

**TAX-EXEMPT EQUIPMENT LEASE/PURCHASE AGREEMENT
(ESCROW ACCOUNT & STREETLIGHTS – ARIZONA)**

This Tax-Exempt Equipment Lease/Purchase Agreement (this “*Agreement*”) dated as of November 30, 2017, and entered into between Banc of America Public Capital Corp, a Kansas corporation (“*Lessor*”), and the City of Avondale, Arizona, a city and a body corporate and politic existing under the laws of the State of Arizona (“*Lessee*”).

WITNESSETH:

WHEREAS, Lessee desires to lease, purchase and acquire from Lessor certain Equipment (as such term is defined herein), subject to the terms and conditions hereof;

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

NOW, THEREFORE, for good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

ARTICLE I

Section 1.01. Definitions. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

“*Acquisition Amount*” means \$1,864,946.00. The Acquisition Amount is the amount represented by Lessee to be sufficient, with other funds of Lessee (if any) that are legally available for the purpose, to pay Equipment Costs.

“*Acquisition Period*” means the period ending five (5) business days prior to May 30, 2019.

“*Assigned Rights*” has the meaning provided in Section 11.01.

“*Agreement*” means this Tax-Exempt Equipment Lease/Purchase Agreement, including the exhibits hereto, together with any amendments and modifications to this Agreement pursuant to Section 13.04.

“*Ameresco Agreement*” means that certain Energy Services Agreement dated as of November 20, 2017 between Ameresco, Inc. (“*Ameresco*”) and Lessee, including all exhibits and attachments thereto, as supplemented or amended.

“*Code*” means the Internal Revenue Code of 1986, as amended. Each reference to a Section of the Code herein shall be deemed to include the relevant United States Treasury Regulations proposed or in effect thereunder.

“*Collateral*” has the meaning provided in Section 6.02.

“*Commencement Date*” means the date when Lessee’s obligation to pay rent commences hereunder, which shall be the date on which the Acquisition Amount is deposited with the Escrow Agent. For the avoidance of doubt, the Commencement Date shall be November 30, 2017.

“*Contract Rate*” means the rate identified as such in the Payment Schedule.

“*Cushion Percentage*” means one percent (1%) of the Equipment financed under this Agreement equal to Equipment located at seventy-eight (78) Lessee Owned Streetlights.

“*Determination of Taxability*” has the meaning provided in Section 4.06.

“*Disbursement Request*” means the disbursement request attached to the Escrow Agreement as Schedule 1 and made a part thereof.

“*Disposed Equipment Collateral Value*” means an amount equal to the product obtained by multiplying (A) the Prepayment Price shown on the Payment Schedule for the Rental Payment Date next preceding the Partial Prepayment Date (or if the Partial Prepayment Date occurs prior to the first Rental Payment Date for which the Prepayment Price is shown, then the product obtained by multiplying the then aggregate unpaid principal component of Rental Payments outstanding on the Partial Prepayment Date times 102%) times (B) a fraction (i) the numerator of which equals the cost of the Equipment (including any costs of installation or other related costs financed or refinanced under this Agreement) located in or on such property, facilities and buildings subject to demolition, disposition, damage, destruction, casualty, title defect or condemnation event, as the case may be, and (ii) the denominator of which equals the total cost of the Equipment financed under this Agreement.

“*Disposed Equipment Prepayment Amount*” means, as of a Partial Prepayment Date, an amount equal to the greater of the Disposed Equipment Collateral Value or the Lost Energy Savings Amount.

“*Equipment*” means all property financed with the proceeds of this Agreement, including, but not limited to, the property listed in the Equipment Schedule and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Article V or Section 8.01. Whenever reference is made in this Agreement to Equipment, such reference shall be deemed to include all such replacements, repairs, restorations, modifications and improvements of or to such Equipment. Equipment shall not include any Refurbished Lessee Streetlights or Non-Lessee Owned Streetlights Equipment.

“*Equipment Costs*” means the total cost of the Equipment, including related costs such as freight, installation and sales and other taxes, capitalizable costs, and costs of issuance incurred in connection with the acquisition and/or financing of the Equipment.

