

ATTACHMENT 11-6

SAMPLE LEASE-PURCHASE AGREEMENT

THIS LEASE PURCHASE AGREEMENT made and entered into this the _____ day of _____, 20____, by and between the _____ Local Development Authority, of _____, Kentucky 4XXXX hereinafter referred to as "Lessor", and _____ Company, Inc., of _____, Kentucky 4XXXX, hereinafter referred to as "Lessee."

WITNESSETH, THAT WHEREAS the City of _____, has obtained a Community Development Block Grant (CDBG) from the State of Kentucky to assist in the development of industry in _____, Kentucky; and

WHEREAS, the proceeds from said CDBG have been turned over to the Lessor herein for the purchase of the hereinafter described industrial equipment; and

WHEREAS, the Lessor and Lessee are desirous of entering into a lease-purchase agreement for the lease, use and ultimate sale of the hereinafter described industrial equipment which is being purchased by CDBG funds, and the repayment of the CDBG funds to the Lessor herein.

NOW, THEREFORE, for and in consideration of the foregoing and the following mutual covenants and conditions herein, the parties hereto agree as follows:

1. LEASED PROPERTY

Lessor hereby lets and leases unto Lessee the following described industrial equipment which is hereafter referred to as "leased property" to wit:

See Exhibit A

2. **TERM**

The term of this lease shall be from the ___ day of _____, 20____, to the ___ day of _____, 20____, or the date of which the entire remaining balance of the total rental, plus accrued interest, as set out below in paragraph No. 3 has been paid, whichever date first occurs.

3. **RENTAL**

Lessee hereby covenants and agrees to pay Lessor, as rent for the above-described industrial equipment for the total amount of \$_____ for the entire term. The unpaid balance of the entire amount shall bear interest at the rate of ____% per annum, with any balance or interest payable monthly in an amount equal to the monthly amortization of such balance over a period of ___ years. The initial amount of monthly rental herein shall be the sum of \$_____ per month. Lessee may prepay the rent herein at any time and in any amount, at which time the amount of monthly rental due shall be re-computed on the remaining principal balance due bearing interest at the rate of ____% per annum over the remainder of the _____ year term. Said monthly payments shall begin on the ___ day of _____, 20____, and continue on the ___ day of each month thereafter during the term hereof. The rent herein is due and payable for the entire term set out above in paragraph No. 2 whether or not Lessee possesses and uses said leased property.

Upon complete payment of the balance of the rent set out above, plus accrued interest, at any time, the Lessor shall convey the above described leased property to the Lessee by bill of sale or other instrument(s) necessary to transfer title, and this lease shall be terminated, null, void and of no effect whatsoever.

4. **DAMAGE BY LESSEE**

Lessee shall not commit or suffer any waste or damage to any item of leased property identified hereinafter, normal wear and tear excepted.

5. **ALTERATIONS AND MODIFICATIONS**

Lessee shall make no substantial changes, alterations, modifications or improvements to said leased property, without the prior written consent of Lessor.

6. **TAXES AND ASSESSMENTS**

Lessee shall, during the term of this lease, pay all state, county, school and personal property taxes and assessments of every kind and nature levied and assessed against said leased property.

7. **RIGHT OF INSPECTION**

Lessee agrees that the Lessor, or their representatives shall have the right at all reasonable times to enter upon Lessee's premises or other places necessary to inspect said leased property, and ascertain that Lessee is complying with the terms, conditions and provisions hereof.

8. **ASSIGNMENT AND SUB-LEASING**

Lessee shall neither assign, transfer, sub-let or under-rent the leased property, nor any part thereof, without the previous written consent of Lessor, and subject to such terms as the Lessor might impose.

9. **LIABILITY OF LESSOR**

Lessee shall indemnify the Lessor and save it harmless from any and all liability, damages, court costs and attorney's fees it might incur as a result of Lessee's use of the leased property.

10. **LIENS AGAINST PROPERTY**

Lessee shall keep the leased property free from any mechanic's, storage or similar lien or other such encumbrances in connection with any alterations, repairs or use of said leased property and

shall indemnify and hold Lessor harmless from and against any claims, liabilities, judgments, cost (including attorney fees) arising out of the same or in connection therewith.

11. REPAIRS AND MAINTENANCE

Lessee shall keep the leased property in good condition and working order and repair, and perform all maintenance necessary thereto, both routine and otherwise.

