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**DEVELOPMENT AGREEMENT**

**Dated as of \_\_\_\_\_ 1, 2023**

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**by and among**

**CITY OF MOBERLY MISSOURI,**

**MOBERLY AREA ECONOMIC DEVELOPMENT CORPORATION,**

**and**

**EQUIPMENTSHARE.COM INC.**

**Relating to:**

**Not to Exceed \$55,000,000**  
**(Aggregate Maximum Principal Amount)**  
**City of Moberly, Missouri**  
**Taxable Industrial Revenue Bonds**  
**(EquipmentShare.com Inc. Manufacturing, Refurbishment and**  
**Distribution Facility Project)**  
**Series 2023**

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## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (this “**Agreement**”) is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2023 (the “**Effective Date**”) by and among the CITY OF MOBERLY, MISSOURI, a city of the third classification and Missouri municipal corporation having a principal office at 101 West Reed Street, Moberly, Missouri 65270 (the “**City**”); MOBERLY AREA ECONOMIC DEVELOPMENT CORPORATION, a Missouri nonprofit corporation having a principal office at 115 North Williams Street, Moberly, Missouri 65270 (the “**EDC**”); and EQUIPMENTSHARE.COM INC., a Delaware corporation duly authorized to do business in Missouri and having a principal office at 5710 Bull Run Drive, Columbia, Missouri 65201 (together with its Affiliates, successors and assigns, the “**Company**”). *Capitalized terms used in this Agreement shall have the meanings ascribed to them in Article I of this Agreement.*

### **RECITALS**

**A.** Section 100.020 of the Revised Statutes of Missouri, as amended, authorizes the City’s governing body to carry out projects for industrial development pursuant to the terms of sections 100.010 to 100.200, inclusive, of the Revised Statutes of Missouri, as amended, and sections 70.210 through 70.220, inclusive, of the Revised Statutes of Missouri, as amended, authorize the City to contract with any private person, firm, association, or corporation for certain purposes which are within the scope of the powers of the City.

**B.** Article VI, section 27(b) of the Missouri constitution and sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended, further authorize the City to issue and sell revenue bonds for the purpose of paying all or part of the cost of purchasing, constructing or improving any “project” to be leased to a private person or corporation for industrial development purposes.

**C.** The Company desires to develop the Project on the Property and in support thereof the Company further desires that the City cooperate to provide certain economic incentives for the Project involving the City’s acceptance of conveyance in fee of the Property and issuance of the Bonds to finance the Financed Equipment and the Financed Facilities and, while the Bonds remain outstanding, that the City continue to own the Property, the Project, the Financed Equipment and the Financed Facilities and lease the same to the Company, all as provided in this Agreement.

**D.** The Project will provide significant private investment and newly created jobs in the City and, accordingly, City is willing to accept conveyance of the Property and to issue the Bonds in support of the Project and seeks the cooperation and assistance of the EDC in the verification of provision by the Company of the Target Jobs, all as contemplated in this Agreement, and the EDC willing to cooperate with the City and to provide the aforesaid assistance to the City and the Project, all subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the above premises, the mutual covenants and agreements contained herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I**  
**MEANINGS OF TERMS**

**Section 1.1. Definitions.** As used in this Agreement, capitalized words and terms used in this Agreement shall have the following meanings unless the context clearly requires otherwise:

“**Acquisition Fund**” shall mean the “City of Moberly, Missouri, Acquisition Fund - EquipmentShare Manufacturing, Refurbishment and Distribution Facility Project,” together with any accounts and subaccounts therein created in Section 501 of the Indenture.

“**Acts**” shall mean, collectively, article VI, section 27(b) of the Missouri constitution and sections 100.010 through 100.200, inclusive, and 70.210 through 70.220, inclusive, of the Revised Statutes of Missouri, all as from time to time amended.

“**Additional Payment**” shall mean an additional payment made (or deemed made) by the Company to the Trustee with respect to the Bonds from time to time after the initial issuance of the Bonds in accordance with Section 208 of the Indenture, the Bond Purchase Agreement, and the Lease.

“**Affiliate**” shall mean an individual, corporation, association, partnership, limited liability company, joint venture, trust, estate, or other entity or organization, or any other such person or entity which, (i) directly or indirectly, Controls, is in common Control of, or is Controlled by the Company or a parent of the Company or (ii) a majority of the members of the Directing Body of which are members of the Directing Body of the Company.

“**Agreement**” shall mean this Development Agreement dated as of the Effective Date by and among the City, the EDC, and the Company including all duly authorized amendments thereto.

“**Applicable Regulations**” shall mean all federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes including, without limitation, those of the State of Missouri, the City, and the County pertaining to or affecting the Property or any portion thereof or the Project.

“**Bonds**” shall mean, collectively, the City’s Taxable Industrial Revenue Bonds (EquipmentShare.com Inc. Manufacturing, Refurbishment and Distribution Facility Project) Series 2023 of any series issued from time to time pursuant to the Indenture, and subject to the terms of this Agreement, in a maximum total aggregate principal amount of not to exceed \$55,000,000.

“**Bond Counsel**” shall have the meaning and use attributed to that term in the Indenture.

“**Bond Counsel Services**” shall mean professional legal services specifically related to the issuance of the Bonds including, without limitation, coordination, drafting and review of Bond Documents; preparation of a transcript of the proceedings; preparation of notices and, as requested, attendance at meetings at which Bond Documents are approved and adopted; and if warranted and justified under application of customary practices and relevant ethical and legal standards,

rendering of an approving opinion of Bond Counsel for the Bonds regarding the validity and binding effect of the Bonds and the source of payment and security for the Bonds.

“**Bond Documents**” shall mean, collectively, the forms of the Bonds, the Indenture, the Lease, the Bond Purchase Agreement and such other transactional documents as are necessary or convenient to allow the City to issue and secure the Bonds and thereby to obtain the financing of the Project and the Financed Equipment and the Financed Facilities, all as contemplated in this Agreement.

“**Bond Purchase Agreement**” shall mean the agreement dated as of the date of closing on the Bonds, by and through which the City agrees to issue and the Company agrees to purchase the Bonds.

“**Business Day**” shall mean a day that is not a Saturday, Sunday or legal holiday in the State of Missouri. All other references to “days” shall mean calendar days. If the date for performance of any covenant or obligation under this Agreement shall fall on a Saturday, Sunday or legal holiday in the State of Missouri, then the date for performance thereof shall be extended to the next Business Day.

“**City**” shall mean the City of Moberly, Missouri, a city of the third classification and municipal corporation organized and existing under the laws of the State of Missouri and having a principal office at 101 West Reed Street, Moberly, Missouri 65270, its successors and assigns.

“**City Council**” shall mean the duly elected and serving governing body of the City.

“**Closing**” shall mean the closing on the conveyance by the Company to the City of the Property and the contemporaneous issuance by the City of the Bonds.

“**Closing Date**” shall have the meaning and use attributed to this term in the Bond Purchase Agreement.

“**Collector**” means the City Treasurer of the City or his designee or, at the direction of the City, the Collector of Revenue of Randolph County, Missouri.

“**Company**” shall mean EquipmentShare.com Inc., a Delaware corporation duly authorized to do business in Missouri and having a principal office at 5710 Bull Run Drive, Columbia, Missouri 65201, together with its Affiliates, successors and assigns.

“**Control**” shall mean, with respect to any Affiliate, with respect to: (a) a corporation having stock, the ownership, directly or indirectly, of more than 50% of the securities (as defined in Section 2(1) of the Securities Act of 1933, as amended) of any class or classes, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the Directing Body of such corporation; (b) a not for profit corporation not having stock, having the power to elect or appoint, directly or indirectly, at least a majority of the members of the Directing Body of such corporation; or (c) any other entity, the power to direct the management of such entity through

the ownership of at least a majority of its voting securities or the right to designate or elect at least a majority of the members of its Directing Body, by contract or otherwise.

“**County**” shall mean the County of Randolph, Missouri.

“**Directing Body**” shall mean with respect to: (a) a corporation having stock, such corporation’s board of directors and the owners, directly or indirectly, of more than 50% of the securities (as defined in Section 2(1) of the Securities Act of 1933, as amended) of any class or classes, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporation’s directors (both of which groups shall be considered a Directing Body); (b) a not for profit corporation not having stock, such corporation’s members if the members have complete discretion to elect the corporation’s directors, or the corporation’s directors if the corporation’s members do not have such discretion or if such corporation has no members; and (c) any other entity, its governing board or body.

“**EDC**” shall mean the Moberly Area Economic Development Corporation, a Missouri nonprofit corporation having a principal office at 115 North Williams Street, Moberly, Missouri 65270.

“**Effective Date**” shall mean \_\_\_\_\_, 2023, the date first set forth in this Agreement.

“**Environmental Laws**” shall mean and include the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), as amended by the Hazardous and Solid Waste Amendments of 1984; the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986; the Hazardous Materials Transportation Act (49 U.S.C. §5101 et seq.); the Toxic Substances Control Act (15 U.S.C. §2601 et seq.); the Clean Air Act (42 U.S.C. §7401 et seq.); the Clean Water Act (33 U.S.C. §1251 et seq.); the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §136 et seq.); the Occupational Safety and Health Act (29 U.S.C. §651 et seq.); any state super-lien and environmental clean-up statutes; and all other applicable federal, state and local environmental laws, including, without limitation, obligations under the common law, ordinances, rules, regulations and publications, and any other legal requirements, now or hereafter existing relating to the pollution and protection of the environment, the preservation or reclamation of natural resources, the management or release of Hazardous Substances, or to human health or safety.

“**Financed Equipment**” shall mean collectively, the machinery, equipment, furnishings, information systems hardware, special tools and other personal property acquired or installed or acquired for installation in the Project pursuant to the Lease and paid for in whole or in part from the Acquisition Fund, all as listed from time to time on Exhibit B to the Indenture which exhibit is hereby incorporated by reference in this Agreement as amended and supplemented from time to time as provided in the Indenture, together with all replacements thereof and substitutions therefor.

“**Financed Facilities**” shall mean collectively, the real property improvements at the Property in connection with the Project made or to be made subsequent to the Effective Date pursuant to this Agreement and the Lease and paid for in whole or in part from the Acquisition

Fund, all as further identified and described from time to time on Exhibit A to the Indenture, which exhibit is hereby incorporated by reference in this Agreement.

**“Full Time Equivalent (FTE) Job”** shall mean either: (i) a regular “full-time employee” performing duties at the Financed Facilities or (ii) in the case of part-time employment, two (2) or more persons performing duties at the Financed Facilities whose aggregate regular weekly hours total at least 35 hours and receiving healthcare and other customary Company benefits; *provided that* neither independent contractors, contract personnel utilized by the Company, nor any employee or agent not permanently based and occupied full time at the Financed Facilities shall constitute a Full Time Equivalent Job for purposes of this Agreement. For purposes of this definition, a “full-time employee” is a regular employee that is paid by salary or that is paid, on the average, for over 35 hours per week at the Financed Facilities and receives healthcare and other customary Company benefits.

