are inconsistent with the representations and warranties set forth in this Section 6.2(b).

**Section 6.3 Event of Taxability.** If Lessor either (i) receives notice, in any form, from the Internal Revenue Service, or (ii) reasonably determines, based on an opinion of independent tax counsel selected by Lessor, that Lessor may not exclude the interest component of Rental Payments paid under the Lease from its Federal gross income (each an "Event of Taxability"), Lessee shall pay to Lessor upon demand (x) an 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 due through the date of such event), will restore to Lessor its after-tax yield (assuming tax at the maximum corporate income tax rate and taking into account the time of receipt of Rental Payments and reinvestment at the after-tax yield rate) on the transaction evidenced by the Lease through the date of such event and (y) as additional Rental Payments to Lessor on each succeeding Payment Date such amount as will maintain such after-tax yield to Lessor.

## **ARTICLE VII. INSURANCE; DAMAGE TO OR LOSS OF EQUIPMENT**

**Section 7.1 Liability and Property Insurance.** Lessee shall, at its own expense, procure and maintain continuously in effect during each Lease Term: (a) commercial general 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 successors and assigns from liability in all events, with a coverage of not less than \$1,000,000 per occurrence unless specified differently in the related Equipment Schedule, and (b) insurance against all risks of physical loss or damage to the Equipment as Lessor may require (including all risk casualty and property insurance) in an amount equal to the greater of the full replacement cost of the Equipment or the applicable Prepayment Price.

**Section 7.2 Workers' Compensation Insurance.** If required by State law, Lessee shall carry workers' compensation insurance covering all employees on, in, near or about the Equipment.

### **Section 7.3 Insurance Requirements.**

(a) All insurance policies required by this Article shall be taken out and maintained with insurance companies acceptable to Lessor and shall contain a provision that thirty (30) days prior to any material change in the coverage (including cancellation or non-renewal) 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 successors and assigns as an additional insured party and each casualty and property insurance policy shall be endorsed to name Lessor and its successors and assigns as sole lender loss payee, in each case regardless of any breach of warranty or other act or omission of Lessee.

(b) Prior to the Lease Date for each Lease, and thereafter at Lessor's request, Lessee shall deliver to Lessor the evidence of insurance which complies with this Article VII with respect to the Equipment Group subject to the Lease.

(c) If permitted in an Equipment Schedule, Lessee may self-insure against the risks described in Sections 7.1 and 7.2 for such Lease and shall deliver to Lessor, prior to the Lease Date for such Lease, and thereafter at Lessor's request, a letter from its risk manager or insurance consultant in substantially the form attached to the Equipment Schedule, which shall satisfy the obligations set forth in clauses (a) and (b) of this Section 7.3.

**Section 7.4 Damage to or Loss of Equipment.** If any item of Equipment is stolen, lost or destroyed, in whole or in part, or is damaged by fire or other casualty, or title to, or the temporary use of, any item of Equipment shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority (each, an "Event of Loss"), Lessor and Lessee will cause the Net Proceeds of such Event of Loss to be applied, at the option

of Lessee, to (a) the prompt replacement, repair, restoration, modification or improvement of the Equipment in substantial conformance with the Specifications, or (b) the prepayment of the Lease pursuant to Section 5.2. Lessee will give Lessor prompt written notice of an Event of Loss and written notice of its election within thirty (30) days after its receipt of the Net Proceeds. The insufficiency of the Net Proceeds to pay in full the cost of any replacement, repair, restoration, modification, improvement or prepayment shall not affect Lessee's obligations under this Section, and Lessee shall not be entitled to any reimbursement therefor from Lessor or any diminution of the Rental Payments. The amount of the Net Proceeds, if any, remaining after completing such replacement, repair, restoration, modification, improvement or prepayment may be retained by Lessee.

## **ARTICLE VIII. OTHER OBLIGATIONS OF LESSEE**

**Section 8.1 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, or in violation of any Vendor's guidelines or warranty, the terms of any insurance policy or any applicable law or regulation. 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 related Equipment Schedule; provided that Lessee may change the location at which any Equipment is kept (or housed) with thirty (30) 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, 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 8.2 Taxes.** Lessor and Lessee contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee, and therefore that the Equipment will be exempt from all property taxes. The Rental Payments payable by Lessee under each Lease have been established to reflect the savings resulting from this exemption. Lessee will take all necessary actions under applicable law to obtain or maintain such exemption. Nevertheless, if the use, possession or acquisition of the Equipment is determined to be subject to taxation or later becomes subject to taxation, 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 budget year of the Lease Term for such Equipment.

**Section 8.3 Liens.** Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or other claim 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 mortgage, pledge, lien, charge, encumbrance or other claim if the same shall arise at any time. Lessee shall pay all gas, water, steam, electric, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment.