In the event Lessee fails to make any and all property repairs or maintenance to said leased property which it is obligated to make within a reasonable time after the Lessor shall have notified the Lessee in writing of such default, Lessor may make or cause the repairs to be made. The Lessee agrees to pay the cost thereof promptly upon receipt of a statement for such expenses.

12. DAMAGES TO PROPERTY

If the above described leased property or any part thereof, shall be damaged by fire or other casualty, whether man made, natural or otherwise, Lessee shall at its own expense commence to restore said property and thereafter diligently complete such restoration. Such repairs shall substantially restore the condition of the property prior to the casualty. No abatement of rent shall be allowed during the time and to the extent the property is unfit for use as a result of such damages.

13. INSURANCE

Lessee shall maintain during the term of this lease comprehensive public liability insurance, for personal injury, bodily injury, sickness, disease, or death and for damage or injury to or destruction of property (including the loss of use thereof) for any on occurrence. The Lessee shall also maintain during the term primary, noncontributory "all-risk" casualty insurance on its personal property, fixtures, and improvements and other insurable personal property and risks in amounts not less than the full insurable replacement value of such property and full insurable value of such other interests of the Lessee.

Lessee shall also maintain during the term primary, noncontributory insurance on the leased property against fire and extended coverage or "all-risk" insurance, in an amount equal to the full insurable value of the property, or such other amount necessary to prevent the Lessor from being a coinsured, and such other coverage as the Lessor shall deem appropriate or that may be required by any mortgagee of the property.

Prior to taking possession of the leased property, the Lessee shall provide the Lessor with certificates evidencing such coverage (and, with respect to public liability coverage, showing the Lessor as an additional named insured). These certificates shall state that such insurance coverage may not be changed or cancelled without at least 30 days prior written notice to the Lessor, and shall provide renewal certificates to the Lessor at least 30 days prior to expiration of such policies.

In the event of a loss, which is paid by such insurance coverage, the Lessee shall be entitled to the proceeds from such insurance coverage to the extent of the proceeds from such insurance coverage to the extent of the repairs and/or replacements actually performed by Lessee. In the event there are any excess funds above and beyond actual repairs and replacements, then such excess funds shall be applied to the total rent due herein, unless waived by Lessor.

14. RETURN OF POSSESSION

At the termination of this lease prior to the end of the term herein or upon termination of the Lessee's right of possession, whichever shall first occur, the Lessee shall surrender possession of leased property and any keys therefore to the Lessor. In such event, Lessee shall return said property and all additions, changes, alterations, improvements, and fixtures in as good an order and condition when received except for ordinary wear and tear. All additions, changes, alterations, improvements, and fixtures related to leased property, whether installed by the Lessee or Lessor, shall be the Lessor's property and shall remain with same, all without compensation, allowance or credit to the Lessee.

If Lessee fails to perform any repairs or restoration, or fails to perform any requirement as set forth in this lease agreement, Lessor may do so, and the Lessee shall pay Lessor the cost thereof upon demand. Any property removed by the Lessor pursuant to any provision of this lease or any law, may be handled and stored by the Lessor at the cost and expense of the Lessee; the Lessor shall, in event, be responsible for the value, preservation, or safekeeping thereof. The Lessee shall pay the Lessor for all expenses incurred by the Lessor in such handling and storage, including Lessor's reasonable storage charges for so long as the same shall be in the Lessor's possession or under the Lessor's control. All property not removed from the premises or retaken from storage by the Lessee within 30 days after the end of the term, or termination of the Lessee's right to possession, whichever shall first occur, shall, at the Lessor's option, be conclusively deemed to have been conveyed by the Lessee to the Lessor as by bill of sale without further payment or credit by the Lessor to the Lessee. To the extent permitted by applicable law, the Lessor shall have a lien against such property for the costs incurred in removing and storing the same.

15. WAIVER

No provision of this lease will be deemed waived by either party unless expressly waived in a writing signed by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision; the Lessor's consent or approval respecting any action by the Lessee shall not constitute a waiver of the requirement for obtaining the Lessor's consent or approval respecting any subsequent such action. Subsequent acceptance of rent or any other amounts by the Lessor or its employees or duly authorized agents shall not reinstate or extend the term or the Lessee's right to possession after termination of either of the same and shall not constitute a waiver of any breach by the Lessee of any term or condition of this lease, regardless of the Lessor's knowledge of such breach

at the time such rent is accepted. The acceptance of rent, or of the performance of any other term or condition by any person other than the Lessee, including any transfer, shall not constitute a waiver of the Lessor's right to approve any transfer.

