

## EQUIPMENT LEASE AGREEMENT

THIS EQUIPMENT LEASE AGREEMENT (this "Lease") dated as of September 9, 2020, is by and between The First, a National Banking Association ("Lessor"), having its mailing address at P. O. Box 15549, Hattiesburg, MS, 39404, and, The City of Diamondhead, ("Lessee"), having its principal place of business at 5000 Diamondhead Circle, Diamondhead, MS 39525 and its mailing address at 5000 Diamondhead Circle, Diamondhead, MS 39525.

1. **Lease.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, subject to the terms and conditions of this Lease, the personal property described in **Exhibit A** attached hereto and made a part hereof, together with all replacements, repairs, additions and accessories thereto (the "Equipment").

2. **Term and Rent; Late Charges.** (a) This Lease will become effective upon the execution hereof by Lessor. The term of this Lease will commence on the date the Equipment is accepted pursuant to Paragraph 3 of this Lease and, unless earlier terminated as expressly provided for in this Lease, will terminate, without further obligation on the part of the Lessee, at the end of the fiscal year of Lessee in which this Lease is executed and at the end of each succeeding fiscal year for which it may be renewed as hereinafter provided. The term of this Lease will be automatically renewed for an additional period of one year at the end of each fiscal year unless Lessee gives written notice to Lessor of its intent to terminate this Lease not less than thirty (30) days prior to the end of such fiscal year. If not sooner terminated, the Lease will continue until the Expiration Date set forth in **Exhibit B** attached hereto (the "Term").

(b) Lessee shall pay as rent for use of the Equipment aggregate rental payments equal to the sum of all the rental payments (including Advance Rents, if any) ("Rent") for the Lease term (including all renewals, the "Term") as set forth in **Exhibit B** attached hereto and made a part hereof; provided, however, the Lessee shall be obligated to make such Rent payments only during any fiscal year to the extent that such Rent payments may be made from current revenues lawfully budgeted and appropriated for such purpose during such year.

(c) THIS LEASE CANNOT BE CANCELED OR TERMINATED EXCEPT AS EXPRESSLY PROVIDED HEREIN. LESSEE ACKNOWLEDGES AND AGREES THAT THIS IS A NET LEASE AND THAT LESSEE'S OBLIGATION TO PAY ALL RENT DUE OR TO BECOME DUE HEREUNDER FOR THE TERM SHALL BE ABSOLUTE AND UNCONDITIONAL AND SHALL NOT BE SUBJECT TO ANY REDUCTION, SETOFF, DEFENSE, COUNTERCLAIM OR DEFERMENT FOR ANY REASON WHATSOEVER, INCLUDING WITHOUT LIMITATION ANY PAST, PRESENT, OR FUTURE CLAIMS THAT LESSEE MAY HAVE AGAINST LESSOR OR THE SUPPLIER OF THE EQUIPMENT. No defect or unfitness of the Equipment shall relieve Lessee of the obligation to pay any installment of Rent or any other obligation under this Lease. All obligations of Lessee (including, without limitation, those set forth in Paragraph 5 hereof) shall survive the expiration or termination of this Lease to the extent required for their full observance and performance. It is intended that Lessee shall pay all costs, expenses and taxes of every kind and character, whether foreseen or unforeseen, ordinary or extraordinary, in connection with the operation, use, maintenance, repair and reconstruction of the Equipment.

(d) Lessee reasonably believes that funds can be obtained sufficient to make all Rent payments during the Lease Term and hereby covenants that it will do all things lawfully within its power to obtain, maintain and properly request and pursue funds from which the Rent payments may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using its bona fide best efforts to have such portion of the budget approved and exhausting all available administrative reviews and appeals in the event such portion of the budget is not approved. It is Lessee's intent to make payments of Rent for the full Term of this Lease if funds are legally available therefore, and in that regard Lessee represents that the use of the Equipment is essential to the proper, efficient and economic operation of its governmental functions and its purchase is pursuant to a legitimate public purpose.

(e) The total obligation of Lessee for the fiscal year of execution is the sum of the periodic payments for such fiscal year as set forth on **Exhibit B**. The total obligation of Lessee in each fiscal year during cash renewal term, if any, is the sum of the periodic payments during such fiscal year renewal term as set forth on **Exhibit B**.

(f) To the extent permitted by applicable law, Lessee will pay on demand, as a late charge and not as interest, an amount equal to the greater of (i) five dollars (\$5.00) or (ii) four percent (4%) of each installment of Rent and any other sums payable hereunder which are at least fifteen (15) days past due. All payments provided for herein shall be payable to Lessor at its address set forth above, or at any other place designated by Lessor in writing. Any payment received by Lessor hereunder shall be applied to amounts due hereunder at Lessor's sole discretion, notwithstanding any contrary instrumentation by Lessee.