**Section 8.4 Net Lease; Advances.** Each Lease is a net lease. Lessee shall perform all of its obligations hereunder at its sole expense. If Lessee shall fail to perform any of its obligations hereunder, 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 reimburse Lessor on demand for all expenses and costs incurred, or advances made, by Lessor in connection therewith with interest at the rate of 12% per annum or the maximum rate permitted by law, whichever is less, from the date of Lessor's payment thereof to the date of reimbursement by Lessee.

**Section 8.5 Financial Information.** Lessee shall deliver to Lessor (i) its annual audited financial statements within 180 days after the end of each budget year, (ii) its annual budget for the succeeding budget year promptly following approval thereof, (iii) proof of appropriation of Rental Payments with its annual budget, and (iv) such other financial statements and information relating to the ability of Lessee to satisfy its obligations under this Agreement and each Lease as may be reasonably requested by Lessor from time to time.

## **ARTICLE IX. TITLE; SECURITY INTEREST**

**Section 9.1 Title.** During the Lease Term, legal title to all Equipment shall be in Lessee, subject to Lessor's interests under the applicable Lease.

**Section 9.2 Security Interest.** In order to secure Lessee's payment of all Rental Payments and other amounts due hereunder and the performance of all other obligations hereunder, Lessee hereby grants to Lessor a continuing, first priority security interest in and to (a) the Equipment; (b) all moneys and investments in any escrow account into which proceeds of the Lease have been deposited; (c) all books, ledgers and records and all computer programs, tapes, discs, punch cards, data processing software,

transaction files, master files and related property and rights (including computer and peripheral equipment) necessary or helpful in enforcing, identifying or establishing any item of Equipment; and (d) all proceeds of the foregoing, including insurance and condemnation proceeds. Lessee hereby authorizes Lessor to prepare and file such financing statements and such other documents to establish and maintain Lessor's valid first lien and perfected security interest. Lessee will join with Lessor in executing such documents and will perform such acts as Lessor may request to establish and maintain Lessor's valid first lien and perfected security interest. Upon Lessor's request, Lessee shall obtain, at Lessee's expense, a waiver of any interest in the Equipment from any landlord, mortgagee or any other party holding an interest in the real property on which the Equipment is or will be located. Lessee will not change its legal name in any respect without giving thirty (30) days prior written notice to Lessor.

**Section 9.3 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 change or impair the originally intended value, function or use of the Equipment.

**Section 9.4 Personal Property.** The Equipment is and shall at all times be and remain personal property and not fixtures.

## **ARTICLE X. SELECTION; VENDOR'S WARRANTIES; DISCLAIMER; RISK OF LOSS**

**Section 10.1 Selection of Equipment.** Lessee has selected each Vendor and all of the Equipment. Lessor shall have no responsibility in connection with the selection of the Equipment, the ordering of the Equipment, its suitability for the use intended by Lessee, the acceptance by any Vendor or its sales representative of any order submitted, or any delay or failure by such Vendor or its sales representative to manufacture, deliver or install any Equipment for use by Lessee.

**Section 10.2 Vendor's Warranties.** So long as no Event of Default has occurred, Lessor hereby assigns to Lessee for and during the related Lease Term, all of its interest, if any, in all Vendor's warranties, guarantees and patent indemnity protection, express or implied, issued on or applicable to an Equipment Group, and Lessee may obtain the customary services furnished in connection with such warranties and guarantees at Lessee's expense. Lessor has no obligation to enforce any Vendor's warranties or obligations on behalf of itself or Lessee.

**Section 10.3 Disclaimer of Warranties.** LESSEE ACKNOWLEDGES THAT THE EQUIPMENT IS OF A SIZE, DESIGN, CAPACITY, AND MANUFACTURE SELECTED BY LESSEE. LESSEE ACKNOWLEDGES THAT IT SELECTED THE EQUIPMENT WITHOUT ASSISTANCE OF LESSOR, ITS AGENTS OR EMPLOYEES. LESSOR IS NOT A MANUFACTURER OF THE EQUIPMENT OR A DEALER IN SIMILAR EQUIPMENT, AND DOES NOT INSPECT THE EQUIPMENT BEFORE DELIVERY TO LESSEE. LESSOR LEASES THE EQUIPMENT TO LESSEE AS-IS, WHERE IS, AND MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, QUALITY, DURABILITY, SUITABILITY, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, THE EQUIPMENT OR LESSEE'S USE OF THE EQUIPMENT.