**“Hazardous Substances”** shall mean: (i) those substances (whether solid, liquid or gas), included within the definitions of or identified as “hazardous substances,” “hazardous materials,” or “toxic substances,” in or pursuant to, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499, 100 Stat. 1613); the Resource Conservation and Recovery Act of 1976 (42 U.S.C., §6901 et seq.); the Clean Water Act (33 U.S.C. §1251 et seq.); the Occupational Safety and Health Act of 1970 (29 U.S.C. §651 et seq.); and the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; or in the regulations promulgated pursuant to the aforesaid laws, all as amended; (ii) those substances listed in the United States Department of Transportation Table (40 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto); (iii) any material, waste, substance, pollutant or contamination which is or contains (A) petroleum, its derivatives, by-products and other hydrocarbons, including crude oil or any fraction thereof, natural gas, or synthetic gas usable for fuel or any mixture thereof; (B) asbestos and/or asbestos-containing materials in any form that is or could become friable; (C) polychlorinated biphenyls; (D) flammable explosives; (E) infectious or medical waste; or (F) radioactive materials; and (iv) such other substances, materials, wastes, pollutants and contaminants which are or become regulated as hazardous, toxic or “special wastes” under applicable local, state or federal law, or the United States government, or which are classified as hazardous, toxic or as “special wastes” under any Environmental Laws.

**“Indenture”** shall mean the Trust Indenture for the Bonds, together with such amendments and supplements permitted thereto.

**“Initial Funding Agreement”** shall mean that certain Initial Funding Agreement dated as of February 1, 2022 by and between EDC and the Company.

**“Industrial Development Plan”** shall mean an Industrial Development Plan and Costs-Benefits Analysis for the Project meeting the requirements of the Acts and specifically of section 100.050 of the Revised Statutes of Missouri, as amended.



“**Jobs**” shall mean the average number of Full Time Equivalent (FTE) Jobs at the Financed Facilities during the applicable Testing Period, as certified annually to the City by the Company subject to verification by the EDC on behalf of the City, all in accordance with Article IV of this Agreement; *provided that*, for purposes of compliance with Section 4.5 of this Agreement, Jobs shall be deemed to be the average, rounded to the nearest whole number, of monthly actual averages of Full Time Equivalent (FTE) Jobs at the Financed Facilities during such Testing Period such that, by way of illustration, if in a particular Testing Period Three (3) months thereof each average 100 Full Time Equivalent (FTE) Jobs, Four (4) months thereof each average 125 Full Time Equivalent (FTE) Jobs, and Five (5) months thereof each average 130 Full Time Equivalent (FTE) Jobs, the number of Jobs for such testing Period shall be 121 as illustrated by the following formula:

$$(100+100+100+125+125+125+125+130+130+130+130+130)/12=120.8 \text{ say } 121$$

“**Land Use Approvals**” shall mean all applicable subdivision, plat, improvement plan, building permit, re-zoning, and other zoning change request approvals, site plan approvals, conditional use permit approvals, design approvals and similar required approvals of the City relating to the use of land and improvements.

“**Lease**” shall mean the lease purchase agreement between the City, as lessor, and the Company, as lessee related to the acquisition and financing of the Project, the Property, the Financed Facilities and the Financed Equipment, as amended and supplemented from time to time in accordance with the Lease, the Indenture, and this Agreement.

“**Notice of Acceptance**” shall mean a written notice from the City to the Company indicating the City’s satisfaction with the due diligence activities conducted pursuant to Section 2.2 of this Agreement and the City’s readiness to accept conveyance of the Property from the Company.

“**Outstanding**” with reference to the Bonds, shall have the meaning and use attributed to that term in the Indenture.

“**Permitted Encumbrances**” shall mean those encumbrances of record on the Project as shown on Schedule B to an Owner’s Policy of Title Insurance issued by the Title Company or other encumbrances accepted by the City in writing.

“**Project**” shall mean, collectively, the renovation and refurbishing of the Property as a construction equipment refurbishment, rental, sales, service and tracking facility including, without limitation, the construction and equipping of the Financed Facilities and the installation of the Financed Equipment all as and when annually accepted by the City in accordance with the Lease and the Indenture, and necessary to facilitate the implementation of the Project which is anticipated to result in significant job creation and capital investment within the City and the region *provided that* during the term of the Bonds, the Project shall be deemed at any time and from time to time to include only those portions of the Property, the Financed Facilities and the Financed Equipment actually conveyed to, accepted by, and then currently held by the City for a maximum period in each case of Twelve (12) years.

“**Property**” shall mean the real property and improvements existing as of the Effective Date comprising a total of approximately Sixteen (16) acres within the corporate limits of the City and known and numbered as 1855 Robertson Road, all as more particularly described in Exhibit C to the Indenture, which exhibit is hereby incorporated by reference in this Agreement.

“**Table**” shall mean the Table of Cumulative Outstanding Principal Amount on the Bonds, as reflected in the records maintained by the Trustee as provided in the Bonds and the Indenture.

“**Target Jobs**” shall mean, in the calendar year following the commencement of operations at the Project, One Hundred Fifty (150), representing the total number of Full Time Equivalent (FTE) Jobs to be provided by the Company at the Financed Facilities in any Testing Period while any Bonds are Outstanding, all as provided in this Agreement.

“**Testing Period**” shall mean (a) the first full calendar year beginning on January 1 and ending on December 31 immediately following the calendar year in which operations are commenced at the Project or January 1, 2024, whichever is earlier; and (b) each full calendar year thereafter during which any Bonds are Outstanding, all as provided in this Agreement.

“**Third Party Action**” shall mean any action, proceeding or demand initiated at any time by a party other than a named party to this Agreement and directed to the City, the EDC, or the Trustee or naming the City, the EDC, or the Trustee or any of their respective officials, officers, agents, attorneys, employees or representatives as a party and arising out of the issuance of the Bonds, the Bond Documents, the Property (but only during the period held in fee by the City), the Project or any portion thereof (but only during the period held in fee by the City), the tax exemptions contemplated by this Agreement, the Lease, or this Agreement, or any portion thereof or any actions taken pursuant to any of the foregoing.

“**Title Company**” shall mean a title insurance company providing services in the County selected by the City with the consent of the Company, which consent shall not be unreasonably withheld or delayed.

“**Title Policy**” shall mean an owner’s policy of title insurance for the Property issued in favor of the City in the amount of the initial issuance of the Bonds issued by the Title Company and containing terms reasonably acceptable to the City and subject to Permitted Encumbrances and such other exceptions as allowed by the City, in the City’s sole discretion.

“**Trustee**” shall mean any trustee or successor under the Indenture.

**Section 1.2. Rules of Construction.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words importing the singular number shall include the plural and vice versa, and words importing person shall include firms, associations and corporations, including public bodies, as well as natural persons.

**Section 1.3. Computation of Time.** Wherever this Agreement calls for the performance of any act by reference to a day or number of days, to a month or number of months or to a year or number of years, each such computation shall be made based upon calendar days, calendar months, and calendar years, as applicable unless otherwise expressly provided.

## **ARTICLE II CONVEYANCE AND ACCEPTANCE OF THE PROPERTY**

**Section 2.1 Conveyances Required; Lease; Company Payments.** Contemporaneous with the issuance of the Bonds: (i) the Company shall convey to the City marketable fee simple title to the Property, subject only to Permitted Encumbrances; and (ii) the City shall lease to the Company via the Lease the Property for a term co-terminus with the term of the Bonds, all in accordance with terms and conditions set forth in the Bond Documents. At Closing, the Company shall (i) pay (or receive credit for if pre-paid) as purchase price for the Bonds: (a) all closing costs incurred in connection with the conveyance of the Property contemplated by this Agreement, including charges related to the issuance of the Title Policy; (b) all costs and expenses associated with the preparation and review of this Agreement in accordance with the Initial Funding Agreement; (c) all closing costs, fees and charges associated with issuance of the Bonds; (ii) deliver to the City a special warranty deed and any other necessary instruments of transfer for the Property; and (iii) deliver to the City the Title Policy or a written binding commitment to issue the Title Policy. From time to time, as the Company constructs the Project: (i) the City shall issue in multiple annual series Bonds in aggregate principal amounts in each such series corresponding to the costs of the portions of the Project then completed or installed, but not previously financed or conveyed to the City under this Agreement and the Bond Documents; (ii) using amounts then provided in the applicable accounts within the Acquisition Fund and from no other source whatsoever, the City shall acquire the applicable portions of the Project for the acquisition prices set forth in the Indenture or any applicable supplement thereto; and (iii) the City shall lease to the Company via the Lease or applicable amendments thereto the portions of the Project so acquired for a term co-terminus with the term of the Bonds. The Company and the City each intend that payments made from time to time under the Lease shall at all times be equal to and timed to coincide with the due dates of, and pledged to pay, all applicable principal and interest as the same shall become due and payable with respect to the applicable series of Bonds.

**Section 2.2. City's Due Diligence.** Prior to Closing, the City may take the following actions with respect to the Property, which, other than the costs of the Title Policy, shall be at the sole cost and expense of the City:

- (i) Obtain and review a commitment for the Title Policy;
- (ii) Obtain and review a survey of the Property prepared by a licensed Missouri land surveyor; and
- (iii) Perform or obtain such satisfactory inspections as the City deems necessary or appropriate, specifically including, without limitation, an environmental hazard assessment.

The delivery of the Notice of Acceptance shall be deemed to be an acceptance of the results of such inspections and matters and a waiver of any objection by the City as to all such matters.

The Company hereby grants permission to the City and its agents before delivery of the Notice of Acceptance to come upon the Property for the purpose of conducting the activities described in this Section 2.2 at the sole cost, expense, and risk of the City.

**Section 2.3. Closing; Company's Representations.** Closing on the conveyance of the Property shall be through an escrow with the Title Company acting as escrowee. Conveyance shall be by special warranty deed in a form reasonably acceptable to the City and the Company subject to any lien for real property taxes and assessments for the year in which the Closing occurs, building and zoning laws, ordinances and restrictions, utility easements, recorded easements, rights of way of record, deed restrictions and all other matters of record, use and occupancy restrictions, and rights to coal and other minerals with the right to mine and remove the same. At Closing, the City and the Company shall execute and deliver customary affidavits and such other reasonable documents as may be required by the Title Company and the City and the Company shall each deliver to the other such other documentation as is reasonably requested by such party. The Company hereby represents and warrants to the City and to the EDC, jointly and severally, as of the date of this Agreement and as of the date of Closing as follows:

(i) The Company possesses the full right to convey fee title to the Property without the necessity of obtaining the consent of any person not a signatory to this Agreement and this Agreement constitutes the legal, valid and binding obligation of the Company enforceable against the Company in accordance with the terms hereof;

(ii) The Company possesses good and marketable title to the Property, subject to those exceptions that may be disclosed in any commitment for title insurance obtained by the City and issued by the Title Company for the Property, and free and clear of liens, security interests, encumbrances, leases, options, rights of first refusal and restrictions of every kind and description and any liens pursuant to indebtedness for borrowed money which will be discharged at Closing and there are no leases, options, contracts, maintenance, management, repair or other contracts, equipment leases or other similar agreements of any kind relating to or affecting the Property or any part thereof which will survive the Closing or be binding upon the City. The parties hereby agree that the Company's representations in this Section 2.3(ii) shall be deemed merged into the special warranty deed for the Property to be executed and delivered by the Company at Closing;

(iii) There are no claims, causes of action or litigation or administrative proceedings pending, or to the Company's actual knowledge threatened, in respect to the ownership, operation or condition of the Property or the surface water on the Property or groundwater beneath the Property, including, without limitation, disputes of tenants, employees, government authorities, environmental groups, prior owners, utilities, contractors, adjoining landowners or suppliers of goods and services;

(iv) The Company has not received any notice: (A) from any federal, state, county or municipal governmental authority alleging any fire, health, safety, building,

pollution, environmental, zoning or other violation of law, including, without limitation, any Environmental Law, in respect to the Property or any part thereof which has not been entirely corrected; or (B) from any insurance company of any defects or inadequacies in the portions of the Property or any part thereof which would adversely affect the insurability of the Property or cause the imposition of extraordinary premiums therefor; and

(v) The condition of the portion of the Property do not violate any applicable governmental laws, rules, regulations, ordinances or codes, including, without limitation, any Environmental Law.