16. SUBORDINATION

Pursuant to Exhibit B-1 of CDBG No. _____, no subordination of this lease will be allowed.

17. DEFAULT

The occurrence of any one or more of the following events shall constitute a "default" by the Lessee, which, if not cured within any applicable time permitted for cure below, shall give rise to the Lessor's remedies set forth in paragraph No. 18:

- A. Failure of the Lessee to make, when due, any payment of rent, unless such failure is cured within 10 days after written notice thereof by the Lessor to Lessee;
- B. Failure by the Lessee to observe or perform any of the terms or conditions of this lease to be observed or performed by the Lessee other than the payment of rent, or as provided below, unless such failure is cured within 10 days after written notice thereof by the Lessor to Lessee sufficiently describing such failure to enable the Lessee to determine an appropriate cure;
- C. Abandonment of the property;
- D. Making by the Lessee of any general assignment for the benefit of creditors;
- E. Filing by or against the Lessee of a petition to have the Lessee adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of petition filed against the Lessee, the same is dismissed within 60 days);

- F. Appointment of a trustee or receiver to take possession of substantially all of the Lessee's assets located on the premises or of the Lessee's interest in this lease, where possession is not restored to the Lessee within 30 days;
- G. Attachment, execution, or other judicial seizure of substantially all of the Lessee's assets, or the Lessee's interest in this lease;
- H. The Lessee's convening of a meeting of its creditors or any class thereof for the purpose of effecting a moratorium upon or composition of its debts;
- I. The Lessee's insolvency or admission of an inability to pay its debts as they mature;
- J. Lessee's failure to comply with CDBG No. _____; Legally Binding Agreement between City of _____, _____ Local Development Corporation, and _____ Company, Inc.; or any other document prepared in connection with the issuance of the CDBG.

Upon default, any amount recovered by the Lessor from the Lessee, or from others on behalf of the Lessee such as by sale through judicial process, shall be considered and is hereby a credit against the purchase price set out herein.

18. REMEDIES OF LESSOR

If a default occurs and is not cured within any applicable time permitted under paragraph No. 17 above, the Lessor shall have all of the rights and remedies allowed by law, including the right, without notice, to terminate this lease, to enter the Lessee's premises or other real property and dispossess Lessee and their legal representatives or other persons in possession of the leased property by summary proceedings or otherwise and remove their effects and possess the property as if this lease had not been made; the Lessee hereby waives the service of notice of intention to enter or repossess or to institute legal proceedings to that end. The Lessee further agrees that in case of any termination, the Lessee will indemnify the Lessor against all loss of rents and other

damage which the Lessor may incur by reason of such termination, including, but not limited to, cost of restoring and repairing the property and putting same into rentable condition, cost of renting the property to another Lessee, loss or diminution of rents and other damage which the Lessor may incur by reason of such termination, and, to the extent permitted under the then applicable law, all reasonable attorney's fees and expenses incurred in enforcing any of the terms of this lease or any other rights or remedies of the Lessor. Neither acceptance of rent by the Lessor, with or without knowledge of breach, nor failure of the Lessor to take action on account of any breach hereof or to enforce its rights hereunder shall be deemed a waiver of any breach. Absent written notice or consent, said breach shall be a continuing one. The words "re-enter" and "re-entry" as used in this lease is not restricted to their technical legal meaning. The Lessee hereby expressly waives any and all rights to recover or regain possession of the premises or to reinstate or to redeem this lease as permitted or provided by or under any statute, law, or decision now or hereafter in force and effect.

19. DEPRECIATION

Because of the lease-purchase nature of this agreement, the Lessee may claim to the exclusion of the Lessor any and all depreciation of any equipment or property leased herein.

20. LESSOR'S DEFAULT

If the Lessor shall fail to perform any term or condition under this lease required to be performed by the Lessor, the Lessor shall not be deemed to be in default hereunder nor subject to any claims for damages of any kind, unless such failure shall have continued for a period of 30 days after written notice thereof by the Lessor sufficiently describing such failure to enable the Lessor to determine an appropriate cure.

21. CAPTIONS

The captions of the articles and paragraphs of this lease are for convenience and easy reference only and shall not be considered or referred to in resolving questions of construction.