3. **Installation, Delivery and Acceptance.** Lessor shall have no obligation under this Lease in respect of the Equipment and shall have no obligation to ship, deliver, assemble, install, erect, test, adjust or service the Equipment. The Lessee shall provide an acceptable installation environment as specified in any applicable manufacturer's manual, and, except as otherwise specified by manufacturer, shall furnish all labor required to install the Equipment. Lessee shall be responsible for any delivery, rigging or other charges by manufacturer with respect to the Equipment. Lessee shall cause the Equipment to be delivered to Lessee at the location set forth in **Exhibit A** attached hereto. Lessee shall accept the Equipment as soon as it has been delivered and is operational, or in the event that the manufacturer or vendor allows a pre-acceptance test period, as soon as the test period has expired. Lessee will evidence its acceptance of the Equipment by executing and delivering to Lessor a delivery and acceptance certificate in form and content acceptable to Lessor.

4. **Nonappropriation of Funds.** (a) In the event no funds or insufficient funds are appropriated and budgeted, or funds are otherwise not available out of current revenues of Lessee by any means whatsoever, in any fiscal period for Rent due under this Lease, then Lessee will immediately notify Lessor or its assignee of such occurrence, and this Lease shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to Lessee of any kind whatsoever, except as to the portions of Rent Payments herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available. Lessee agrees to peaceably surrender possession of the

Equipment to Lessor or its assignee on the date of such termination, in accordance with the provisions of Paragraph 9 of this Lease. Lessor will have all legal and equitable rights and remedies to take possession of the Equipment.

(b) Notwithstanding the foregoing, Lessee agrees (i) that it will not cancel this Lease under the provisions of this Paragraph if any funds are appropriated to it, or by it, for the acquisition, retention or operation of the Equipment or other equipment performing functions similar to the Equipment for the fiscal period in which such termination occurs or the next succeeding fiscal period thereafter, and (ii) that it will not, during a period of five (5) years after such termination occurs, appropriate funds or otherwise give priority in the application of funds to any other functionally similar equipment. This Paragraph 4 will not be construed so as to permit Lessee to terminate this Lease in order to acquire any other equipment or to allocate funds directly or indirectly to perform essentially the same function for which the Equipment is intended.

(c) Notwithstanding any provision to the contrary contained in this Lease, it is expressly understood and agreed that Rent payments to be made in each fiscal year shall be payable only out of current revenues of Lessee for that year lawfully budgeted and appropriated during such year.

5. **Disclaimer of Warranties.** LESSEE HAS SELECTED THE EQUIPMENT BASED UPON ITS OWN JUDGMENT AND EXPRESSLY DISCLAIMS ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY LESSOR. ALL EQUIPMENT IS OR WILL BE ACCEPTED BY LESSEE "AS IS" AFTER INSPECTION BY LESSEE. LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, THE DESIGN, OPERATION, FITNESS OR CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, SUITABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, THE QUALITY OF ANY MATERIALS OR THE WORKMANSHIP IN THE EQUIPMENT, OR THE TITLE TO THE EQUIPMENT, AND HEREBY DISCLAIMS ANY SUCH WARRANTIES. Lessee specifically waives all rights to make claim against Lessor for breach of any warranty whatsoever. Lessor shall not be liable to Lessee hereunder or at law or in equity for any liability, claim, loss, damage or expense caused directly or indirectly by the Equipment or any deficiency or defect thereof or the installation, operation, maintenance or repair thereof. So long as there shall not have occurred or be continuing any Default (as defined in Paragraph 12) or event which with the lapse of time or notice or both might become a Default hereunder, Lessor agrees, as Lessee's sole and exclusive remedy, to assign to Lessee, for the sole purpose of making and prosecuting a claim, all rights Lessor may have against the Equipment manufacturer/seller for breach of warranty or other representation to the extent the same are assignable. Lessor shall not be liable to Lessee or any third party for any consequential or incidental damages as those terms are used in Sections 75-2A-503 and 520 of the Mississippi Code of 1972, or Sections 2A-503 and 520 of the Uniform Commercial Code as enacted in any other state (the "UCC").

6. **Title; Labeling; Personal Property.** The parties agree that title to the Equipment during the Term of this Lease shall vest in Lessor, subject to the rights of Lessee under this Agreement. Lessee (i) shall not sell, assign, subject or otherwise dispose of, or permit legal process or encumbrance upon or against any interest in, this Lease or the Equipment; (ii) shall keep the Equipment free of liens and give immediate written notice to Lessor of any such process or encumbrance; and (iii) shall, at its sole expense, protect and defend Lessor's title and interest and Lessor's rights and interests in and to the Equipment against all persons claiming against or through Lessee or otherwise and indemnify and hold Lessor harmless from and against any loss caused thereby. Lessee shall affix to the Equipment any markings requested by Lessor showing Lessor's interest. The Equipment is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. If requested by Lessor, Lessee will, at Lessee's expense, furnish a landlord or mortgagee waiver with respect to the Equipment from all persons claiming an interest in any real property on which the Equipment is located.