The Company shall promptly notify the City if any of the Company's representations under this Section 2.3 are or become untrue immediately upon the Company's discovery thereof.

**THE CITY ACKNOWLEDGES AND AGREES THAT THE CITY IS ACQUIRING THE PROPERTY IN "AS IS/WHERE IS" CONDITION WITH ALL FAULTS. OTHER THAN AS EXPRESSLY SET FORTH IN THIS SECTION 2.3, AND ENVIRONMENTAL WARRANTIES SET FORTH OR REFERENCED IN THIS AGREEMENT, THE COMPANY MAKES NO WARRANTY OR REPRESENTATION WHATSOEVER REGARDING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE RELATIVE TO THE PROPERTY.**

**ARTICLE III  
CHAPTER 100 BONDS; LEASE; TARGET JOBS**

**Section 3.1. Terms of Bonds.** Subject to the terms of this Agreement and the Bond Purchase Agreement, the City shall issue the Bonds in multiple annual series as evidenced by endorsements (each such endorsement after the initial issuance of the Bonds to be accompanied by an Additional Payment) in principal amounts as set forth from time to time on the Table, all in accordance with Section 208 of the Indenture, in the maximum total aggregate principal amount of not to exceed \$55,000,000; *provided that* (i) the terms of each series of or endorsements to the Bonds issued pursuant to this Section 3.1 (and the accompanying period of ownership by the City of the Property or portion of the Financed Facilities or Financed Equipment to which such issuance of Bonds or Additional Payment pertains) shall be for a maximum period of Twelve (12) years after the date of such endorsement set forth on the Table, it being the intent of the City and the Company that the full value of the Property and all materials, construction, and equipment purchased by the Company for the Financed Facilities and Financed Equipment shall be exempt from all State of Missouri, City and County property taxes from the time ownership of such Property, Financed Facilities, and Financed Equipment or portion thereof is transferred to the City and continuing for a Twelve (12) year period beginning in the calendar year following the date of such transfer; and (ii) the initial issuance of the Bonds shall occur contemporaneous with the conveyance by the Company to the City of the Property. Pursuant to the Initial Funding Agreement, the City has selected Bond Counsel, and, if the City desires to do so, the City may select such financial advisors and consultants as the City deems necessary from time to time for the issuance of the Bonds, the fees of Bond Counsel and such additional professional consultants

hired by the City to be paid pursuant to the terms of the Initial Funding Agreement and this Section 3.1. The City through Bond Counsel shall prepare all documents, including the Industrial Development Plan, required by the Acts, applicable Missouri law or otherwise necessary or desirable for issuance of the Bonds. At Closing, the Company shall pay to the Trustee for the account of the City or EDC, as directed, (A) all closing, recording and titling costs incurred in connection with the conveyance of the Property to the City and the leasing of the Property from the City as contemplated by this Agreement, including charges related to the issuance of any title policy issued with respect to the Property, (B) all costs and expenses of EDC set forth in the Initial Funding Agreement and remaining unpaid; and (C) all Costs of Issuance (as that term is used and defined in the Indenture) of the initial issuance of Bonds; and, in consideration of the foregoing, the City shall issue the initial series of the Bonds; *provided that* in the event for any reason this Agreement or the Project is terminated by the Company prior to Closing and payment of all amounts due under the Initial Funding Agreement, the Company agrees to pay in addition to amounts indicated in the Initial Funding Agreement fees and expenses for Bond Counsel Services actually provided based upon time and expenses actually incurred through the date of termination at the firm's then current standard hourly rates. The Bonds shall bear interest at such rates, shall be subject to redemption and shall have such terms as the City shall reasonably determine. The Bonds shall be secured solely by the payments under the Lease, and in no way shall the City have liability to make any payment with respect to the Bonds except from amounts credited to or received by the City under the Lease and other Bond Documents. Other than the security interests in the Lease granted to the Trustee pursuant to the Indenture in connection with the issuance of the Bonds, the City may not and will not otherwise encumber, pledge or grant any other security interest in or with respect to the Financed Equipment, the Financed Facilities, the Property or any portion thereof, or the Project.

**Section 3.2. Lease of the Property, Project; Periodic Company Conveyances.** On the Closing Date the City shall lease the Property to the Company as provided in and subject to the terms of the Lease. From time to time, as the Company constructs the Project or upon substantial completion thereof, all at the option and reasonable discretion of the Company (i) the Company shall convey to the City by special warranty deed or applicable amendment thereto, or by bill of sale, as applicable, the portions of the Project then completed or installed, but not previously financed or as substantially completed, as the Company elects; *provided that* any such election shall be made not more frequently than annually on or about but not later than December 1 in any year, and (ii) the City shall lease to the Company via supplements to the Lease the portions of the Project so conveyed for the term set forth in the Lease and co-terminus with the term of the applicable series of Bonds. The Company and the City each intend that payments made from time to time under the Lease as supplemented from time to time shall at all times be equal to and timed to coincide with the due dates of, and pledged to pay, all applicable principal and interest as the same shall become due and payable with respect to the Bonds. Upon the maturity of the Bonds as provided in Section 3.1 of this Agreement, the City shall promptly convey to the Company by special warranty deed or by bill of sale, as applicable, and at no cost to the Company other than the costs provided in the Indenture and the Lease, together with the costs of recording any such deed or bill of sale, the Property and the Project and shall notify the County's assessor of such conveyance. The City hereby represents and warrants that during the term of the Lease the City shall not take any action inconsistent with the Company's rights under the Lease nor cause by City action an encumbrance on the Property other than that which may have existed as of the Closing

Date. At the time of the termination of the Lease and conveyance of the Property the Company shall have the right, but not the obligation to purchase title insurance at the Company's sole cost and expense.

**Section 3.3. Obligations with Respect to Tax Forbearance.** The Company anticipates that upon conveyance to and titling in the name of the City of the Property and, from time to time, the Financed Facilities and the Financed Equipment in accordance with Section 3.2 of this Agreement, the Property, the Financed Facilities and the Financed Equipment will be exempt from property taxes (whether real, personal or otherwise) levied by any applicable taxing jurisdiction for so long as the City continues to own the Property, the Financed Facilities, or the Financed Equipment. During the period the City owns the Property, the Financed Facilities or the Financed Equipment, the City agrees to take all actions within the City's control to obtain and maintain in effect such exemption from property taxes related to the Property, the Financed Facilities and the Financed Equipment or portions thereof then owned by the City, including any filings required with any governmental authorities; *provided, however, that* neither the City nor the EDC is guaranteeing the exemption from taxation of the City's fee interest in the Property, the Financed Facilities or the Financed Equipment or any portion thereof or of the leasehold interest of the Company therein as contemplated by the issuing of the Bonds, and the parties hereto acknowledge and agree that neither the City nor EDC nor their respective officials, officers, directors, agents, attorneys or employees, shall be liable for any failure of the State of Missouri, any agency thereof or any other taxing authority, or of any court of competent jurisdiction to recognize any exemption contemplated in this Section 3.3 or by this Agreement. In the event a levy or assessment of property taxes is imposed on the Property, the Financed Facilities or the Financed Equipment, the City, at the Company's written request and expense, shall fully cooperate with the Company in all commercially reasonable ways to prevent or remove any such levy or assessment; *provided, however, that* the City shall not be liable for any costs or expenses resulting from such cooperation and may withhold cooperation with the Company until evidence is provided, to the City's reasonable satisfaction, that demonstrates that the City shall not incur such costs. The City and the Company each covenant and agree that the property tax exemption contemplated in this Agreement by the issuance of the Bonds shall only apply to the City's fee interest in the Property, the Financed Equipment and the Financed Facilities. Any property taxes levied against the interest of the Company in the Property or the Project by any taxing jurisdiction shall be and remain solely the responsibility of the Company. In the event such a levy or assessment should occur, the City shall, at the request and expense of the Company, fully cooperate with the Company in all commercially reasonable ways to prevent and/or challenge such levy or assessment. In the event that it is finally determined by a court of competent jurisdiction that all or any part the Project, the Lease, the Bond Documents or any portion thereof, the Bonds or any endorsement thereto, or this Agreement, shall be declared invalid or unconstitutional in whole or in part such that the Company is prevented from enjoying the rights and privileges of the Company hereunder, the City, upon written request and at the expense of the Company, shall take such lawful steps to make available to the Company and the Property such alternative property tax relief available pursuant to then-current Missouri law for a duration and in an amount to provide and restore to the Company to the extent lawfully available, the economic benefit to the Company of this Article III.

**Section 3.4. Payments in Lieu of Taxes; Company's Obligations; City Remedies for Non-Payment.** During the term of the Lease, the Company shall make with respect to the Property

payments in lieu of taxes (each a “PILOT”) indicated on the schedule below, as applicable, of that amount specified or that percentage which would have been levied and collected on the land and improvements to such Property and on the personalty located or installed therein or thereon in such year as determined from time to time by the Randolph County Assessor. At any time during the term of the Lease reimbursements pursuant to section 100.050.4 of the Revised Statutes of Missouri, as amended, or successor enactments are required to be made, the Company shall be and shall remain solely responsible for making such reimbursements as and when due and the Company shall indemnify, defend and hold City, the EDC and their respective officials, agents, attorneys, employees and representatives acting in any capacity harmless from and against any action, proceeding, claim or demand initiated at any time by any party arising out of any reimbursement claimed, demanded or paid pursuant to section 100.050.4 of the Revised Statutes of Missouri, as amended, or successor enactments.

**Schedule of Required Payments in Lieu of Taxes**

Lease Year	Lease Term Start Date	Abatement Year	% Exemption	% PILOT Required <sup>1</sup>
1	____/____/2023	1	N/A	-0-
2	1/1/2024	2	100%	-0-
3	1/1/2025	3	100%	-0-
4	1/1/2026	4	100%	-0-
5	1/1/2027	5	100%	-0-
6	1/1/2028	6	100%	-0-
7	1/1/2029	7	100%	-0-
8	1/1/2030	8	100%	-0-
9	1/1/2031	9	50%	50% <sup>2</sup>
10	1/1/2032	10	50%	50%
11	1/1/2033	11	50%	50%
12	1/1/2034	12	50%	50%

<sup>1</sup> Lease Term ends on the earlier of (i) December 31, 2034 or (ii) with respect to each portion of the Bonds represented by an annual endorsement of principal, December 1 of that year which is twelve (12) years from the year of such annual endorsement as set forth on the Table to which an Additional Payment/Principal Amount Advanced (all as provided in Section 208(e) of the Indenture) pertains, unless earlier terminated in accordance with its terms.