“Equipment Schedule” means the equipment schedule attached hereto as Exhibit A and made a part hereof.

“Escrow Account” means the account established and held by the Escrow Agent pursuant to the Escrow Agreement.

“Escrow Agent” means the Escrow Agent identified in the Escrow Agreement, and its successors and assigns.

“Escrow Agreement” means the Escrow and Account Control Agreement in form and substance acceptable to and executed by Lessee, Lessor and the Escrow Agent, pursuant to which the Escrow Account is established and administered.

“Event of Default” means an Event of Default described in Section 12.01.

“Event of Non-appropriation” means the failure of Lessee’s governing body to appropriate or otherwise make available funds to pay Rental Payments under this Agreement following the Original Term or then current Renewal Term sufficient for the continued performance of this Agreement by Lessee.

“Event of Taxability” has the meaning provided in Section 4.06.

“Inoperable Component” has the meaning provided in Section 5.04.

“Lease Servicer” has the meaning provided in Section 11.01(a).

“Lease Term” means the Scheduled Term upon its expiration or as terminated as provided in Section 3.03.

“Lessee” means the entity referred to as Lessee in the first paragraph of this Agreement.

“Lessee Owned Streetlights” means any and all existing and future electric distribution poles, streetlights and related fixtures owned by Lessee and located within Maricopa County, Arizona, on, about and to which a portion of the Equipment is to be acquired, constructed, furnished and installed with amounts to be disbursed pursuant to the Escrow Agreement, but shall not include any Refurbished Lessee Streetlights or Non-Lessee Owned Streetlights Equipment.

“Lessee’s Contribution” means the \$1,102,500.00 paid by Lessee from legally available funds and not from the Acquisition Amount for the purposes provided in Section 2.01(n) hereof.

“Lessor” means (a) the entity referred to as Lessor in the first paragraph of this Agreement and its successors or (b) any assignee or transferee pursuant to Section 11.01 hereof of any right, title or interest of Lessor in and to this Agreement, the Equipment, the Rental Payments and other amounts due hereunder and the Escrow Account, but does not include any

entity solely by reason of that entity retaining or assuming any obligation of Lessor to perform hereunder.

“Lien” means any lien (statutory or otherwise), security interest, mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, preference, priority or other security or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing as the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

“Lost Energy Savings Amount” means, as of a Partial Prepayment Date, an amount equal to the product obtained by multiplying (A) the Prepayment Price shown on the Payment Schedule for the Rental Payment Date next preceding the applicable Partial Prepayment Date (or if the Partial Prepayment Date occurs prior to the first Rental Payment Date for which the Prepayment Price is shown, then the product obtained by multiplying the then aggregate unpaid principal component of Rental Payments outstanding on the Partial Prepayment Date times 102%) times (B) a fraction (i) the numerator of which equals the dollar amount of energy savings, which are allocable to the payment of Rental Payments for the remaining Scheduled Term after the Partial Prepayment Date, that would be eliminated as a result of the demolition or disposition of the building or property in which Equipment is installed and that Lessee intends to demolish or dispose of and (ii) the denominator of which is the total dollar amount of energy savings under the Ameresco Agreement that are allocable to the payment of Rental Payments for the remaining Scheduled Term after the Partial Prepayment Date.

“Material Adverse Change” means any change in Lessee’s creditworthiness that could have a material adverse effect on (i) the financial condition or operations of Lessee, or (ii) Lessee’s ability to perform its obligations under this Agreement.

“Memorandum of Understanding” means that certain Memorandum of Understanding dated as of November 30, 2017 between Ameresco and Lessor, amending and modifying the Ameresco Agreement.

“Original Term” means the period from the Commencement Date until the end of the fiscal year of Lessee in effect at such Commencement Date.

“Outstanding Balance” means the amount that is shown for each Rental Payment Date under the column titled “Outstanding Balance” on the Payment Schedule.

“Partial Prepayment Date” means a business day selected by Lessee that is the earlier of the next Rental Payment Date or 60 days after the casualty, title defect or condemnation event (or such other date approved in writing by Lessor), and shall be the date that Lessee exercises its right of partial prepayment following a partial casualty or condemnation event as provided in Section 10.01(b)(2).