22. SEVERABILITY

If any provision of this lease shall be found invalid, void, illegal, or unenforceable with respect to any particular person by a court of competent jurisdiction, it shall in no way affect, impair, or invalidate any other provisions hereof, or its enforceability with respect to any other person, the parties hereto agreeing that they would have entered into the remaining portion of this lease notwithstanding the omission of the portion or portions adjudged invalid, void, illegal, or unenforceable with respect to such person.

23. DEFINITIONS

The following terms when used herein shall have the meanings set forth below:

- A. "Lessor" and "Lessee" shall be applicable to one or more persons as the case may be. The singular shall include the plural, and the neuter shall include the masculine and feminine; if there be more than one, the obligations thereof shall be joint and several, and the word "Lessee" shall include Lessee's assignees, subtenants, concessionaires, licensees, and other transferees as the context may require;
- B. "Person" shall mean individuals, trusts, partnerships, joint ventures, associations, corporation, and any other entities;
- C. "Law" shall mean all federal, state, county, and local governmental and municipal laws, statutes, ordinances, rules, regulations, codes, decrees, orders and such other requirements, applicable equitable remedies and decisions by courts in cases where such

decisions are considered binding precedents in the Commonwealth of Kentucky, and decisions of federal courts applying the laws of Kentucky;

- D. "Mortgage" shall mean all mortgages, deeds of trust, ground leases, and other such encumbrances now, heretofore, or hereinafter placed upon the property or building, or any part thereof, and all renewals, modifications, consolidations, replacements or extensions thereof, and all indebtedness now or hereafter secured thereby and all interest thereon;
- E. "Holder" shall mean the holder of any mortgage at the time in question, and where such mortgage is a ground lease, such term shall refer to the ground lease.

24. CONVEYANCE BY LESSOR

In case the Lessor or any successor owner of the industrial equipment or personal property shall convey or otherwise dispose of any item or any portion thereof to another person, such other person shall, thereupon, be and become Lessor hereunder and shall be deemed to have fully assumed and be liable for all obligations of this lease to be performed by the Lessor which first arise after the date of conveyance. The Lessee shall attorn to such other person and the Lessor or such successor owner shall, from and after the date of conveyance, be free of all liabilities and obligations hereunder not then incurred. No provision herein shall be construed as to restrict or prevent Lessor from conveying any of its rights, title interest in or to any of the hereinabove referred to leased property, or its right granted under this lease agreement.

25. PARTIES AFFECTED

Each of the covenants and obligations of this lease shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, guardians, custodians, successors, and assigns.

26. QUIET ENJOYMENT

The Lessor covenants that upon the Lessee's timely payment of the rent and performance of the terms, covenants, and conditions to be performed by it hereunder, the Lessee shall peaceably and quietly have, hold, and enjoy and use the above-described property during the term of this lease subject to the terms herein.

27. FIXTURES

The above-described leased property shall at no time be deemed as a permanent fixture or improvement to the Lessee's real property, regardless of how it may be affixed thereon until Lessee has satisfied all of its payment obligations under this Lease-Purchase Agreement. In the event of default as set out in Paragraph No. 17 above, Lessee hereby waives its rights to claim any of the leased property as a permanent fixture or improvement to Lessee's real property.

28. ENTIRE AGREEMENT

This lease contains all the terms and conditions between the Lessor and the Lessee relating to the matters set forth herein and no prior or contemporaneous agreement or understanding pertaining to the same shall be of any force or effect, unless any such contemporaneous agreement specifically referring to and modifying this lease is signed by both parties. This lease may not be modified except in writing signed by both parties.

29. EFFECTIVE DATE OF AGREEMENT

This Lease-Purchase Agreement may be executed prior to completing the title transfer transaction whereby the Lessor acquiring the industrial equipment and personal property described herein above, and prior to the completion and execution of other related documents by the Lessor, the Lessee and other related parties. Therefore, this lease shall not take full force and effect until the completion and execution of all related documents, at which time any missing dates shall be

inserted into this document. If all other such related documents are not completed within 60 days of the execution of this Lease-Purchase Agreement, then this agreement shall be null, void and of no effect whatsoever.

IN TESTIMONY WHEREOF, witness the signatures of the parties hereto on the day and year first above written.

LESSOR: _____ Local Development Authority

BY: _____

TITLE: President

LESSEE: _____ COMPANY, INC.

BY: _____

TITLE: President

SAMPLE