7. **Taxes; Liens.** Lessee agrees to pay when due all sales, use, property, excise and other taxes, fees or other charges of any nature whatsoever (except for any taxes based upon Lessor's net income), if any, however designated, together with any liens, penalties or interest thereon, now or hereafter imposed by any governmental entity, whether based upon the Rent or the Equipment or the purchase, delivery, installation, ownership, leasing, use, possession or return thereof. Lessee agrees to cooperate with Lessor in filing all tax returns and informational statements, if any, required by any federal, state and/or local governmental agency. Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances except those created under this Lease. If Lessee fails to pay said charges or taxes when due, Lessor shall have the right, but not the obligation, to pay said charges or taxes, and Lessee shall on demand reimburse Lessor therefore.

8. **Use; Maintenance; Alterations; Inspection.** Lessee agrees to comply with all laws, regulations and orders applicable to this Lease and the Equipment, including, but not limited to, all applicable environmental laws, and to use the Equipment in the business or the purpose for which the Equipment was designed and in compliance with applicable operating instructions, warranties and policies of insurance with respect thereto, and to use properly trained personnel in the operation thereof. Lessee, at its sole cost and expense, shall maintain the Equipment in good repair, condition and working order, according to the manufacturer's recommended guidelines or the equivalent and meet any and all recertification requirements and shall furnish proof of such maintenance, if requested by Lessor, and shall furnish all needed servicing and parts, which parts shall become the property of Lessor and part of the Equipment. If Lessee enters into any maintenance contracts for the Equipment with a party other than the manufacturer, Lessee, at its sole cost and expense, shall have the manufacturer recertify the Equipment at the expiration of the Lease or any renewals or extensions thereof. Lessee shall not make any alterations or attachments to the Equipment without the prior written consent of Lessor, and any permitted alteration or attachment which cannot be readily removed without damaging the Equipment's originally intended function or value shall become part of the Equipment and the property of Lessor. Notwithstanding the foregoing, any upgrade, addition or modification added by the Lessee as required by law or under any manufacturer's or servicer's recommendations shall, without further action, become a part of the Equipment and the sole property of Lessor. Lessee shall not attach the Equipment to any real property if, as a result, the Equipment would or might become a fixture under applicable law. Lessor shall have the right during normal business hours to enter Lessee's premises to inspect the Equipment. Lessee agrees not to move the Equipment from the location shown on Exhibit A hereto without Lessor's prior written consent.

9. **Return of Equipment.** Unless Lessee exercises an option to purchase the Equipment or renews the Term of this Lease as provided in any Schedule to this Lease and except as otherwise provided in this Lease, upon expiration of the Term as to each item of Equipment or upon demand of Lessor pursuant to Paragraph 13 hereof, Lessee, at its own risk and expense, including, but not limited to the expense of maintaining all insurance thereon, shall promptly assemble, prepare for shipment, and return the Equipment to Lessor in the same condition as delivered, ordinary wear and tear excepted, and meeting all recertification requirements, at such location within the United States as Lessor shall designate. For any return of Equipment, Lessee shall contact Lessor to obtain shipping instructions. Lessee will provide for the deinstallation, packing and transporting

of the Equipment to include, but not limited to, the following: (y) the Equipment shall be packed properly and in accordance with the manufacturer's recommendations; and (z) Lessee shall transport the Equipment in a manner consistent with the manufacturer's recommendations and practices.

10. **Insurance.** Lessee shall obtain and maintain during the Term, at its own expense, liability insurance (in an amount of not less than One Million Dollars (\$1,000,000.00)) and insurance against property damage or loss, insuring such risks as are customarily insured against for the type of equipment leased hereunder in the business or governmental functions in which Lessee is engaged, in such amounts, in such form and with such insurers as are satisfactory to Lessor, or, with Lessor's prior written consent, may self-insure against any or all such risks; provided, however, that the amount of insurance against damage or loss shall not be less than the greater of (a) the replacement value of the Equipment, (b) the Concluding Payment of such Equipment as specified in **Exhibit B** attached hereto, or (c) the total initial cost of the Equipment. Lessor may, by written notice delivered to Lessee not more than once in any calendar year, require additional insurance coverage or a change in the form of insurance or insurer. Each liability insurance policy shall contain a breach of warranty clause satisfactory to Lessor, shall name Lessor as an additional insured, and each property damage policy shall name Lessor as sole loss payee and all policies shall contain a clause requiring the insurer to give Lessor at least thirty (30) days prior written notice of any alteration in the terms or cancellation of the policy. Lessee shall furnish a certificate of insurance or other evidence satisfactory to Lessor that the required insurance coverage is in effect. Lessor shall have no duty to ascertain the existence of or to examine the insurance policies to advise Lessee if the insurance coverage does not comply with the requirements of this Paragraph. If Lessee fails to insure the Equipment as required, Lessor shall have the right, but not the obligation, to obtain such insurance, and the cost of the insurance shall be for the account of Lessee, due as part of the next due Rent payment. Lessee consents to Lessor's release, upon its failure to obtain appropriate insurance coverage, of any and all information necessary to obtain insurance with respect to the Equipment and/or Lessor's interest therein. Lessor retains the right to substitute its own insurance for any insurance obtained by Lessee in accordance with this Paragraph upon reasonable notice to Lessee with an insurer or through an agent or broker of its choice, at Lessee's sole cost.