“Payment Schedule” means the payment schedule attached hereto as Exhibit B and made a part hereof.

“Prepayment Price” means the amount that is shown for each Rental Payment Date under the column titled “Prepayment Price” on the Payment Schedule.

“Principal Component” means the amount that is shown for each Rental Payment Date under the column titled “Principal Portion” on the Payment Schedule.

“Real Property” means real estate where the Equipment is and/or will be located.

“Real Property Issue” has the meaning provided in Section 2.01(m).

“Renewal Terms” means the consecutive renewal terms of this Agreement, the first of which commences immediately after the end of the Original Term and each having a duration and term coextensive with each successive fiscal year of Lessee; *provided* that the final such Renewal Term shall commence on the first day of the last such fiscal year and end on the first business day after the last scheduled Rental Payment Date.

“Rental Payment Date” means the basic rental payments payable by Lessee on the Rental Payment Dates and in the amounts as specified in the Payment Schedule, consisting of a principal component and an interest component, and in all cases sufficient to repay the Principal Component and interest thereon at the applicable Contract Rate (or Taxable Rate if then in effect).

“Rental Payments” means the basic rental payments payable by Lessee on the Rental Payment Dates and in the amounts as specified in the Payment Schedule, consisting of a principal component and an interest component, and in all cases sufficient to repay such principal component and interest thereon at the applicable Contract Rate (or Taxable Rate if then in effect).

“Replaced Equipment” has the meaning provided in Section 8.01.

“Replacement Equipment” has the meaning provided in Section 8.01.

“Scheduled Term” means the Original Term and all expected Renewal Terms, with a final Renewal Term ending on June 1, 2028.

“Special Counsel” means Greenberg Traurig LLP, Phoenix, Arizona.

“State” means the State of Arizona.

“Surety Bond” means a payment or performance bond.

“Taxable Rate” means, for each day that the interest component of Rental Payments is taxable for Federal income tax purposes, an interest rate equal to the Contract Rate plus a rate sufficient such that the total interest to be paid on any Rental Payment Date would, after such interest was reduced by the amount of any Federal, state or local income tax (including any

interest, penalties or additions to tax) actually imposed thereon, equal the amount of interest otherwise due to Lessor.

“*Vendor*” means the manufacturer, installer or supplier of the Equipment, any energy services company or provider or any other person as well as the agents or dealers of the manufacturer, installer or supplier with whom Lessee arranged Lessee’s acquisition, installation, maintenance, operation, servicing, energy savings guarantee or performance of the Equipment, and includes without limitation, Ameresco, Inc.

“*Vendor Agreement*” means any contract entered into by Lessee and any Vendor for the acquisition, installation, maintenance, operation, performance and/or servicing of the Equipment, including all exhibits and attachments thereto, and includes without limitation, each energy savings guarantee or performance contract relating to the Equipment and the Ameresco Agreement.

ARTICLE II

Section 2.01. Representations and Covenants of Lessee. Lessee represents, covenants and warrants for the benefit of Lessor on the date hereof as follows:

(a) Lessee is city and a political subdivision of the State within the meaning of Section 103(c) of the Code, duly organized and existing under the constitution and laws of the State, with full power and authority to enter into this Agreement and the Escrow Agreement and the transactions contemplated hereby and thereby and to perform all of its obligations hereunder and thereunder.

(b) Lessee has duly authorized the execution and delivery of this Agreement and the Escrow Agreement by proper action of its governing body at a meeting duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement and the Escrow Agreement.

(c) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof. No Event of Non-appropriation has occurred or is threatened with respect to this Agreement.

(d) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a city and a body corporate and politic of the State.

(e) Lessee has complied with such procurement and public bidding requirements as may be applicable to this Agreement and the acquisition and installation by Lessee of the Equipment.

(f) During the Lease Term, the Equipment will be used by Lessee only for the purpose of performing essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority. Lessee does not intend to sell or otherwise dispose of the Equipment or any interest therein prior to the last Rental Payment (including all Renewal Terms) scheduled to be paid hereunder.