<sup>2</sup> Whether or not the Project is completed and conveyed in sequential phases, the percentage of PILOTs due in any year shall apply to all portions of the Property, the Financed Facilities, and the Financed Equipment then accepted and held in fee by the City. Thus, each portion of the Project will obtain a maximum 12 year abatement.



Payments in lieu of taxes required under this Section 3.4 shall be made as provided in section 100.050.3 of the Revised Statutes of Missouri, amended, and shall be due and payable to the Collector not later than November 30 in the calendar year due. The Company, for itself and its successors and assigns, hereby covenants and warrants to the City that the Company shall make payment promptly to the Collector upon notice of all payments in lieu of taxes as and when due from time to time under this Agreement. The obligation to make payments in lieu of taxes including, without limitation, any and all additional payments in lieu of taxes required pursuant to Article III of this Agreement, shall constitute a personal obligation of the Company and a lien against the Property and the Project, enforceable by the City in the City's sole discretion: (a) in the same manner as is provided for general real property taxes, (b) in the same manner as provided in section 67.469 of the Revised Statutes of Missouri, as amended, or (c) any other means provided by law for the enforcement of liens, as the City may elect and the City and the Company each further agree that any unsatisfied obligation to make payments in lieu of taxes under this Agreement shall remain a lien on the Property and the Project until paid in full through voluntary payment by the Company or through collection by the City as provided in this Section 3.4. The City shall be entitled to record a notice of lien in the records of the Randolph County Recorder of Deeds against the Property and the Project if any payment in lieu of taxes is not paid within thirty (30) days of notice by the City to the Company. In the event the Company fails to pay any such payment in lieu of taxes within one hundred eighty (180) days of notice by the City to the Company, the City, in the City's sole and absolute discretion and in addition to any other remedies that may be available to the City at law or in equity, may declare the Lease in default, immediately invoke the Company's obligation under Section 3.7 of this Agreement to purchase the Property, the Project, the Financed Facilities and the Financed Equipment and, upon conveyance of the Property, the Project, the Financed Facilities and the Financed Equipment to the Company (which the Company hereby agrees to accept) and defeasance and cancellation of the Bonds, terminate this Agreement and any further rights of the Company to further property tax relief.

**Section 3.5. Maintenance of Target Jobs Required; Payments in Lieu of Taxes as Additional Rent.** The parties hereto contemplate and intend that, notwithstanding the term of the Bonds and the duration of the City's fee interests in the Property, or any portions of the Financed Facilities or the Financed Equipment or anything else in this Agreement to the contrary, that the Company shall enjoy property tax relief with respect to the Property, the Financed Equipment, and the Financed Facilities beginning at the time any portion of the Property, such Financed Equipment, or such Financed Facilities is conveyed to the City (it being understood that the intent of this Agreement is that the entire Project shall be so acquired by the City and held by the City) and continuing thereafter through the end of a period of Twelve (12) years from the date such portion of the Property, the Financed Facilities or the Financed Equipment is conveyed to and accepted by the City, all as further provided in the Indenture. The parties hereto further acknowledge and agree that the Company anticipates the creation of at least one hundred fifty (150) new Full Time Equivalent (FTE) Jobs at the Property and the Financed Facilities resulting from the Project and that the creation of such new Full Time Equivalent (FTE) Jobs constitutes a material inducement to the City and the EDC to enter into this Agreement and to the City to issue the Bonds in accordance with this Agreement. Accordingly, and to assure the foregoing, the Company hereby agrees that, with respect to each Testing Period, the Company shall, notwithstanding any tax exemption or abatement contemplated by this Agreement, make with respect to the Financed Facilities and Financed Equipment which are titled in the name of the City

on January 1 of such calendar year, such payments in lieu of taxes as are required by this Section 3.5, if any, as Additional Rent under the Lease no later than April 15 of the year following each Testing Period. Such Additional Rent, if any, shall be based upon the number of Full Time Equivalent (FTE) Jobs at the Financed Facilities in the applicable Testing Period as certified by the Company to the City and the EDC in accordance with the following procedure and schedule:

(i) On or before each January 31<sup>st</sup> following the end of each Testing Period, the Company shall determine and certify to the City and the EDC in an annual report the number of Jobs at the Facilities during the applicable Testing Period. If the EDC so desires, the EDC may verify the number of Jobs certified in such report, *provided that* in the case of any such verification activities EDC shall notify the Company and the City in writing of the results of such activities on or before the 60<sup>th</sup> day following the Company's submission of the applicable report. If the EDC provides no such notice on or before such 60<sup>th</sup> day, the Company's report shall be deemed verified and accurate as certified for purposes of this Section 3.4; and

(ii) In the event in any such Testing Period the number of Jobs is less than the Target Jobs, the Company shall make with respect to such Testing Period not later than April 15 of the calendar year following such Testing Period as Additional Rent under the Lease a payment in lieu of taxes which shall be equal to the amount which would have been levied and collected upon the basis of the "true value in money" of such Property, Financed Facilities and Financed Equipment then titled in the name of the City during such Testing Period, as determined from time to time in accordance with applicable law including laws pertaining to re-assessment and rights of appeal applicable to real and personal property assessments. Such Additional Rent shall be calculated as follows: the "true value in money" of the land, improvements, and personalty constituting the Project and titled in the name of the City determined as aforesaid (i) multiplied by 0.32 (in the case of the Property and the Financed Facilities) or 0.33 (in the case of the Financed Equipment); (ii) divided by \$100; (iii) multiplied by the combined ad valorem levies for all affected taxing jurisdictions; and (iv) multiplied by the fraction resulting from the number of Target Jobs minus the number of Jobs at the Financed Facilities as certified by the Company and verified by the EDC divided by the number of Target Jobs. By way of illustration, the applicable calculation formula is set forth below:

$$\begin{aligned} & \text{"true value in money"} \times 0.32/0.33 \div \$100 \times \text{combined ad valorem levy amount} \times \\ & \quad (\text{Target Jobs} - \text{Jobs, subject to verification}) \div \text{Target Jobs} \\ & \quad = \text{Additional Rent payment;} \end{aligned}$$

*provided that*, in the event that in any Testing Period the number of Jobs equals or exceeds the Target Jobs, no such calculation shall be performed for such year and no Additional Rent in the form of payment in lieu of taxes shall be required for such year; and *provided further that* in the event of a sustained period of significant decline in the level of aggregate economic activity within the United States or the State of Missouri (as distinguished from (a) business or other decisions within the discretion or control of the Company or of Affiliates, including, without limitation, parent, assignees, subsidiaries, or nominees or any of them; or (b) other external factors not related to decline in national or state-wide

economic activity) and only in such event, which results in a substantial reduction in the number of Jobs at the Financed Facilities during a Testing Period, the Company may request in a writing specifying and documenting the conditions which affect or result in the reduction of Jobs submitted to the City Council that, notwithstanding the Company's failure to meet Target Job requirements during such Testing Period, the City waive or reduce the amount of Additional Rent due during for Testing Period and the City Council, upon due consideration and a finding in its sole discretion that: (i) a sustained period of significant decline in the level of aggregate national or state-wide economic activity has occurred; (ii) that such decline has caused a substantial reduction in the number of Jobs at the Financed Facilities; and (iii) that such reduction is not due to business or other decisions within the discretion or control of the Company, or of its Affiliates, parent, assignees, subsidiaries, or nominees or other external factors not related to decline in national economic activity, may waive or reduce such amount of Additional Rent due during for such Testing Period.

Additional Rent payments required and made under this Section 3.5 shall be and shall be deemed to be payments in lieu of taxes and shall be made and distributed as provided in section 100.050.3 of the Revised Statutes of Missouri, as amended. The obligation to make the foregoing payments in lieu of taxes shall constitute a lien against the Property, the Financed Facilities and the Financed Equipment or portions thereof to which such obligation applies, enforceable by the City and subject to the same remedies for non-payment as provided in Section 3.4 of this Agreement; *provided, however, that* notwithstanding anything in this Agreement to the contrary, the Additional Rent payments constituting payments in lieu of taxes required by this Section 3.5 shall be the sole remedy available to the City in the event the Company fails to produce the Target Jobs or if the number of Jobs at the Project in any Testing Period is less than the Target Jobs; *provided further that* notwithstanding anything else in this Agreement to the contrary, in no event shall the combination of the payments in lieu of taxes required under this Section 3.5 exceed the ad valorem taxes on the Financed Facilities and the Financed Equipment that would have been due had this Agreement not been executed.

**Section 3.6. Treatment of Released Portions of Property, Project.** The Company acknowledges and agrees that in the event that the Company effectuates at any time a release of any portion of the Property, the Project, the Financed Facilities, or the Financed Equipment (but not the entirety of the aggregate Property, Project, Financed Facilities, or Financed Equipment) as provided in the Lease or otherwise (i) such portion shall no longer be entitled to any tax relief or tax forbearance under this Agreement or otherwise; and (ii) no such release by the Company of any portion of the Property, the Project, the Financed Facilities, or the Financed Equipment shall excuse or diminish in any way (a) the Company's obligations for payment, indemnification, provision of payment bonds as provided in Sections 4.3.4, 4.3.5 and 5.2 of this Agreement, or for the payment of payments in lieu of taxes as Additional Rent pursuant to Section 3.5 of this Agreement; or (b) the City's rights to indemnification and to be protected by insurance coverages required under this Agreement or the Lease, whether with respect to the portion of the Project and the Property so released, the remaining portions of the Project and the Property, or otherwise. Notwithstanding the preceding sentence, the Company may replace any equipment or portion of the Project deemed obsolete or unsuitable for the Project as determined in the reasonable discretion of the Company and constituting a portion of the Financed Facilities or Financed Equipment originally conveyed to and accepted by the City, and the City agrees to release the property being replaced and accept such

property's replacements as part of the Financed Facilities or Financed Equipment, as applicable, and provide the Company with the benefits of such City ownership as if the replacements were originally part of the Financed Facilities or Financed Equipment, as applicable.

**Section 3.7. Obligation to Purchase Project.** When all principal and interest due on the Bonds shall have been paid in full, the Company or its permitted successors and assigns shall have the absolute obligation to purchase the Property, the Project, the Financed Facilities and the Financed Equipment or portions thereof to which the Bonds paid in full relate for the purchase price(s) provided for in the Indenture and subject to the requirements of the Bond Documents.

#### **ARTICLE IV IMPLEMENTATION OF PROJECT**

**Section 4.1. Mutual Cooperation for Land Use Approvals.** The parties to this Agreement contemplate that at the time following Closing and of initial issuance of the Bonds, fee title to the entire Property will be held by the City to facilitate the financing from time to time of the Project, the Financed Facilities and the Financed Equipment. Accordingly, the Company and the City agree to mutually cooperate in the undertaking, at the sole cost and expense of the Company, of all applications and supporting materials required for any Land Use Approvals which may be required and the Company shall pursue to completion in a commercially reasonable manner such Land Use Approvals in accordance with the applicable customary procedures therefor. The City agrees to expeditiously process and timely review as received all applications for the Land Use Approvals and, in a commercially reasonable and timely manner, take all further actions as are consistent with this Agreement to obtain all such Land Use Approvals; *provided that*, the City shall not be obligated to grant any Land Use Approval other than in the lawful exercise of the City's police powers. The City further agrees that the City will not unreasonably withhold, condition, or delay any Land Use Approvals. Nothing in this Agreement shall prohibit the Company from seeking in connection with the Project other or further permits, approvals, reviews or other actions of regulators other than the City as may be deemed necessary or desirable by the Company in its sole discretion.