11. **Loss or Damage.** From the date on which the supplier of the Equipment delivers the Equipment to Lessee and until the Equipment is returned to (and accepted by) the Lessor as provided in Paragraph 9, Lessee shall bear the entire risk of loss for theft, damage, destruction or other injury to, the Equipment (including, but not limited to, any condemnation, seizure or requisition of title or use) from any and every cause whatsoever (an "Event of Loss"). No Event of Loss shall relieve Lessee from its obligations to pay Rent or otherwise perform under this Lease except as expressly provided in subparagraph (c) below. When any Event of Loss occurs, Lessee shall immediately notify Lessor and, at the option of Lessor, shall (a) place such Equipment in good repair, condition and working order, ordinary wear and tear excepted, or (b) replace such Equipment (or any part thereof) with like Equipment in good repair, condition and working order, ordinary wear and tear excepted with clear title to the replacement Equipment in Lessor; or (c) promptly pay to Lessor an amount equal to the Concluding Payment, whereupon Lessor shall transfer to Lessee, without recourse or warranty (express or implied), all of Lessor's interest, if any, in and to such Equipment on an "as is, where is" basis. The proceeds of any insurance payable with respect to the Equipment shall be applied, at the option of Lessor, either towards (y) replacement or repair of the Equipment, or (z) payment of any of Lessee's obligations hereunder. Lessee hereby appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payments of, and execute and endorse all documents, checks or drafts issued with respect to any Event of Loss under any insurance policy relating to the Equipment. An Event of Loss as to any of the Equipment shall constitute an Event of Loss as to all Equipment leased hereunder unless Lessor, in its sole discretion, otherwise agrees in writing.

12. **Events of Default.** Each of the following shall be a default ("Default") under this Lease: Lessee (a) fails to pay any portion of Rent or any insurance premiums within ten (10) days of when due; or (b) fails to perform or observe any other covenant or agreement in this Lease, and such failure continues unremedied for thirty (30) days (or such longer period of time if Lessee is diligently working to cure such breach and such breach is capable of being cured, as determined in Lessor's discretion); or (c) shall or shall attempt to abandon, remove, sell, encumber or sublet any item of Equipment or to assign any rights under or interest in this Lease; or (d) fails to appropriate sufficient funds to pay all Rent payments due or to become due for the then-current fiscal year; or (e) shall become insolvent or make an assignment for the benefit of creditors, or a trustee or receiver shall be appointed for Lessee or for a substantial part of its assets, or bankruptcy, reorganization or insolvency proceedings shall be instituted by or against Lessee; or (f) shall be in material default under any other agreement with Lessor or any of its affiliates or any other lender or lessor.

13. **Remedies.** Upon the occurrence of a Default and at any time thereafter, Lessor may, in its sole discretion, to the extent permitted by and in conformity with applicable law, do any one or more of the following: (a) upon notice to Lessee, terminate this Lease as to any or all Equipment; (b) declare the total amount or any portion thereof of unpaid Rent and other amounts due hereunder immediately due and payable in an amount not to exceed the sum of all Rent payments then due and unpaid, plus an amount equal to the Concluding Payment (as defined in Paragraph 20); (c) demand the return of any or all items of Equipment in accordance with Paragraph 9 hereof; (d) without demand or legal process, enter the premises where any or all items of Equipment are located and take immediate possession of and remove the same, without liability for such entry or for damage to property or otherwise; (e) re-lease or sell any or all of the Equipment at a public or private sale on such terms and notice as Lessor shall deem reasonable and, in addition to retaining the total proceeds received from such lease or sale, recover from Lessee damages, not as a penalty, but liquidated for all purposes and in an amount equal to the sum of (i) any accrued and unpaid Rent, and other amounts due hereunder, as of the later of (A) the date of Default, or (B) the date that Lessor has obtained possession of the Equipment or such other date as Lessee has made an effective tender of possession of the Equipment back to Lessor ("Default Date"); plus Rent (at the periodic rate provided for in this Lease) for the additional period (but in no event longer than two (2) months) that it takes Lessor to resell or re-let all of the Equipment, and (ii) the difference between the monthly Rent payments for the remainder of the Term as they become due and the net proceeds, if any, of any reletting of the Equipment after deducting all of Lessor's expenses in connection with such reletting, including without limitation, all repossession costs, broker's commissions, attorney's fees and expenses, and alteration costs and expenses of preparing the Equipment for reletting (f) proceed at law or in equity to enforce specifically Lessee's performance under this Lease, or (g) exercise any other right or remedy available to Lessor under applicable law or proceed by court action to enforce the terms of this Lease or to recover damages or expenses resulting from the breach of this Lease. A cancellation hereunder shall occur only upon notice by Lessor and only as to such items of Equipment as Lessor specifically elects to cancel, and this Lease shall continue in full force and effect as to the remaining items of Equipment, if any. Lessee shall be liable for and shall pay to Lessor all attorneys' fees and expenses and other costs incurred by Lessor in exercising Lessor's remedies, including placing any Equipment in the condition required by Paragraph 9 hereof. If this Lease is deemed at any time to be one intended as security as set forth in Paragraph 18, Lessee agrees that the Equipment shall secure, in addition to the indebtedness herein, all other indebtedness at any time owing by Lessee or Lessor. No remedy referred to in this Lease is intended to be exclusive, but each shall be in addition to any other remedy referred to or otherwise available to Lessor at law or in equity. No express or implied waiver by Lessor of any Default shall constitute a waiver of any other Default by Lessee or a waiver of any of Lessor's rights and no delay by Lessor in enforcing any right or requiring performance of any provisions of this Lease by Lessee shall be a waiver of such right or affect the right of Lessor to enforce such provision.