(g) Lessee has kept, and throughout the Lease Term shall keep, its books and records in accordance with generally accepted accounting principles and practices consistently applied by governmental entities, and shall deliver to Lessor (i) if not otherwise available to Lessor on the website of Lessee or available to Lessor through the MRSB's EMMA portal, annual audited financial statements (including (1) a balance sheet, (2) statement of revenues, expenses and changes in fund balances for budget and actual, (3) statement of cash flows, and (4) footnotes, schedules and attachments to the financial statements) within two hundred seventy (270) days after the end of its fiscal year, (ii) such other financial statements and information as Lessor may reasonably request, and (iii) upon Lessor's request (if not otherwise available to Lessor on the website of Lessee or available to Lessor through the MRSB's EMMA portal) its annual budget for any prior or current fiscal year or for the following fiscal year when approved but not later than thirty (30) days prior to the end of its current fiscal year. The financial statements described in this subsection (g)(1) shall be accompanied by an unqualified opinion of Lessee's independent auditor. In the event such financial statements are not accompanied by an unqualified opinion of Lessee's independent auditor, Lessee shall provide Lessor with an explanation for such failure and if Lessor receives such explanation within 3 business days of such breach, Lessor shall assess or take into consideration such explanation prior to exercising remedies in connection with a breach of the covenant in the immediately preceding sentence; *provided that* nothing herein shall preclude Lessor from exercising any remedies under Section 12.02 hereof upon the occurrence of an Event of Default. Credit information relating to Lessee may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns.

(h) Lessee has an immediate need for the Equipment and expects to make immediate use of the Equipment. Lessee's need for the Equipment is not temporary and Lessee does not expect the need for any item of the Equipment to diminish during the Lease Term.

(i) The payment of the Rental Payments or any portion thereof is not (under the terms of this Agreement or any underlying arrangement) directly or indirectly (x) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property; or (y) on a present value basis, derived from payments (whether or not to Lessee) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. Lessee shall not permit the federal government to guarantee any Rental Payments. The Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local governmental unit. No portion of the Acquisition Amount will be used,

directly or indirectly, to make or finance loans to any person other than Lessee. Lessee has not entered into any management or other service contract with respect to the use and operation of the Equipment. Lessee will use the Equipment as part of its program to construct, improve, install and equip its facilities with energy efficient solutions.

(j) There is no pending litigation, tax claim, proceeding or dispute that may adversely affect Lessee's financial condition or impairs its ability to perform its obligations under this Agreement or the Escrow Agreement. Lessee will, at its expense, maintain its legal existence in good standing and do any further act and execute, acknowledge, deliver, file, register and record any further documents Lessor may reasonably request (to the extent necessary or available pursuant to applicable law) in order to protect Lessee's pledge of the Collateral and Lessor's first priority Lien on and security interest in the Equipment and the Escrow Account and Lessor's rights and benefits under this Agreement and the Escrow Agreement. As of the date of execution and delivery of this Agreement, Lessee has not granted any Lien on the Collateral that would be senior in priority to, or *pari passu* with, the senior pledge of and first priority Lien on the Collateral granted to Lessor under Section 6.02 of this Agreement.

(k) With respect to the Real Property: (i) Lessee is the fee owner of the Real Property and has good and marketable title thereto, (ii) the Equipment will be located on improvements within, a right-of-way that is dedicated to public use for a period that is longer than the Scheduled Term and/or (iii) to the extent neither (i) or nor (ii) is true with respect to any portion of the Real Property ("*Non-Lessee Real Property*"), then Lessee has the right to enter onto said Non-Lessee Real Property for the purposes of returning the Equipment to Lessor and/or exercising remedies under this Agreement on behalf of Lessor, including, without limitation, the right to physically detach and remove the Equipment from the Non-Lessee Real Property and return the same to Lessor. Lessee has either (x) good and marketable title to the Lessee Owned Streetlights on, about and to which a portion of the Equipment is or will be located or (y) the right to install, operate, maintain and remove Equipment on, to and from the Lessee Owned Streetlights for a period that is longer than the Scheduled Term, and the right, upon Lessor's request, to physically detach and remove the Equipment from the Lessee Owned Streetlights and return the same to Lessor. Lessee covenants and agrees that throughout the Lease Term and prior to the payment of the last scheduled Rental Payment and the payment of all other amounts due hereunder, Lessee shall not, to the extent it may legally agree to do so, transfer title to or control over, or encumber the Real Property to another entity or devote any portion of the Real Property to another entity.