**Section 4.2. Other Approvals.** The City, at the Company's cost and expense, shall assist and cooperate in good faith with the Company in connection with obtaining any (i) approvals and permits from other governmental or quasi-governmental agencies having jurisdiction over the Property or the Project and (ii) similar documents and instruments from third parties, as may be necessary or desirable in connection with the development or operation of the Project. If City action is required in connection with obtaining any such approvals, permits, documents or instruments, the City shall promptly take action following receipt of a written request therefor; *provided that* such period shall be tolled for any period during which the City is awaiting revisions or additional information from the Company that are necessary to complete the requested City action.

**Section 4.3. Initiation of the Project; Insurance and Payment Bonds Required.** Subject to any applicable Land Use Approvals and the terms of the Lease, the Company shall implement, construct, and operate the Project as provided in this Section 4.3.

**Section 4.3.1. Generally.** Work on the Project shall be performed by the Company or contractors designated by the Company, in accordance with plans and specifications developed or approved in accordance with Section 4.3.2 of this Agreement by the Company in the Company's sole discretion and at the Company's sole cost. The Company shall review and approve all construction documents for such work, including bids, prior to commencement of construction of such work. Notwithstanding the foregoing, it is the understanding and agreement by the parties to this Agreement that the entire Project is being constructed as a private project, with the support of the City, but for the Company's sole use and control. It is further acknowledged and agreed by the parties that any such work items or other improvements which are located or installed or are to be located or installed on the Property are intended to be included within the Project for purposes of the Bonds and associated tax relief as provided in this Agreement and that, to facilitate the foregoing, fee title to all such work items or improvements which are located or installed or are to be located or installed on the Property shall be conveyed to and held in fee by the City in accordance with the terms of and for the duration provided in this Agreement and in the Indenture.

**Section 4.3.2. Plans and Specifications.** The Company shall initiate preparation or cause to be initiated the preparation of plans and specifications for the Project as required for the orderly implementation of the Project and, solely for the purpose of satisfying the City that the Project will be constructed in accordance with all Applicable Regulations of the City and with the requirements of this Agreement, shall submit from time to time such plans and specifications for approval by the City in sufficient completeness and detail to show that all such construction will be in conformance with Applicable Regulations and this Agreement. When and as required by Applicable Regulations, such plans and specifications shall be prepared by a professional engineer or architect licensed to practice in the State of Missouri. Upon each submittal of such plans and specifications, together with required applications, the City shall expeditiously review and approve or reject same, in writing, solely on the basis of non-conformity with Applicable Regulations or with specific terms of this Agreement. If the City rejects such plans and specifications, said rejection shall specify deficiencies relating to lack of conformity with this Agreement or with Applicable Regulations; *provided, however, that* the City's failure to specify deficiencies in such plans and specifications relating to Applicable Regulations shall not relieve the Company of the Company's obligations to install the Project and each portion thereof in accordance therewith. Following receipt of any such rejection, the Company shall submit new or corrected plans and specifications within sixty (60) days after the date the Company receives written notice of the City's rejection referred to in the latest such notice (or at such later time as the Company may request in writing and the City may approve as being reasonably necessary to prepare such revisions or corrections for submission to the City). The provisions of this Section 4.3.2 relating to approval, rejection and resubmittal of plans and specifications shall continue to apply until all plans and specifications for the Project have been approved by the City. Notwithstanding anything in this Section 4.3.2 or this Agreement to the contrary, (a) the City shall not unreasonably withhold, condition, or delay approval of any of the plans and specifications submitted for the Project; and (b) the Company shall have the unfettered right to avail itself of any appeal process made available by the City or the State of Missouri, as applicable, including, without limitation, appeals to the City's Board of Adjustment or Board of Building Appeals.

**Section 4.3.3. Company to Construct Project.** The parties to this Agreement acknowledge and agree that the Company at the Company's sole cost and expense will construct,

or cause the construction of, the Project. In connection with the City's issuance of the Bonds, the City hereby grants to the Company (which grant shall be reflected and incorporated in the Lease) an irrevocable right to access the Property and to construct and install from time to time portions of the Financed Facilities and the Financed Equipment which portions shall at all times remain titled in the Company and not in the City unless and until such time as the City acquires and accepts in writing such portions as evidenced by one or more deeds (in the case of Financed Facilities) or bills of sale (in the case of Financed Equipment) acknowledged by the City and at such time (and only at such time) such portions shall be deemed to be incorporated into the Project, all as further provided in and in full accordance with the Indenture and the Bond Documents. The Company agrees that all construction work by the Company or its agents or independent contractors in connection with or to be incorporated within the Project shall be in substantial conformity with the plans and specifications therefor as finally approved by the City as in accordance with Applicable Regulations and this Agreement.

**Section 4.3.4. Insurance.** In constructing or causing the construction of the Project, the Company may enter into one or more construction services contracts; *provided that* prior to the commencement of any construction or installation, the Company shall obtain, or shall ensure that each contractor obtains workers' compensation, commercial general liability, and builder's risk insurance coverage in amounts customary in the industry for similar type projects, and, if the Project or any portion thereof is determined to be in a flood hazard area, flood insurance, all with insurance companies with ratings reasonably acceptable to the City. All policies of liability insurance required under this Section 4.3.4 shall name the City as an additional insured and, to the extent available, shall contain a clause providing that such policies may not be cancelled, reduced in coverage or otherwise modified without thirty (30) days prior written notice to the City. Before initiating construction of any portion of the Financed Facilities, the Company shall provide or cause to be provided to the City certificates of insurance evidencing the insurance coverages required under this Section 4.3.4. The Company shall ensure that the insurance required under this Section 4.3.4 is maintained by each contractor for the duration of construction services to be provided at the Project.

**Section 4.3.5. Payment Bond Required; Indemnification.** As a condition precedent to Closing, the Company shall initially procure or cause to be procured and delivered to the City at or before Closing a dual obligee payment bond in substantially the form of Exhibit C-1 to this Agreement naming and in favor of the City and meeting all requirements of section 107.170 of the Revised Statutes of Missouri, as amended, or any successor enactment in the minimum aggregate penal amount of the greater of (i) \$4,500,000, or (ii) the total costs of acquisition and renovation of the Financed Facilities and Financed Equipment as evidenced by construction contracts or orders therefor. In addition, prior to initiation of any work under any contract (whether written or oral) with any contractor for the construction or installation of or for procurement or supplying of materials to be incorporated, consumed (other than raw materials to be utilized in a manufacturing process) or used in connection with the construction of the Financed Facilities or the Financed Equipment, and as a condition precedent to the future acceptance by the City of the conveyance of any portions of the Financed Facilities or Financed Equipment so constructed or installed, the Company shall for each such contract procure or cause to be procured a dual obligee payment bond in substantially the form of Exhibit C-1 naming and in favor of the City and meeting all requirements of section 107.170 of the Revised Statutes of Missouri, as

amended, or any successor enactment in the minimum amount of One Hundred percent (100%) of the total amount of each such contract; and *provided further that* in the event that the amount of any such contract shall be increased at any time or from time to time by more than Twenty-Five percent (25%) in the aggregate of the initial contract amount, the Company shall promptly cause the amount of the corresponding payment bond to be increased to a total One Hundred percent (100%) of such increased amount. All such payment bonds required under this Section 4.3.5, section 107.170 of the Revised Statutes of Missouri, as amended, or otherwise shall provide for and be maintained until the date which is One (1) year from the date the last labor or services were provided by anyone or last materials or equipment were furnished by anyone under or pursuant to the contract to which such payment bond applies. **Prior to the execution of any contract or order for labor, services, materials, equipment or other work at the Project, the Financed Facilities or the Financed Equipment the Company shall provide the City a certification from such contractor or supplier in the form of Exhibit C-2 acknowledging the payment bond obligations of this Section 4.3.5. The parties hereby further agree that delivery of such certification shall be a condition precedent to the enforceability of any such contract.** Prior to initiation of any work under any such contract, the corresponding dual obligee payment bond fully executed by the surety, the Company and the contractor in the minimum amount of One Hundred percent (100%) of the total amount of each such contract shall be submitted to the City. **It is the intent of the parties to this Agreement that the Project comply at all times with the requirements of section 107.170 of the Revised Statutes of Missouri, as amended, and that one or more payment bonds shall provided in the aggregate amount of 100% of the Financed Facilities and the Financed Equipment to be accepted for acquisition by the City and that this condition shall be met to the sole satisfaction of the City prior to and as a pre-condition of the conveyance to and acceptance by the City.** The Company hereby agrees to indemnify, defend with counsel of the City's choosing, and hold harmless the City and the City Council in their official and individual capacities from and against all claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys' fees, by or on behalf of any person, firm or corporation arising out of the Company or the Company's contractors failure to comply in all respects with the requirements of this Section 4.3.5 or any failure of the Company to obtain payment bonds as required by section 107.170 of the Revised Statutes of Missouri, as amended. The foregoing indemnification obligations shall survive termination of this Agreement or the Lease for any reason. The parties hereto further agree to promptly take such further actions as may be required from time to time to assure that the Project complies with any subsequent amendments or successor enactments to such section 107.170 and with any final, non-appealable determinations by any court of competent jurisdiction affecting the procurement of payment bonds by or on behalf of public entities.

**Section 4.3.6. Company to Adhere to All Applicable Regulations.** To the full extent that any Applicable Regulation applies to any aspect of construction of the Project and the installation of the Financed Facilities or the Financed Equipment or to construction, reconstruction, expansion, renovation or similar activity in connection with any portion of the Property at any time during the period the Bonds remain Outstanding, the Company covenants and agrees to take all such actions as are necessary to comply with such Applicable Regulation (subject, however, to all available rights of appeal). This covenant shall survive termination of this Agreement for any reason until full payment, satisfaction and defeasance of the Bonds.

**Section 4.4. Completion of the Project.** Subject to force majeure, the Company shall cause construction and renovation of the Financed Facilities and installation of the Financed Equipment as finally approved by the City or as modified thereafter with the City's written concurrence and the installation of the Financed Equipment at the Property all to be substantially complete not later than December 31, 2023; provided that all portions of the Financed Facilities and the Financed Equipment to be offered for acceptance and acquisition by the City shall be so tendered to the City, together with applicable conveyancing documentation as provided in the Indenture, in any event not later than December 31, 2028. All such work shall be completed in a good and workmanlike manner and free from any lien, right of lien, or attachment upon, or claim affecting the right of any person, firm, or corporation to receive payment. Evidence of substantial completion shall be in substantially the form of Exhibit D, attached to and incorporated by reference in this Agreement, provided by the Company to the City and countersigned by the City (which countersignature shall not be unreasonably withheld, conditioned or delayed).