Notwithstanding any provision of this Paragraph 13 to the contrary, Lessee may terminate this Lease as provided in Paragraph 4, and the Lessee shall not be liable under this Lease for any Rent payments in excess of the amount otherwise due under said Paragraph 4.

14. **Lessee's Waivers.** To the extent permitted by applicable law, Lessee hereby waives any and all rights and remedies conferred upon a lessee by Sections 75-2A-508 through 522 of the Mississippi Code of 1972, and Sections 2A-508 through 2A-522 of the UCC. To the extent permitted by applicable law, Lessee also hereby waives any rights now or hereafter conferred by statute or otherwise which may require Lessor to sell, lease or otherwise use any Equipment in mitigation of Lessor's damages as set forth in Paragraph 13 or which may otherwise limit or modify any of Lessor's rights or remedies under Paragraph 13. Any action by Lessee against Lessor for any default by Lessor under this Lease, shall be commended within one (1) year after any such cause of action accrues.

15. **Lessee's Representations.** Lessee represents, warrants and covenants that: (a) Lessee is a fully constituted political subdivision, agency or public corporation of the State of Mississippi; (b) the execution, delivery and performance by Lessee of this Lease have been duly authorized by all necessary action on the part of Lessee; (c) this Lease has been executed on behalf of Lessee by its duly authorized officers; (d) this Lease constitutes a legal, valid and binding obligation of Lessee enforceable in accordance with its terms; (e) neither the execution and delivery of this Lease, nor the consummation of the transactions herein contemplated, nor the fulfillment of or compliance with the terms and provisions hereof will conflict with or result in a breach of any of the terms, conditions or provisions of the charter or other organizational documents of Lessee, or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which Lessee is now a party or by which it or its property is bound, or constitute (with giving of notice or the passage of time, or both) a default thereunder; (f) all financial reports, statements or summaries provided to Lessor by or with respect to Lessee accurately present the financial condition of Lessee; (g) Lessee has complied with all requirements of law with respect to the execution and delivery of this Lease, including, without limitation, all notice and advertisement requirements of applicable under the Mississippi Code of 1972, without limitation and (g) the ordinary maintenance and repairs performed by Lessee pursuant to any provisions of the Lease requiring Lessee to maintain and keep the Equipment in good repair during the Term hereof will not change the purpose or character of the Equipment or materially enhance its value (as opposed to preserving its value or slowing its depreciation). Lessee agrees that (i) it will do or cause to be done all things necessary to preserve and keep the Lease in full force and effect, (ii) it has complied with all public bidding, notice and hearing requirements where necessary and by due notification presented this Lease for approval and adoption as a valid obligation on its part, and (iii) it has sufficient appropriations or other funds available to pay all amounts due hereunder for the current fiscal period. Notwithstanding anything to the contrary contained herein, Lessee's obligations under this Lease are not secured by a pledge of its full faith and credit.

16. **Assignment.** WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, LESSEE SHALL NOT (a) ASSIGN, TRANSFER, PLEDGE, HYPOTHECATE OR OTHERWISE DISPOSE OF THIS LEASE, THE EQUIPMENT OR ANY INTEREST THEREIN, OR (b) SUBLET OR LEND THE EQUIPMENT OR PERMIT IT TO BE USED BY ANYONE OTHER THAN LESSEE OR LESSEE'S EMPLOYEES. Lessee shall remain primarily liable on this Lease. Lessor may sell, assign or grant security interests or participations in this Lease and the Equipment in whole or in part without notice to Lessee, and Lessor's assignee or secured party may then assign such interest without notice to Lessee. Lessee agrees that any such assignment shall not materially change Lessee's duties or obligations under this Lease or materially increase Lessee's risks or burdens. Each such assignee and/or secured party shall have all the rights but none of the obligations of Lessor under the Lease unless Lessee is otherwise notified by Lessor. Lessee shall recognize such assignments and/or security agreements and agrees that upon notice of such assignment Lessee shall pay directly to assignee (unless otherwise directed by assignee) without abatement, deduction or setoff all amounts which become due hereunder and further agrees that Lessee will not assert against assignee any defense, counterclaim or setoff for any reason whatsoever in any action for Rent or possession brought by assignee. Upon such assignment and except as may otherwise be provided therein all references in this Lease to "Lessor" shall include assignee. DURING THE LEASE TERM LESSEE SHALL KEEP A COMPLETE AND ACCURATE RECORD OF ALL SUCH APPROVED ASSIGNMENTS IN FORM NECESSARY TO COMPLY WITH SECTION 149(a) OF THE INTERNAL REVENUE CODE OF 1986 AND THE REGULATIONS, PROPOSED OR EXISTING, FROM TIME TO TIME PROMULGATED THEREUNDER. No further action will be required by Lessor or by Lessee to evidence the assignment, but Lessee will acknowledge such assignments in writing if so requested. Subject to the foregoing, this Lease inures to the benefit of and is binding upon the successors and assigns of the parties hereto.