(l) Upon an Event of Default or Event or an Event of Non-Appropriation, Lessee shall at Lessor's direction enter onto the Real Property, including any Non-Lessee Real Property, and physically detach and remove the Equipment and return the same to Lessor pursuant to Section 3.03 hereof.

(m) To the best knowledge of the Lessee, there exists no mortgage, pledge, Lien, security interest, reverter, charge or other encumbrance of any nature whatsoever on or with respect to the Real Property or the Lessee Owned Streetlights that would

adversely affect Lessee's senior pledge of, or Lessor's Lien on and security interest in, the Equipment. In the event any Lien, encumbrance, reverter, restriction, asserted encumbrance, claim, dispute or other issue exists or arises with respect to the Lessee's legal title to or valid and marketable, beneficial use and enjoyment of the Real Property or impairs or adversely impacts Lessor's right, title or interest in the Equipment or any of Lessor's rights or remedies under this Agreement with respect to the Equipment, (each of the foregoing referred to as a "*Real Property Issue*"), Lessee will, to the extent it may legally agree to do so, take all steps necessary to promptly quiet, resolve and/or eliminate such Real Property Issue to the satisfaction of Lessor and ensure that Lessee and Lessor have adequate access to and use of (including beneficial use and enjoyment of) the Real Property for all purposes of the Equipment contemplated herein and Lessee shall, to the extent it may legally agree to do so, ensure that its fee interest in the Real Property and Lessor's right, title or interest in the Equipment and rights or remedies under this Agreement with respect to the Equipment remain free and clear of Real Property Issues.

(n) Lessee hereby covenants to pay from its own legally available funds the costs to acquire, install, retrofit and equip (x) the 181 new replacement poles relating to a corresponding number of streetlights owned by Lessee other than Lessee Owned Streetlights (the "*Refurbished Lessee Streetlights*") and (y) the light fixtures for 269 of Lessee's streetlight arms that are affixed to electric distribution poles owned by Arizona Public Service and Salt River Project, as applicable (the "*Non-Lessee Owned Streetlights Equipment*"). Lessee shall set aside at least \$1,000,000 from its own legally available funds (the "*Lessee's Contribution*") to pay the costs of acquiring, installing, retrofitting and equipping the Refurbished Lessee Streetlights and the Non-Lessee Owned Streetlights Equipment. Lessee hereby further acknowledges and agrees that the Escrow Agent is not authorized to disburse, and Lessor will not approve any disbursement for, any of the Acquisition Amount or funds from the Escrow Account for the Refurbished Lessee Streetlights or the Non-Lessee Owned Streetlights Equipment or relating to any Equipment or electric distribution poles, streetlights, related fixtures or other equipment to be attached to any Refurbished Lessee Streetlights. Lessee shall not be obligated to deposit the Lessee's Contribution in the Escrow Account or in any other account or fund under this Agreement or the Escrow Agreement, but shall pay all costs relating to the Refurbished Lessee Streetlights and the Non-Lessee Owned Streetlights Equipment from Lessee's Contribution directly to the related utility companies, suppliers, vendors and providers and shall provide such evidence of the dates, amounts and payees of such expenditures of the Lessee's Contribution as Lessor may reasonably request. The Equipment shall only be acquired, constructed, furnished and installed on Lessee Owned Streetlights.

(o) To the best of Lessee's knowledge, no lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been a party at any time has been terminated by Lessee as a result of insufficient funds being appropriated in any fiscal year. No lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been a party at any time during the past ten (10) years has been terminated by Lessee as a result of insufficient funds being appropriated in any fiscal year. No event has occurred which

would constitute a payment default or any other material event of default under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years.

(p) Lessee has obtained, or will have obtained prior to disbursement from the Escrow Account for the related Equipment, all necessary licenses, permits, approvals or other authorizations, if any, issued by any applicable governmental authority to acquire, construct, furnish and install the Equipment as contemplated by this Agreement.