**Section 4.5. Sales Tax Exemption.** Contemporaneous with Closing on the conveyance to the City of the Property as provided in Article II of this Agreement, the City shall make available to the Company in connection with the purchase of tangible personal property and materials to be incorporated into the Project, the City's sales tax exemption from purchases of such tangible personal property and materials to the extent permitted under Section 144.062 of the Revised Statutes of Missouri, as amended, and 12 CSR 10-112.010 of the Missouri Code of State Regulations, it being the intent of this Agreement that the full value of all materials, construction, and equipment purchased by the Company for the Project be exempt from all State of Missouri, City and County sales taxes; *provided that* the parties hereto acknowledge and agree that neither City nor the EDC is guaranteeing the exemption from taxation of such purchases. The City hereby agrees to cooperate with the Company by providing upon request such certificates and other documentation as may be necessary for the Company to receive such sales tax exemption.

## **ARTICLE V FURTHER OBLIGATIONS OF THE COMPANY**

**Section 5.1. Cooperation in Verification of Jobs Required.** The Company shall use commercially reasonable efforts to cooperate with the City and the EDC in promptly making available at the Project upon request by the EDC such employment records and similar documentation prepared or maintained by the Company, its subsidiaries or nominees which the EDC may reasonably require to verify the number of Jobs in any Testing Period in accordance with the terms of Section 3.5 of this Agreement; *provided that* nothing in this Agreement shall require the Company to disclose confidential or proprietary information maintained by the Company, its parent, subsidiaries, or nominees. The Company shall make such information available to the EDC and the City at the Project solely to enable the EDC and the City to verify the actual number of Jobs in any Testing Period in accordance with the terms of Section 3.5 of this Agreement.

**Section 5.2. Indemnification.**



**(a) Indemnification for Certain Third Party Actions; Release of City, EDC, and Trustee.** The Company hereby covenants, warrants and agrees to indemnify and hold the City, the EDC, and the Trustee, as applicable, and their respective officials, officers, agents, attorneys, employees and representatives acting in any capacity harmless from and to defend against (with legal counsel selected by the Company and reasonably acceptable to the City) all claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys' fees, by or on behalf of any person, firm or corporation arising from any Third Party Action except where the basis, in whole or in part, for such Third Party Action is the fraud, criminal malfeasance, gross negligence or willful misconduct of the City, the EDC, or any officer, employee, or agent thereof. The indemnification obligations of the Company under this Section 5.2(a) shall be in force and effect at all times during the later of: (A) the time the Bonds are Outstanding; or (B) the time any portion of the Property, the Project, the Financed Facilities or the Financed Equipment is held in fee by the City; and (ii) shall not be assignable or delegable by the Company without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. In no event shall the City or the EDC, or their respective officials, officers, agents, attorneys, employees or representatives have any liability whatsoever at law or in equity to the Company or an Affiliate or to their parent respective directors, officers, agents, employees and representatives, in consequence of any such Third Party Action, except where the basis, in whole or in part, for such Third Party Action is the fraud, criminal malfeasance, gross negligence or willful misconduct of the City, the EDC or any officer, employee, or agent thereof. The Company hereby further covenants, warrants and agrees that in no event shall the City or the EDC, or their respective officials, officers, agents, attorneys, employees or representatives have any liability to the Company or to any Affiliate, parent, assignee or sublessee of the Company for damages or otherwise in the event that all or any part the Project, the Lease, the Bonds, the Bond Documents or any portion thereof, or this Agreement, shall be declared invalid or unconstitutional in whole or in part by a final (as to which all rights of appeal have been exhausted or expired) judgment of a court of competent jurisdiction or as a result of initiation of a Third Party Action the Company is prevented from enjoying any of the rights and privileges of the Company hereunder.

**(b) Other Indemnification Obligations of the Company.** The Company hereby covenants warrants and agrees to indemnify and hold the City, the EDC, and the Trustee, as applicable, and their respective officials, officers, agents, attorneys, employees and representatives acting in any capacity harmless from and defend against (with legal counsel selected by the Company and reasonably acceptable to the City) all claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys' fees, by or on behalf of any person, firm or corporation arising from: (i) the conduct or management of, or from any work or thing done in, on or about, the Financed Facilities, the Project or the Property during the term of the Lease and the Bonds, (ii) any condition of the Financed Facilities, the Project or the Property, or any acts or omissions thereon by any person during the term of the Lease and the Bonds of any series; (iii) any breach or default on the part of the Company in the performance of any of the Company's obligations under this Agreement or the Lease affecting a third party; (iv) any contract, whether written or oral, entered into during the term of the Lease and the Bonds of any series in connection with the purchase, construction, extension or improvement of the Project; (v) any act of negligence of the Company or of any of its agents, parties to contract (whether written or oral), servants, employees or licensees during the term of the Lease and the Bonds of any series; (vi) the obtaining of any applicable exemptions from state or local sales or use taxes for materials or goods which

become part of the Financed Facilities or the Financed Equipment, but only during the later of (A) the time the Bonds remain Outstanding; or (B) the time any portion of the Property, the Project, the Financed Facilities or the Financed Equipment is held in fee by the City; (vii) any violation of section 107.170 of the Revised Statutes of Missouri, as amended or successor enactment; and/or (viii) a final determination by a court of competent jurisdiction that the purchase of tangible personal property or materials and their incorporation in the Project as contemplated in this Agreement is not related to the City's exempt functions and activities or that the City for any reason is liable for such tax, but only during the later of (A) the time the Bonds are Outstanding; or (B) the time any portion of the Property, the Project, the Financed Facilities or the Financed Equipment is held in fee by the City. Each of the foregoing phrases (i) through (viii) shall constitute independent obligations. The indemnification obligations of the Company under this Section 5.2(c) shall not be assignable or delegable by the Company without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

**(c) Environmental Indemnification Obligations of the Company.** The Company hereby covenants warrants and agrees to indemnify and hold the City, the EDC, and the Trustee, as applicable, and their respective officials, officers, agents, attorneys, employees and representatives acting in any capacity harmless from and defend against (with legal counsel selected by the Company and reasonably acceptable to the City) all claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys' fees, by or on behalf of any person, firm or corporation arising from: (i) any release (as defined in 42 U.S.C. §9601 (22)) or threat of a release, actual or alleged, of any Hazardous Substances, upon the Property, the Financed Facilities, the Financed Equipment or the Project or respecting any products or materials introduced or delivered to or arising at the Property, the Financed Facilities, the Financed Equipment or the Project regardless of whether such release occurs as a result of any act, omission, negligence or misconduct of the Company, or any third party or otherwise; (ii) (A) any violation now existing or hereafter arising (actual or alleged) or any other liability under or in connection with, any applicable Environmental Laws relating to or affecting the Property, the Financed Facilities, the Financed Equipment, or the Project, or (B) any violation now existing or hereafter arising, actual or alleged or any other liability, under or in connection with, any applicable Environmental Laws relating to any products or materials now or hereafter located upon, delivered to or in transit to or from the Property, the Financed Facilities, the Financed Equipment, or the Project regardless of whether such violation or alleged violation or other liability occurs or arises as the result of any act, omission, negligence or misconduct of the Company or any third party or otherwise; or (iii) any assertion by any third party of any claims or demands for any loss or injury arising out of, relating to or in connection with any Hazardous Substances on or allegedly on the Property, the Financed Facilities, the Financed Equipment, or the Project. Each of the foregoing phrases (i) through (iii) and the portions thereof shall constitute independent obligations. The indemnification obligations of the Company under this Section 5.2(d) shall apply and extend whether the event giving rise to such claim or action occurred prior to or during the term of the Lease. Indemnification obligations of the Company shall not be assignable or delegable by the Company without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

**(d) Survival of Indemnification and Defense Obligations.** Each of the indemnification and defense obligations of the Company set forth in this Section 5.2 that arise from any Third Party Action or otherwise, including, without limitation those arising under Section

5.2(c) of this Agreement, from a party other than the parties to this Agreement shall survive termination of this Agreement or of the Lease for any reason, including, without limitation, payment, satisfaction and defeasance of the Bonds for a period of sixty (60) months following the re-acquisition for any reason of the entire Project by the Company.

**Section 5.3. Annual Report Filings.** Pursuant to the Acts, the City may be required to file annual reports with the Missouri Department of Economic Development or other entities of the State of Missouri. The Company shall use commercially reasonable efforts to cooperate with the City in causing such reporting requirements to be fulfilled.

## **ARTICLE VI COVENANTS, REPRESENTATIONS, WARRANTIES, AND ACKNOWLEDGEMENTS**

**Section 6.1. The Company, Generally.** The Company hereby represents, warrants and covenants to the City and the EDC that, as of the date of this Agreement and during the term of this Agreement and so long as any Bonds remain Outstanding:

(i) The Company is a Delaware corporation duly organized, validly existing and qualified and authorized to do business in Missouri and will lawfully maintain such status;

(ii) The Company has the right, power and authority to enter into, execute, deliver and perform this Agreement and no other consents or authorization from any other persons or entities are required prior to the Company's execution and delivery of this Agreement;

(iii) The execution, delivery and performance by the Company of this Agreement has been duly authorized by all necessary action and does not violate the formation documents or operating agreement of the Company or any applicable provision of law, nor does the execution, delivery and performance by the Company of this Agreement constitute a breach of or default under or require any consent under any agreement, instrument or document to which the Company is now a party or by which the Company is now bound;

(iv) To the Company's actual knowledge, following reasonable due inquiry, there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting the Company which would impair the Company's ability to perform under this Agreement; and

(v) To the Company's actual knowledge, following reasonable due inquiry, the Company has obtained or will obtain as and when required by Applicable Regulations, and shall maintain all government permits, certificates and consents (including, without limitation, environmental approvals required by any Applicable Regulations) necessary to conduct the Company's business and to construct, complete and operate the Project.

**Section 6.2. Compliance with Laws.** The Company covenants, represents and warrants to the City and the EDC that, to the best of the Company's knowledge, following diligent inquiry, the Company's actions related to the Property and the Project are or, when complete, will be in compliance with all Applicable Regulations, including, without limitation, Environmental Laws. The Company agrees that the City and the City's duly authorized agents shall have the right at reasonable times during business hours, subject to at least Seventy-Two (72) hours advance notice to the Company, to enter upon the Project and the Property to examine and inspect the Project to assure material compliance with this Agreement; *provided that* such inspections in any year shall not occur more frequently than quarterly.

**Section 6.3. Environmental Matters; Warranties, Covenants; Indemnification.**

(a) The Company acknowledges, represents and warrants that there are no conditions on the Property or the Financed Facilities which materially violate any applicable Environmental Laws, and that no claims or demands have been asserted or made by any third parties arising out of, relating to or in connection with any Hazardous Substances on, or allegedly on the Property or the Financed Facilities for any injuries suffered or incurred, or allegedly suffered or incurred, by reason of a violation of applicable Environmental Laws. The Company has not received notice from any federal, state, county or municipal governmental authority alleging violation of any Environmental Law, in respect to the Property, the Financed Facilities, or any part thereof which has not been entirely corrected.

(b) During the term of the Lease, the Company shall provide the City with copies of any notifications of releases of Hazardous Substances or of any environmental hazards or potential hazards which are given by or on behalf of the Company to any federal, state or local or other agencies or authorities or which are received by the Company from any federal, state or local or other agencies or authorities with respect to the Property, the Financed Facilities, the Financed Equipment, or the Project. Such copies shall be sent to the City concurrently with their being mailed or delivered to the governmental agencies or authorities or within Ten (10) days after they are made or received by the Company.