**Section 10.4 Risk of Loss.** All risk of loss to the Equipment shall be borne by Lessee. Lessee shall not be required to indemnify Lessor from liabilities associated with this Agreement; however, to the extent permitted by applicable laws of the State, as between Lessor and Lessee, Lessee assumes all risks and liabilities from any cause whatsoever, whether or not covered by insurance, and Lessee agrees to defend Lessor against, all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses that relate to or arise out of this Agreement or any Lease, including, (a) the selection, manufacture, purchase, acceptance or rejection of Equipment or the ownership of the Equipment, (b) the delivery, lease, possession, maintenance, use, condition, return or operation of the Equipment, (c) the condition of the Equipment sold or otherwise disposed of after possession by Lessee, (d) the conduct of Lessee, its officers, employees and agents, (e) any claim, loss, cost or expense involving alleged damage to the environment relating to the Equipment, including investigation, removal, cleanup and remedial costs, and (f) any strict liability under the laws or judicial decisions of any state or the United States. Lessee acknowledges that Lessor does not operate, control or have possession of the Equipment and has no control over Lessee or Lessee's operation, use, storage or maintenance of the Equipment. This Section 10.4 shall survive the termination of this Agreement or any Lease.

## **ARTICLE XI. ASSIGNMENT AND SUBLEASING**

**Section 11.1 Assignment by Lessor.** Lessor, without Lessee's consent, may assign and reassign all of Lessor's right, title and/or interest in and to this Agreement or any Lease, including the Rental Payments and other amounts payable by Lessee and Lessor's interest in the Equipment, in whole or in part, to one or more assignees or subassignee(s) of Lessor at any time. No such assignment shall be effective as against Lessee unless and until written notice of the assignment is provided to Lessee. When presented with a notice of assignment, Lessee will acknowledge in writing receipt of such notice for the benefit of Lessor and any assignee. Lessee shall keep a complete and accurate record of all such assignments. Assignees of Lessor's rights in one Lease shall have no rights in

any other Lease unless such rights have been separately assigned. The term "Lessor" includes, with respect to a Lease, any person or entity to whom Lessor has assigned any or all of its right, title and/or interest in such Lease.

**Section 11.2 Assignment and Subleasing by Lessee.** Neither this Agreement nor any Lease or any Equipment may be assigned, subleased, sold, transferred, pledged or mortgaged by Lessee.

## **ARTICLE XII. EVENTS OF DEFAULT AND REMEDIES**

**Section 12.1 Events of Default.** The occurrence of any of the following events with respect to a Lease shall constitute an "Event of Default" under such Lease:

(a) Lessee's failure to pay any Rental Payment or other amount required to be paid to Lessor under the Lease within ten (10) days following the due date thereof.

(b) Lessee's failure to maintain insurance under the Lease as required by Article VII or comply with the requirements of Sections 8.3 or 11.2.

(c) With the exception of the above clauses (a) or (b), Lessee's failure to perform or abide by any condition, agreement or covenant with respect to the Lease for a period of thirty (30) 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) Lessor's determination that any representation, warranty or statement made by Lessee in or pursuant to the Lease was untrue in any material respect on the date made.

(e) The filing of a petition in bankruptcy or receivership or similar proceeding by or against Lessee, or failure by Lessee promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its governmental functions or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of any adjustment of indebtedness of Lessee, or the dissolution or liquidation of Lessee.

An Event of Nonappropriation with respect to a Lease shall not constitute an Event of Default.

**Section 12.2 Remedies on Default.** Upon the occurrence of an Event of Default with respect to a Lease, Lessor shall have the right, at its option and without any further demand or notice, to exercise one or more of the following remedies with respect to such Lease:

(a) Lessor, with or without terminating the Lease, may declare all Rental Payments payable under the Lease to the end of the then-current budget year of Lessee to be immediately due and payable by Lessee, whereupon such Rental Payments shall be immediately due and payable.

(b) Lessor may terminate the Lease and repossess any or all of the Equipment subject to the Lease by giving Lessee written notice to deliver such Equipment in the manner provided in Section 12.3; or in the event Lessee fails to do so within ten (10) days after receipt of such notice, Lessor may enter upon Lessee's premises where such Equipment is kept and take possession of such Equipment. Lessor may thereafter dispose of the Equipment in accordance with the requirements of Article 9 of the Uniform Commercial Code. If Lessor terminates the Lease and takes possession 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 due pursuant to Section 12.6 (including reasonable attorneys' fees and default interest) and any sales or transfer taxes incurred in connection with the disposition of the Equipment; (ii) any Rental Payments payable under the Lease to the end of the then-current budget year of Lessee; (iii) the outstanding principal component of all other Rental Payments under the Lease; and (iv) any other amounts then due under the Lease. Any disposition proceeds remaining after the requirements of clauses (i), (ii), (iii), and (iv) have been met shall be paid to Lessee or such other creditor of Lessee as may be entitled thereto. No deficiency shall be allowed against Lessee, except with respect to any unpaid Rental Payments to the end of the then-current budget year of Lessee, any other amounts then due under the Lease and unpaid costs and expenses due pursuant to Section 12.6 (including reasonable attorneys' fees and default interest).