(q) Lessee shall deliver to Lessor such information as Lessor shall request regarding the Vendor Agreement, including any information provided by Vendor to Lessee thereunder. Lessee shall comply with the terms of the Vendor Agreement and shall pay amounts required to be paid under the Vendor Agreement from legally available funds. Lessee shall not, without the prior written consent of the Lessor, terminate or materially amend the Vendor Agreement.

Section 2.02. Representations and Covenants of Lessor. Lessor represents, covenants and warrants for the benefit of Lessee on the date hereof as follows:

(a) Lessor is a limited liability company duly organized and validly existing and in good standing pursuant to the laws of the State of Delaware and is authorized to transact business in the State of Arizona.

(b) Lessor possesses all requisite authority, power, licenses, permits and franchises to conduct all business contemplated in this Agreement and to observe and perform its covenants, agreements and obligations pursuant to this Agreement.

(c) To the extent applicable, pursuant to the provisions of the Arizona Revised Statutes Section 41-4401, Lessor hereby warrants and certifies it is in material compliance with all federal immigration laws and regulations that relate to its employees and it is in material compliance with the E-verify requirements in accordance with Arizona Revised Statutes Section 23-214(A). Lessee retains the legal right to randomly inspect the papers and records of Lessor related to Lessor's personnel to ensure that Lessor is complying with the above-mentioned certification and warranty. Lessor covenants to keep its papers and records open for random inspection by Lessee during normal business hours. Lessor shall cooperate with the Lessee's random inspections including granting Lessee entry rights onto its property to perform the random inspections and waiving its rights to keep such papers and records confidential.

(d) Pursuant to Section 35-393 et seq., Arizona Revised Statutes, the Lessor hereby certifies it is not currently engaged in, and for the duration of this Agreement shall not engage in, a boycott of Israel. The term "boycott" has the meaning set forth in Section 35-393, Arizona Revised Statutes. If the Lessee determines that the Lessor's certification above is false or that it has breached such agreement, the Lessee may impose remedies as provided by law.

ARTICLE III

Section 3.01. Lease of Equipment. Subject to the terms and conditions of this Agreement, Lessor shall provide the Acquisition Amount to the Escrow Agent to be held and disbursed pursuant to the Escrow Agreement to pay the Equipment Costs. Lessor hereby demises and leases to Lessee, and Lessee hereby acquires, rents and leases from Lessor, the Equipment. The Lease Term may be continued, solely at the option of Lessee, at the end of the Original Term or any Renewal Term for the next succeeding Renewal Term up to the maximum Lease Term as set forth in the Payment Schedule. At the end of the Original Term and at the end of each Renewal Term until the maximum Lease Term has been completed, Lessee shall be deemed to have exercised its option to continue this Agreement for the next Renewal Term unless Lessee's governing body shall have terminated this Agreement pursuant to Section 3.03 or Section 10.01 by taking formal official action with respect thereto. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in the Payment Schedule.

Section 3.02. Continuation of Lease Term. Lessee intends, subject to Section 3.03, to continue the Lease Term through the Original Term and all Renewal Terms and to pay the Rental Payments due hereunder. Lessee affirms that sufficient funds are legally available for the current fiscal year, and Lessee reasonably believes that an amount sufficient to make all Rental Payments during the entire Scheduled Term can be obtained from legally available funds of Lessee. Lessee further intends to do all things lawfully within its power to obtain and maintain funds sufficient and available to discharge its obligation to make Rental Payments due hereunder and to exhaust all available reviews and appeals in the event any portion of the budget or appropriation request relating to Rental Payments is not approved. In accordance with applicable law, Lessee shall include the applicable Rental Payments in each budget or appropriation request submission as necessary to pay Rental Payments as and when due. Notwithstanding the foregoing, the decision whether or not to budget and appropriate funds or to extend the Lease Term for any Renewal Term is within the sole discretion of the governing body of Lessee.