(c) At all times during the term of the Lease, the Company shall use commercially reasonable efforts to materially comply with and operate and at all times use, keep and maintain the Property, the Financed Facilities, the Financed Equipment, and the Project and every part thereof (whether or not such property constitutes a Facilities, as defined in 42 U.S.C. §9601 *et. seq.*) in material conformance with all applicable Environmental Laws. Without limiting the generality of the foregoing, the Company will not use, generate, treat, store, dispose of or otherwise introduce or permit any agent, employee, contractor, subcontractor or other party to contract (whether written or oral) of the Company to use, generate, treat, store, dispose of or otherwise introduce any Hazardous Substance into or on the Property, the Financed Facilities, the Financed Equipment, or the Project or any part thereof nor cause, suffer, allow or permit anyone else to do so except in material compliance with all applicable Environmental Laws.

**Section 6.4. The City, Generally.** The City hereby represents and warrants to the Company that:

(i) the City has the full power and authority to enter into this Agreement and to perform its obligations hereunder;

(ii) this Agreement is a valid and binding obligation, enforceable against the City in accordance with the terms hereof; and

(iii) the execution and delivery of this Agreement has been validly authorized by all necessary governmental or other action and does not conflict with any other agreements entered into by the City.

**Section 6.5. Survival of Covenants.** All warranties, representations, covenants and agreements of the Company contained in this Article VI shall survive termination of this Agreement for any reason until full payment, satisfaction and defeasance of the Bonds.

## **ARTICLE VII MISCELLANEOUS**

**Section 7.1. Term of Agreement.** This Agreement shall continue in force for so long as: (a) any Bonds shall remain Outstanding; or (b) any portion of the Property, the Financed Equipment or the Financed Facilities is titled in the name of the City, whichever is the later. Notwithstanding the foregoing, the Company may terminate this Agreement in the event the Company notifies the City in writing that the Company has reasonably determined after due investigation that the Project is no longer economically viable; *provided that* promptly upon the giving of such notice the Company, at the Company's sole cost and expense: (i) exercises the Company's option to purchase the Property, the Financed Facilities and the Financed Equipment by payment of the purchase price therefor provided in the Indenture and taking such other steps as are required under the Lease and the Indenture; (ii) paying or acknowledging in writing payment of all principal and interest due and tendering all, but not less than all, Outstanding Bonds for redemption, defeasance and cancellation; (iii) paying all payments in lieu of taxes due for the year in which such termination occurs; and (iv) acknowledging in a writing the Company's continuing indemnification obligations under this Agreement or providing a bond or other indemnification security satisfactory to the City in the City's sole discretion. Satisfaction of each for the foregoing shall be conditions precedent to the termination of this Agreement pursuant to this Section 7.1.; *provided that* each of the Company's indemnification obligations shall survive such termination.

**Section 7.2. Notices.** Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) e-mail; (c) overnight courier; or (d) registered or certified mail, return receipt requested:

If to the Company:     EquipmentShare.com Inc.  
                                  5710 Bull Run Drive  
                                  Columbia, Missouri 65201  
                                  Attention: \_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

If to the City: City of Moberly  
101 West Reed Street - City Hall  
Moberly, Missouri 65270  
Attention: City Manager

with a copy to:  
Gilmore & Bell, P.C.  
211 N. Broadway, Suite 2000  
St. Louis, Missouri 63102  
Attention: Shannon Creighton, Esq.

If to the EDC: Moberly Area Economic Development Corporation  
115 North Williams Street  
Moberly, Missouri 65270  
Attention: President

with a copy to:  
Gilmore & Bell, P.C.  
211 N. Broadway, Suite 2000  
St. Louis, Missouri 63102  
Attention: Shannon Creighton, Esq.

Such addresses may be changed by notice to the other parties given in the same manner provided above. Any notice, demand, or request sent pursuant to either clause (a) or (b) above shall be deemed received upon such personal service or upon dispatch.

**Section 7.3. Further Assistance.** The City, the EDC, and the Company each agree to take such actions as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent. In addition, if legislation is proposed by or in any governmental body having jurisdiction over the Project which would have the effect of limiting the ability of the City to issue the Bonds to finance the Project, the City agrees to use its best efforts to issue the Bonds prior to the effective date of any such legislation. The Company shall further cooperate with and assist the City, the EDC, and the Randolph County Assessor as necessary to describe and document from time to time those portions of the Property, the Financed Facilities and the Financed Equipment to be acquired by and conveyed to the City pursuant to this Agreement.

**Section 7.4. Entire Agreement; Modification; No Waiver by Prior Actions.** This Agreement, together with the Bond Documents, the other agreements expressly referenced herein, constitute the entire agreement of the parties and no oral statement or prior written matter shall have any force or effect respecting the matters governed hereby. The terms, covenants and

conditions of this Agreement may not be changed orally, but only by an instrument in writing signed by each of the parties or their authorized representatives. The failure of any party hereto to insist in any one or more cases upon the strict performance of any term, covenant or condition of this Agreement to be performed or observed by another party shall not constitute a waiver or relinquishment for the future of any such term, covenant or condition.

**Section 7.5. Public Liability Strictly Limited; No Personal Liability.** The parties hereto agree that remedies for any claim arising out of this Agreement, the Lease, the Bonds, the Bond Documents or any of them shall be limited to equitable relief including the availability of specific performance and in no event shall the City or the EDC or any of their respective officials, officers, agents, attorneys, employees, or representatives have any liability in damages or any other monetary liability to the Company or any Affiliate, parent, assignee, sublessee, successor, assign, heir or personal representative of the Company in respect of any suit, claim, or cause of action arising out of this Agreement, the Lease, the Bonds, the Bond Documents or any of them. No official, officer, agent, attorney, employee, or representative of any of the parties hereto shall be personally liable to any of the other parties hereto, or the respective assignees, sublessees, successors, assigns, heirs or personal representatives of the other parties hereto in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement other than for fraud, criminal malfeasance, gross negligence or willful misconduct of such party or any officer, employee, or agent thereof.

**Section 7.6. No Waiver of Sovereign Immunity.** Nothing in this Agreement shall be construed or deemed to constitute a waiver of the City's sovereign immunity.

**Section 7.7. Remedies Cumulative.** The remedies of a party under this Agreement shall be cumulative, and the exercise of any one or more of the remedies provided for in this Agreement shall not be construed as a waiver of any other remedies of such party unless specifically so provided herein.

**Section 7.8. Default; Opportunity to Cure.** In the event of any default in or breach of any term or conditions of this Agreement by either party, other than the failure of the Company to make timely payments in lieu of taxes when and as due, the aggrieved party, prior to instituting any action at law or in equity, shall give written notice to the breaching or defaulting party (or successor) specifying, in the opinion of the aggrieved party, the nature of the breach, and the defaulting or breaching party (or successor) shall, upon receipt of such written notice from the other party, proceed to promptly, reasonably, and practically cure or remedy such default or breach, and, shall, in any event, within Thirty (30) days after receipt of notice, commence to cure or remedy such default. In case such cure or remedy is not taken or not promptly, reasonably, and practically pursued, or the default or breach shall not be cured or remedied within Thirty (30) days or such longer time as is reasonable under the circumstances, the aggrieved party may then institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to proceedings to compel specific performance by the defaulting or breaching party.

**Section 7.9. Relationship of the Parties; Third Party Beneficiaries.** Nothing contained in this Agreement nor any act of the City or of the EDC shall be deemed or construed to create a partnership or agency relationship between or among any party and this Agreement is and shall be limited to the specific purposes set out herein. Other than as expressly provided in this Agreement, no party shall be the agent of, or have any rights to create any obligations or liabilities binding on, another party. The parties do not intend to and do not confer any benefit under this Agreement on any other person or entity other than the parties hereto.

**Section 7.10. Captions; Recitals and Exhibits; Agreement Preparation.** The headings and captions of this Agreement are for convenience and reference only, and in no way define, limit, or describe the scope or intent of this Agreement of any provision thereof and shall in no way be deemed to explain, modify, amplify or aid in the interpretation or construction of the provisions of this Agreement. The Recitals found at the beginning of this Agreement are incorporated herein by reference and are important and material parts of this Agreement. Each party to this Agreement and their attorneys have had full opportunity to review and participate in the drafting of the final form of this Agreement and all documents attached as exhibits and schedules. This Agreement shall be construed without regard to any presumption or other rule of construction whereby ambiguities within this Agreement or such other document would be construed or interpreted against the party causing the document to be drafted. The parties each further represent that the terms of this Agreement and the documents attached to this Agreement as exhibits and schedules have been completely read by them and that those terms are fully understood and voluntarily accepted by them. In any interpretation, construction or determination of the meaning of any provision of this Agreement, no presumption whatsoever shall arise from the fact that the Agreement was prepared by or on behalf of any party.

**Section 7.11. Execution; Counterparts.** Each person executing this Agreement in a representative capacity warrants and represents that he or she has authority to do so and upon request by another party proof of such authority in customary form will be furnished to the requesting party. This Agreement may be executed at different times and in two or more counterparts and all counterparts so executed shall for all purposes constitute one agreement, binding on the parties hereto, notwithstanding that both parties may not have executed the same counterpart. In proving this Agreement it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement is sought.

**Section 7.12. Severability.** If any term, covenant, condition or provision of this Agreement or the application of this Agreement to any person or circumstance shall, at any time or to any extent, be finally declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by the partial invalidity, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law unless such partial invalidity prevents a party from realizing the full benefit of the bargain represented by the entire Agreement.

**Section 7.13. Governing Law; Choice of Forum; Waiver of Objections.** This Agreement and its performance shall be governed by and construed under the laws of the State of



Missouri applicable to contracts made and to be performed wholly within such state, without regard to choice or conflict of laws provisions. The parties hereto agree that any action at law, suit in equity, or other judicial proceeding arising out of this Agreement shall be instituted only in the Circuit Court of Randolph County, Missouri or in the Federal District Court for the Eastern District of Missouri and waive any objections based upon venue or *forum non conveniens* or otherwise and waive any and all objections to the application of Missouri law and/or to the foregoing selection of fora.

**Section 7.14. Assignment Limited.** The Company may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part to any individual or entity other than to an Affiliate without the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Any such Affiliate or successor in interest to the Company under this Agreement, as a condition precedent to the validity of such assignment or transfer, shall certify in writing to the City its agreement: (i) to abide by all remaining executory terms of this Agreement (and the representations, warranties and covenants related thereto) through the term of this Agreement, or such other period as may be expressly provided for herein, (ii) to purchase or otherwise assume ownership in accordance with the terms thereof of all of the Bonds then Outstanding, and (iii) to assume the obligations of “Lessee” under the Lease.

**Section 7.15. Binding Effect.** This Agreement shall be binding upon the City, the EDC, and the Company and their respective permitted successors and permitted assigns.