17. **Intentionally Omitted.**

18. **Finance Lease; Not Consumer Lease.** The parties agree that this Lease is a "Finance Lease" as defined by Section 75-2A-103 of the Mississippi Code of 1972. Lessee acknowledges either (a) that Lessee has reviewed and approved any written Supply Contract (as defined by Section 75-2A-103 of the Mississippi Code of 1972) covering the Equipment purchased from the "Supplier" (as defined by Section 75-2A-103 of the Mississippi Code of 1972) thereof for lease to Lessee, or (b) that Lessor has informed or advised Lessee, in writing, of the following: (i) the identity of the Supplier; (ii) that the Lessee may have rights under the Supply Contract; and (iii) that the Lessee may contact the Supplier for a description of any such rights Lessee may have under the Supply Contract. The parties further agree that this Lease is not a "Consumer Lease" as defined by Section 75-2A-103 of the Mississippi Code of 1972. Lessee acknowledges that it is not using any item of the Equipment primarily for a personal, family or household purpose.

19. **Intent; Deemed Security Interest.** It is the express intent of the Lessee and Lessor that this Lease constitutes a Finance Lease and not a sale of the Equipment or a loan of any kind. Lessee shall execute any such documents or UCC financing statements as Lessor deems to be necessary or advisable and shall otherwise cooperate to defend the title and interest of Lessor and the rights and interest of Lessee. Lessee agrees to pay all costs of preparing and filing any such documentation. With regard to any UCC financing statement, and/or continuation statement, the term "debtor," "secured party," and "collateral" on such financing statement forms shall also be read to mean "Lessee," "Lessor," and "Equipment," respectively. It is expressly agreed that any filings or UCC financing statements shall not be deemed to affect the nature of this Lease as a Finance Lease, but rather to give notice to all interested parties of Lessor's interest in the Equipment. Notwithstanding the express intent of Lessee and Lessor, in the event a court of proper jurisdiction should at anytime in the future determine that the transaction between Lessee and Lessor is not a Finance Lease, then Lessee shall be deemed to have hereby granted to Lessor a security interest in such Equipment and all accessions thereto, and all substitutions and replacements therefore, and proceeds (including insurance proceeds) thereof, to secure the prompt payment and performance as and when due of all obligations and indebtedness of Lessee to Lessor, now existing or hereafter created. For the purpose of perfecting its security interest in the Equipment and related property, the UCC filings shall perfect the security interest and/or Lessor may file this Lease or a photocopy hereof or thereof as a financing statement under the UCC. Lessee acknowledges that only Lessor's original of this Lease constitutes chattel paper for purposes of the Mississippi Uniform Commercial Code. No security interest can be perfected by possession of any other counterpart.

20. **Purchase Option.** (a) If all of the Rent payments have not yet been made, upon thirty (30) days prior written notice from Lessee to Lessor and written acceptance of such notice by Lessor, and provided that there is no Default, or an event which with notice or lapse of time, or both, could become a Default, then existing, Lessee will have the right to purchase the Equipment on the Rent payment dates set forth in Exhibit B by paying to Lessor, on such date, the Rent payment then due, together with the Concluding Payment amount set forth opposite such date and any other amounts due by Lessee hereunder.

(b) Upon satisfaction by Lessee of such purchase conditions, Lessor will transfer any and all of its right, title and interest in the Equipment to Lessee "as is, where is", is without warranty, express or implied, except that Lessor will warrant to Lessee that the Equipment is free and clear of any liens created by Lessor.

21. **Further Assurances; Financial Statements.** (a) Lessee shall promptly execute and deliver to Lessor such further documents and take such further action as Lessor may request to more effectively carry out the intent and purpose of this Lease. Lessee agrees to maintain a system of accounts in accordance with the requirements of the state regulator having jurisdiction over Lessee and under Mississippi law.

(b) Lessee shall provide to Lessor annual financial statements of Lessee within one hundred twenty (120) days after the end of Lessee's fiscal year, including a statement of income and cash flows and a balance sheet, certified by Lessee's financial officer, in form satisfactory to Lessor and, if permitted by applicable law, accompanied by an opinion of an independent certified public accountant acceptable to Lessor which opinion shall state in effect that: (i) such financial statements (A) were audited using generally accepted auditing standards, (B) were prepared in accordance with generally accepted accounting principles applied on a consistent basis, and (C) present fairly the financial condition and results of operations of Lessee for the periods covered, and (ii) except as disclosed in such opinion, in making the examination necessary for such opinion, such accountants have obtained no knowledge of (A) the existence of any Default under this Lease or under any instrument evidencing or securing any other indebtedness or contingent liability of Lessee, and (B) the occurrence of any event which, with notice or lapse of time or both, would constitute a Default under this Lease or under any instrument evidencing or securing any other indebtedness or contingent liability of Lessee. If Lessee is not permitted by law to obtain an audit of its financial statements by an independent certified public accountant Lessee shall, in addition to annual unaudited financial statements as described above, provide Lessor with copies of reports of audits done by any governmental agency as soon as they are available. Lessee shall provide such other financial information to Lessor as Lessor shall request from time to time.