Section 3.03. Nonappropriation. Lessee is obligated only to pay such Rental Payments as may lawfully be made during Lessee's then current fiscal year from funds budgeted and appropriated for that purpose. Should Lessee's governing body fail to budget, appropriate or otherwise make available funds to pay Rental Payments following the then current Original Term or Renewal Term, this Agreement shall be deemed terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination promptly after any decision to non-appropriate is made, but failure to give such notice shall not extend the term beyond such Original Term or Renewal Term. If this Agreement is terminated in accordance with this Section 3.03, Lessee agrees to cease use of the Equipment and peaceably remove and deliver to Lessor at Lessee's sole expense (from legally available funds) the Equipment at the location(s) to be specified by Lessor; *provided*, that Lessee shall pay month-to-month rent at the Contract Rate (or Taxable Rate, as applicable) for each month or part thereof that Lessee fails to return the Equipment hereunder pursuant to this Section 3.03.

Section 3.04. Conditions to Lessor's Performance. (a) As a prerequisite to the performance by Lessor of any of its obligations under this Agreement, Lessee shall deliver to Lessor, in form and substance satisfactory to Lessor, the following:

(i) An Escrow Agreement substantially in the form attached hereto as *Exhibit I*, satisfactory to Lessor and executed by Lessee and the Escrow Agent;

(ii) A certified copy of a resolution, ordinance or other official action of Lessee's governing body, substantially in the form attached hereto as Exhibit C-1, authorizing the execution and delivery of this Agreement and the Escrow Agreement and performance by Lessee of its obligations under this Agreement and the Escrow Agreement;

(iii) A Certificate completed and executed by the Clerk or Secretary or other comparable officer of Lessee, in substantially the form attached hereto as *Exhibit C-2*, completed to the satisfaction of Lessor;

(iv) Opinions of Special Counsel and general counsel to Lessee which in the aggregate opine on the matters set forth in the form attached hereto as Exhibit D and which are otherwise satisfactory to Lessor;

(v) Evidence of insurance as required by Section 7.02 hereof;

(vi) All documents, including financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate at that time pursuant to Section 6.02;

(vii) A waiver or waivers of interest in the Equipment, satisfactory to Lessor, from any mortgagee or any other party known to the Lessee as having an interest in the Real Property on which the Equipment will be located and/or known to the Lessee to be the landlord of the Real Property;

(viii) A fully executed copy of the Vendor Agreement for the Equipment (the form and content of which shall be satisfactory to Lessor) and a fully executed copy of the Memorandum of Understanding (the form and content of which shall be satisfactory to Lessor);

(ix) A copy of a fully completed and executed Form 8038-G;

(x) In the event that Lessee is to be reimbursed for expenditures that it has paid more than sixty (60) days prior to the Commencement Date, evidence of the adoption of a reimbursement resolution or other official action covering the reimbursement from tax exempt proceeds of expenditures incurred not more than sixty (60) days prior to the date of such resolution;

(xi) A certificate from an authorized officer of Lessee to the effect that (a) all financial statements and other material information delivered to the Lessor are correct and complete; and (b) from the date of the CAFR of the Lessee dated June 30, 2016, to the Commencement Date, no change has occurred in the Lessee's creditworthiness that could have a material adverse effect on the financial condition or operations of Lessee or the Lessee's ability to perform its obligations under this Agreement;

(xii) Copies of invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale (if title to Equipment has passed to Lessee), to the extent required by Section 5.01(b) hereof;

(xiii) Wire instructions for payments to be made to Vendors and Form W-9 from each such Vendor;

(xiv) A certified copy of any Surety Bond satisfying the conditions set forth in Section 7.04 hereof, or, at Lessor's sole discretion, such Surety Bonds may be provided after the Commencement Date, *provided however*, that no "Disbursement Request" pursuant to the Escrow Agreement shall be authorized by Lessor until such Surety Bonds satisfying the conditions set forth in Section 7.04 have been delivered to Lessor;

(xv) Fully executed copies of each Vendor Agreement; and

(xvi) Such other items reasonably required by Lessor.