**Section 7.16. Force Majeure.** Neither the City, the EDC, nor the Company nor any permitted successor in interest to any of them shall be considered in breach of or in default of any of their respective obligations under this Agreement including, without limitation, the Company’s obligation to construct the Project or any portion thereof and the City’s obligation to issue the Bonds, in the event of any delay caused by damage or destruction by fire or other casualty, strike; shortage of material; any government order or action of any sort; failure, after diligent pursuit, to obtain approvals or permits from applicable governmental entities including, without limitation, environmental permits; acts of war or terrorism; civil disturbance; unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or for an abnormal duration, tornadoes or cyclones; and other events or conditions beyond the reasonable control of the party affected which in fact interferes with the ability of such party to discharge its obligations hereunder. Any delay described under this Section 7.16 shall result in a day-for-day extension of any obligations, deadlines or dates set forth in this Agreement that are directly affected by such delay. The individual or entity relying on this Section 7.16 with respect to any such delay shall, upon the occurrence of the event causing such delay, promptly, reasonably, and practically give written notice to the other parties to this Agreement.

**Section 7.17. Compliance with Section 285.530 of the Revised Statutes of Missouri.** Contemporaneous with the execution of this Agreement, the Company shall by sworn affidavit and provision of documentation, affirm the Company’s enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Project, all as required by Section 285.530 of the Revised Statutes of Missouri, as amended, in the form set forth in Exhibit E, attached to and incorporated by reference in this Agreement. The Company

shall also sign and deliver to the City an affidavit affirming that the Company does not and will not knowingly employ in connection with the Project any person who is an unauthorized alien and, if and as required by Section 285.530 of the Revised Statutes of Missouri, as amended, the Company shall obtain from each general contractor and subcontractor or other party engaged by the Company in connection with the Project affidavits affirming that such contractors and subcontractors do not and will not knowingly employ in connection with the Project any person who is an unauthorized alien.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK - SIGNATURE PAGES FOLLOW]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed on or as of the day and year first above written.

**CITY OF MOBERLY, MISSOURI**

By: \_\_\_\_\_  
Jerry Jeffrey, Mayor

ATTEST:

\_\_\_\_\_  
Shannon Hance, City Clerk

**ACKNOWLEDGEMENT**

**STATE OF MISSOURI**            )  
  )       **ss.**  
**COUNTY OF RANDOLPH**        )

I, the undersigned, a notary public in and for said County, in the State aforesaid, **DO HEREBY CERTIFY** that Jerry Jeffrey, personally known to me to be the Mayor of the CITY OF MOBERLY, MISSOURI and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered said instrument, pursuant to the authority given to him by the Council of the CITY OF MOBERLY, MISSOURI as his free and voluntary act and as the free and voluntary act of the CITY OF MOBERLY, MISSOURI, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public

My Commission Expires:





EXHIBIT A

LOCATION OF FINANCED FACILITIES

EXHIBIT B

LEGAL DESCRIPTION

***Parcel No. 07-7.0-26.0-0.0-000-014.000 in the records of the Randolph County, known and numbered as 1855 Robertson Road, Moberly Missouri and further partially described as:***

**PT OF SE1/4: BEG 792.75' S & 34.77' W OF NE CORNER OF SE1/4, TH S 751.68', W 82', SWLY 146.57', SLY 268.12' TO N LINE OF HUNTHAUSEN RD, TH W 479.96', N 1110.26' TO S LINE OF FOWLER RD, TH E 700.10'>**

**Sec: 26.0 Twp: 54 Range: 14, a total 16.0+/- acres.**

EXHIBIT C-1

FORM OF PAYMENT BOND

DRAFT AIA® Document A312™ - 2010

Payment Bond

**CONTRACTOR:**  
(Name, legal status and address)

« »« »  
« »

**SURETY:**  
(Name, legal status and principal place of business)

« »« »  
« »

**OWNER:**  
(Name, legal status and address)

« »« »  
« »

**CONSTRUCTION CONTRACT**

Date: « »

Amount: \$ « »

Description:

(Name and location)

«Blank»

« »

**BOND**

Date:

(Not earlier than Construction Contract Date)

« »

Amount: \$ « »

Modifications to this Bond:  « » None  « » See Section 18

**CONTRACTOR AS PRINCIPAL**

Company: (Corporate Seal)

**SURETY**

Company: (Corporate Seal)

Signature:

Name and « »« »

Title:

(Any additional signatures appear on the last page of this Payment Bond.)

Signature:

Name and « »« »

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

**AGENT or BROKER:**

« »  
« »  
« »

**OWNER'S REPRESENTATIVE:**

(Architect, Engineer or other party:)

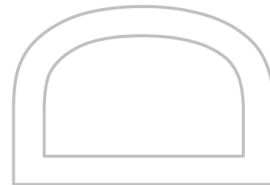
« »  
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**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.



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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### § 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

18.1 This Bond is given pursuant to section 107.170 of the Revised Statutes of Missouri, as amended.

18.2 The City of Moberly, Missouri is added as a Dual Obligee to this Bond pursuant to the Rider attached hereto and incorporated by reference herein.

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ *(Corporate Seal)*

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Address: \_\_\_\_\_

**SURETY**

Company: \_\_\_\_\_ *(Corporate Seal)*

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Address: \_\_\_\_\_

**DUAL OBLIGEE RIDER (form)**

This Rider is executed concurrently with and shall be attached to and form a part of Bond No. \_\_\_\_\_ dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ issued by \_\_\_\_\_, [Insert name of Surety] a corporation organized under the laws of the State of \_\_\_\_\_, as SURETY on behalf of \_\_\_\_\_ [Insert name of Contractor], as PRINCIPAL and in favor of EQUIPMENTSHARE,COM INC., a Delaware limited liability company duly authorized to do business in Missouri, 5710 Bull Run Drive, Columbia, Missouri 65201 (“Obligee”) and the CITY OF MOBERLY, MISSOURI, a city of the third classification and municipal corporation of the State of Missouri, 101 West Reed Street, Moberly, Missouri 64270 (“City of Moberly”), as co-obligees.

WHEREAS, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, Principal entered into a contract (the “Contract”) with Obligee, for the performance of \_\_\_\_\_; and

WHEREAS, Principal and Surety made, executed and will deliver the attached payment bond No. \_\_\_\_\_ (the “Bond”) as required by the Contract; and

WHEREAS, in accordance with section 107.170 of the Revised Statutes of Missouri, as amended, the City of Moberly is a required Co-Obligee under the Bond;

NOW, THEREFORE, Principal, Surety, and Obligee each hereby agree that the City of Moberly is a Co-Obligee under the Bond jointly with and to the same extent as the Obligee, upon the following conditions:

1. Surety’s total liability to the Co-Obligees, jointly and severally, is limited in the aggregate to the penal sum of the Bond; the Co-Obligee’s rights hereunder are subject to the same defenses Principal and/or Surety have against the Obligee.
2. The Surety may, at the Surety's option, make any payments under the Bond by check issued jointly to the Co-Obligees.

IN WITNESS TO and in acknowledgement whereof the Principal, Surety and Obligees hereto have each affixed their signatures and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

EQUIPMENTSHARE.COM INC.  
5710 Bull Run Drive  
Columbia, Missouri 65201  
OBLIGEE

[Insert name of and address of Contractor]  
\_\_\_\_\_  
\_\_\_\_\_  
PRINCIPAL

By: \_\_\_\_\_  
Print Name and Title:

By: \_\_\_\_\_  
Print Name and Title:

CITY OF MOBERLY  
101 West Reed Street  
Moberly, Missouri 65270  
CO-OBLIGEE

*[Insert name and address of Surety]*

\_\_\_\_\_  
\_\_\_\_\_  
SURETY

By: \_\_\_\_\_  
Print Name and Title:

By: \_\_\_\_\_  
Attorney-In-Fact  
Print Name and Title:

EXHIBIT C-2

CERTIFICATION OF GENERAL CONTRACTOR

**CERTIFICATION OF GENERAL CONTRACTOR IN REGARD TO PAYMENT BOND OBLIGATIONS**

**EquipmentShare.com Inc. Manufacturing, Refurbishment and  
Distribution Facility Project  
Moberly, Missouri (the "Project")**

*Capitalized terms used and not defined in this Certificate of Substantial Completion shall have the meanings ascribed to such terms in the Development Agreement, dated as of \_\_\_\_\_ 1, 2023, (the "Development Agreement") by and among the City of Moberly, Missouri (the "City"), Moberly Area Economic Development Corporation (the "EDC") and EquipmentShare.com Inc. (the "Company").*

\_\_\_\_\_, general contractor (the "Contractor") under a construction contract with the Company in connection with the Project hereby certifies, represents, and warrants to the City that the Contractor is fully informed of and will comply with all requirements of the Development Agreement to supply and maintain a payment bond meeting requirements of section 107.170 of the Revised Statutes of Missouri, as amended, in the amount and for the duration provided in Section 4.3.5 of the Development Agreement

The Contractor hereby further certifies, represents, and warrants to the City that the undersigned has full authority from the Contractor to execute this Certification. As such, the Contractor irrevocably waives any argument, defense, or claim that the Contractor has or may have relating to or arising from any argument, defense, or contention that the Contractor did not provide full, complete, proper, binding, and/or effective authorization(s) and approval(s) for this Certification.

\_\_\_\_\_  
the "Contractor"

By: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT D

FORM OF SUBSTANTIAL COMPLETION CERTIFICATE

CERTIFICATE OF SUBSTANTIAL COMPLETION

**EQUIPMENTSHARE.COM INC. MANUFACTURING, REFURBISHMENT AND  
DISTRIBUTION FACILITY PROJECT  
MOBERLY, MISSOURI**

**TO: City of Moberly, Missouri  
101 West Reed Street  
Moberly, Missouri 65270**

*Capitalized terms used and not defined in this Certificate of Substantial Completion shall have the meanings ascribed to such terms in the Development Agreement, dated as of \_\_\_\_\_ 1, 2023, (the "Development Agreement") by and among the City of Moberly, Missouri (the "City"), Moberly Area Economic Development Corporation (the "EDC") and EquipmentShare.com Inc. (the "Company").*

Pursuant to the Development Agreement, the undersigned hereby certifies and warrants to the City and EDC as follows:

1. As of \_\_\_\_\_, 202\_\_ the Financed Facilities, and the Financed Equipment, including acquisition and installation of all necessary facilities and infrastructure required for the Project, are Substantially Complete and in conformity, in all material respects, with the plans and specifications therefor as finally approved by the City or as modified thereafter with the City's concurrence in accordance with the Development Agreement. "Substantially Complete" for purposes of this certificate means that the Project is sufficiently complete so that the Company can utilize the Project for its intended use.

2. Except for costs incurred less than thirty (30) days prior to the date of this Certificate, the Company has made or caused to be made all payments to contractors and sub-contractors required to be made in connection with the construction of the Project, and there are no outstanding statements for which payment is requested in connection with the Project for labor, wages, materials, supplies, or services which could become the basis of a vendors', mechanics', laborers' or materialmen's statutory or other similar lien upon the Project or any portion thereof (subject to the Company's right to contest to the extent permitted under the Development Agreement).

3. To the best of the Company's knowledge, (i) neither the Company nor any entity affiliated with the Company is in default or breach of any term or condition of the Development Agreement, and (ii) the Company has satisfied the obligations of the Company under the Development Agreement with respect to the substantial completion of the Project.

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate on the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

EQUIPMENTSHARE.COM INC., a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACCEPTED:**

CITY OF MOBERLY, MISSOURI

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