22. **Notices.** Any notices given under this Lease shall be in writing, sent by certified mail, return receipt requested, to the addresses set forth above, or to such other addresses as the parties may substitute by written notice given in the manner described in this Paragraph. Any such notice shall be deemed to have been received five (5) days subsequent to mailing.

23. **No Agency.** Lessee acknowledges and agrees that neither the manufacturer, the supplier, nor any salesman, representative or other agent of the manufacturer or supplier, is an agent of Lessor. No salesman, representative or agent of the manufacturer or supplier is authorized to waive or alter any term or condition of this Lease and no representation as to the Equipment or any other matter by the manufacturer or supplier shall in any way affect Lessee's duty to pay Rent and perform its other obligations as set forth in this Lease.

24. **Decrease in Deductibility of Interest Expense.** (a) Lessee acknowledges that the Rent payments were calculated assuming that a financial institution that accepted an assignment of Lessor's interest on the date of delivery of this Lease could deduct eighty percent (80%) of such financial institution's interest expense allocable to this Lease. If (i) the Lessor, or any assignee of the Lessor or its assigns, is a financial institution for purposes of Section 265 of the Internal Revenue Code of 1986 (the "Code"), (ii) the deductible portion of such financial institution's interest expense allocable to this Lease is decreased for any reason (including without limitation a change in applicable law or the fact that this Lease does not qualify as a "qualified tax-exempt obligation" under Section 265(b)(3) of the Code), and (iii) such decrease would have been effective if such financial institution had acquired its interest in the Lease on the date of delivery of this Lease, then for each whole percentage point, or portion thereof, of decrease (below eighty percent (80%)) in the portion of allocable interest expense allowed as a deduction, the interest rate used to calculate the Rent payments shall increase by a like number of basis points (one "basis point" being .01% per annum).

(b) The interest rate adjustment required by this Paragraph 24 shall be made each time that the allowable deduction for allocable interest expense decreases and shall be effective as of the date such decrease becomes effective for the financial institution that is at the time Lessor (or an assignee of Lessor or its assigns). Lessor agrees to notify Lessee of any change in law described above as soon as practicable after such change is enacted by the United States Congress. If any such change was effective for any period prior to the date of such notice, any additional interest payable for such period as a result of the increase in the interest rate, at the option of Lessor, (i) shall be due and payable within thirty (30) days after receipt of such notice from the Lessor, or (ii) shall be paid over such longer term as shall be satisfactory to Lessor. No such adjustment in the interest rate shall be effective during any period when Lessor (or an assignee of Lessor or its assigns) is not a financial institution for purposes of Section 265 of the Code.

(c) Any adjustment required by this Paragraph 24 shall increase the amount of interest payable as a part of each Rent payment affected, but shall not change the principal component of any Rent payment.

25. **Covenant Regarding Tax-Exempt Interest.** (a) Lessee represents and warrants that the interest portion of each Rent payment will not be includible in gross income of Lessor. Lessee covenants and agrees that it will not take any action, or fail to take any action, if such action or failure to act would cause the interest portion of each Rent payment to be or become includible in gross income of Lessor for purposes of federal income taxation. Without limiting the generality of the preceding sentence, Lessee covenants and agrees that, to the extent necessary for the interest portion of each Rent Payment to be so excludable from gross income:

(i) the Equipment shall not be used in any private business use; the Rent payments shall not be secured by, or derived from, property used in a private business use; no portion of the proceeds of this Lease shall be used to make or finance loans to persons other than governmental units; and proceeds of this Lease shall not be used in any manner that would cause this Lease to be or become a "private activity bond", as defined in Section 141 of the Code; and

(ii) Lessee shall submit to the Secretary of the Treasury a statement or report with respect to the execution and delivery of this Lease as required by Section 149(e) of the Code.

(b) If Lessor determines in good faith (which determination shall be supported by an opinion of nationally recognized bond counsel) or if the Internal Revenue Service shall claim in writing that the interest portion of the Rent payments is includible in the gross income of Lessor or any former lessor ("Taxable"), then the interest rate hereunder shall be adjusted to the Prime Rate plus 1.0 %, determined daily according to the Prime Rate in effect for such date, effective as of the earliest date that such interest was taxable. Any additional amount of interest due for the period prior to the date Lessee was notified that interest was Taxable and began making Rent payments at the adjusted rate shall be paid by Lessee, at the option of Lessor, (i) within thirty (30) days after the date Lessee is notified of the amount due, or (ii) on such other payment schedule as shall be satisfactory to Lessor. "Prime Rate" shall mean the rate of interest announced by the Bank as its prime rate, with the understanding that the Bank's prime rate is one of its base rates established from time to time for lending purposes and is not necessarily the best or lowest rate offered by the Bank and is evidenced by the recording thereof after its announcement in such internal publication or publications as the Bank may designate.