(c) By written notice to any escrow agent that is holding proceeds of the Lease, Lessor may instruct such escrow agent to release all such proceeds and any earnings thereon to Lessor, such sums to be credited to payment of Lessee's obligations under the Lease.

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

**Section 12.3 Return of Equipment: Release of Lessee's Interest.** Upon termination of any Lease prior to the payment of all Rental Payments or the applicable Prepayment Price (whether as result of an Event of Nonappropriation or Event of Default) thereunder, Lessee shall, within ten (10) 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 Article VIII; (b) if deinstallation, disassembly or crating is required, cause such Equipment to be deinstalled, disassembled and crated by an authorized manufacturer's representative or such other service



person as is satisfactory to Lessor; (c) return such Equipment to a location in the continental United States specified by Lessor, freight and insurance prepaid by Lessee; and (d) comply with any additional return conditions specified in the Equipment Schedule. Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of legal title and ownership to Lessor and termination of Lessee's interest in the Equipment.

**Section 12.4 Late Charge.** To the extent permitted by applicable law, Lessor shall have the right to require a late payment charge for each Rental Payment or any other amount due hereunder which is not paid within 10 days of the date when due equal to the lesser of 5% of such late payment or the legal maximum.

**Section 12.5 No Remedy Exclusive; No Waiver.** Each of the rights and remedies under this Agreement and each Lease 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 or any Lease. No failure or delay by Lessor to insist upon the strict performance of any term, covenant or agreement of the Agreement or any Lease, 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 12.6 Enforcement Costs and Attorney 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 reasonable attorneys' fees and other enforcement costs and expenses incurred by reason of such Event of Default or the exercise of Lessor's rights or remedies hereunder, whether incurred pre-judgment or post-judgment or prior to, during or after any bankruptcy proceeding. Any such costs shall be immediately due and payable upon written notice and demand given to Lessee and shall bear interest at the rate of 12 percent per annum or the maximum amount permitted by law, whichever is less.

### **ARTICLE XIII. MISCELLANEOUS PROVISIONS**

**Section 13.1 Notices.** All written notices to be given under this Agreement shall be given (a) personally, (b) by mail in registered or certified form, with postage prepaid, or (c) by overnight courier, charges prepaid, in each case to the party entitled thereto at its address specified beneath each party's signature, or at such address as the party may provide to the other parties hereto in writing from time to time, and to any assignee at its address as it appears on the registration books maintained by Lessee. Any such notice shall be deemed to have been received 72 hours after deposit in the United States mail, 24 hours after deposit with a courier, or, if given by other means, when delivered.

**Section 13.2 Binding Effect.** This Agreement and each Lease hereunder shall be binding upon and shall inure to the benefit of Lessor and Lessee and their respective successors and permitted assigns.

**Section 13.3 Severability.** In the event any provision of this Agreement or any Lease 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 13.4 Entire Agreement; Amendments.** Each Lease 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. Each Lease may be amended or modified only by written documents duly authorized, executed and delivered by Lessor and Lessee.

**Section 13.5 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 13.6 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 and each Lease, to consummate the transactions contemplated hereby and thereby, and to carry out the purposes and intentions of this Agreement and each Lease.

**Section 13.7 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State, exclusive of its conflict of laws provisions.

**Section 13.8 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 or in any Equipment Schedule, in no event shall this Agreement or any Lease hereunder 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 applicable Lease Term so that the interest is uniform through such term.

**Section 13.9 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 13.10 USA Patriot Act Compliance Notification.** Lessor hereby notifies Lessee that pursuant to the requirements of the USA PATRIOT Act (the "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 Lessor in accordance with the 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 Act.

(The remainder of this page is intentionally blank. Signature page follows.)

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**EXECUTION PAGE OF MASTER LEASE/PURCHASE AGREEMENT**

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IN WITNESS WHEREOF, Lessor has caused this Agreement to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Agreement to be executed in its name by its duly authorized officer.

**CITY OF CLEARWATER,**  
Lessee

**SUNTRUST EQUIPMENT FINANCE & LEASING  
CORP.,**  
Lessor

By: See Attached Signature Page  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address:  
100 SOUTH MYRTLE AVENUE  
CLEARWATER FL 33756

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail address: \_\_\_\_\_

By: Tanja Barner  
Name: \_\_\_\_\_  
Title: Assistant Vice President

Address:  
P.O. Box 4418  
Atlanta, GA 30302

SunTrust Master Lease/Purchase Agreement (Lease No. 10481)

Countersigned:

-geonerechko  
George N. Cretekos  
Mayor

CITY OF CLEARWATER, FLORIDA

By: William B. Horne II  
William B. Horne II  
City Manager

Approved as to form:

PKA  
Pamela K. Akin  
City Attorney

Attest:

Rosemarie Call  
Rosemarie Call  
City Clerk