(c) All agreements between Lessor and Lessee, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency whether by reason of acceleration of the maturity of any indebtedness governed hereby or otherwise shall the interest contracted for, charged or received by Lessor exceed the maximum amount permissible under applicable law, to include without limitation Section 75-17-101 of the Mississippi Code of 1972.

26. **Arbitration.** Lessee represents to Lessor that its business and affairs constitute substantial interstate commerce and that it contemplates using the Equipment in substantial interstate commerce. Except as otherwise specifically set forth below, any action, dispute, claim, counterclaim or controversy ("Dispute" or "Disputes"), between or among Lessor, Lessee or any guarantor, including any claim based on or arising from an alleged tort, shall be resolved by arbitration as set forth below. As used herein, Disputes shall include all actions, disputes, claims, counterclaims or controversies arising in connection with this Lease (including all Schedules and other addenda), any extension of or amendment to this Lease, any security or collateral given to Lessor, any action taken (or any omission to take any action) in connection with any of the foregoing, any past, present and future agreement between or among Lessor, Lessee or any guarantor (including this Lease and any related guaranty agreement), and any past, present or future transactions between or among Lessor, Lessee or any guarantor.

All Disputes shall be resolved by binding arbitration in accordance with Title 9 of the U.S. Code and the Commercial Arbitration Rules of the American Arbitration Association (the "AAA"). Defenses based on statutes of limitation, estoppel, waiver, laches and similar doctrines, that would otherwise be applicable to an action brought by a party, shall be applicable in any such arbitration proceeding, and the commencement of an arbitration proceeding with respect to this Lease shall be deemed the commencement of an action for such purposes.

Whenever an arbitration is required hereunder, the arbitrator shall be selected in accordance with the Commercial Arbitration Rules of the AAA. The AAA shall designate a panel of 10 potential arbitrators knowledgeable in the subject matter of the Dispute. Each of Lessor and Lessee shall designate, within thirty (30) days of the receipt of the list of potential arbitrators, one of the potential arbitrators to serve, and the two arbitrators so designated shall select a third arbitrator from the eight remaining potential arbitrators. The panel of three arbitrators shall determine the resolution of the Dispute.

27. **Miscellaneous.** (a) This Lease may not be amended except in writing and shall be binding upon and inure to the benefit of the parties, their permitted successors and assigns. THIS LEASE SHALL BE GOVERNED BY THE LAWS OF MISSISSIPPI. THIS LEASE SHALL BE DEEMED ACCEPTED BY LESSOR IN THE STATE OF MISSISSIPPI. Any provision of this Lease which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof. LESSEE WAIVES TRIAL BY JURY AND, AS TO ANY LITIGATION INVOLVING THIS LEASE, CONSENTS TO JURISDICTION AND VENUE IN ANY STATE OR FEDERAL COURT IN HARRISON COUNTY, MISSISSIPPI. Lessee agrees to accept service of process at the address shown on this Lease.

(b) If Lessee fails to perform or comply with any of its agreements or obligations contained herein, Lessor may perform or comply with such agreements or obligations and the amount of any payments and expenses of Lessor incurred in connection with such performance or compliance (including reasonable attorneys' fees and expenses), together with interest thereon at the highest legal contract rate, shall be deemed additional Rent payable by Lessee upon demand.

(c) Lessor's failure at any time to require strict performance by Lessee of any of the provisions hereof shall not waive or diminish Lessor's right thereafter to demand strict compliance therewith or with any provision. Waiver of any Default shall not waive any other Default.

(d) This Lease, together with all Exhibits, constitutes the entire understanding or agreement between Lessor and Lessee, and there is no understanding or agreement, oral or written, which is not set forth herein. This Lease and any Exhibit may not be amended except by a writing signed by Lessor and Lessee and shall be binding upon and inure to the benefit of the parties hereto, their permitted successors and assigns. AS PROVIDED IN PARAGRAPHS 12 AND 16, ABOVE, LESSEE SHALL HAVE NO RIGHT TO SUBLEASE THE EQUIPMENT OR TO ASSIGN THIS LEASE; ANY SUCH ACTION SHALL CONSTITUTE AN IMMEDIATE DEFAULT. Lessee acknowledges having read this Lease. Upon written request, Lessor will furnish to Lessee a copy of this Lease prepared in 11-point type. Lessee acknowledges having read this Paragraph by initialing here: \_\_\_\_\_.

(e) The undersigned understands and agrees that credit reports concerning the undersigned may be requested by and furnished to Lessor in connection with processing this application.

By execution hereof, the signor hereby certifies that this Lease has been read carefully, and that the signor is duly authorized to execute this Lease on behalf of Lessee.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

LESSEE: \_\_\_\_\_

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

Its: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

ACCEPTED BY LESSOR IN \_\_\_\_\_, MISSISSIPPI:

LESSOR: The First, A National Banking Association

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

Its: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date