(b) In addition to satisfaction of the conditions set forth in subsection (a) of this Section 3.04, the performance by Lessor of any of its obligations under this Agreement and the Escrow Agreement shall be subject to: (i) no Material Adverse Change shall have occurred since the date of this Agreement, (ii) no Event of Default or Event of Non-appropriation shall have occurred and then be continuing and (iii) no Event of Default or Event of Non-appropriation shall be threatened with respect to this Agreement.

(c) Subject to satisfaction of the foregoing, Lessor will deposit the Acquisition Amount with the Escrow Agent to be held and disbursed pursuant to the Escrow Agreement.

ARTICLE IV

Section 4.01. Rental Payments. Subject to Section 3.03 of this Agreement, Lessee shall promptly pay Rental Payments, in lawful money of the United States of America, to Lessor on the Rental Payment Dates and in such amounts as provided in the Payment Schedule. If any Rental Payment or other amount payable hereunder is not paid within ten (10) days of its due date, Lessee shall pay an administrative late charge of five percent (5%) of the amount not timely paid or the maximum amount permitted by law, whichever is less.

Section 4.02. Interest and Principal Components. A portion of each Rental Payment is paid as, and represents payment of, interest which begins to accrue as of the Commencement

Date, and the balance of each Rental Payment is paid as, and represents payment of, principal as more fully detailed on the Payment Schedule.

Section 4.03. Rental Payments to Constitute a Current Expense of Lessee. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments shall constitute a current expense of Lessee payable solely from its general fund or other funds that are legally available for that purpose and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of Lessee.

Section 4.04. Rental Payments to be Unconditional. Except as provided in Section 3.03 of this Agreement, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in this Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Equipment, any defects, malfunctions, breakdowns or infirmities in the Equipment or any accident, condemnation or unforeseen circumstances, disputes with the Vendor of any Equipment or Lessor, or failure of any Vendor to deliver any Equipment or otherwise perform any of its obligations under the Vendor Agreement for whatever reason, including bankruptcy, insolvency, reorganization or any similar event with respect to the Vendor under the Vendor Agreement, the failure or inability (for whatever reason) of Lessee to receive (or delay in receipt of) all or any portion of any guaranteed energy savings, subsidies or other financing with respect to the Equipment or any accident, condemnation or unforeseen circumstances.

Section 4.05. Tax Covenants. Lessee agrees that it will not take any action that would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for Federal income tax purposes, nor will it omit to take or cause to be taken, in timely manner, any action, which omission would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for Federal income tax purposes. In connection with the foregoing, Lessee hereby agrees that (a) so long as any Rental Payments remain unpaid, moneys on deposit in the Escrow Account shall not be used in a manner that will cause this Agreement to be classified as an "arbitrage bond" within the meaning of Section 148(a) of the Code; and (b) Lessee shall rebate, from funds legally available for the purpose, an amount equal to excess earnings on the Escrow Account to the Federal Government if required by, and in accordance with, Section 148(f) of the Code, and make the determinations and maintain the records required by the Code.

Section 4.06. Event of Taxability. Upon the occurrence of an Event of Taxability and receipt of a Determination of Taxability, the interest component of Rental Payments and any charge on Rental Payments or other amounts payable based on the Contract Rate shall have accrued and be payable at the Taxable Rate retroactive to the date as of which the interest component is determined by the Internal Revenue Service to be includible in the gross income of the owner or owners thereof for Federal income tax purposes (which retroactive date shall be the earliest date as of which the interest component of any Rental Payment is deemed includible in

the gross income of the owner or owners thereof for Federal income tax purposes, which may be earlier than the date of delivery of such determination by the Internal Revenue Service), and Lessee will, subject to Section 3.03, pay such additional amount as will result in the owner receiving the interest component at the Taxable Rate.

For purposes of this Section, “*Event of Taxability*” means the circumstance of the interest component of any Rental Payment paid or payable pursuant to this Agreement being or becoming includible for Federal income tax purposes in an owner’s gross income as a consequence of any act or omission by Lessee, including, but not limited to any breach by Lessee of any representation, warranty or covenant with respect to this Agreement or the related tax agreement and certificates. A “*Determination of Taxability*” shall consist of (a) the receipt by Lessor or Lessee of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency or other written correspondence which legally holds that the interest component of any Rental Payment is includable in the gross income of the owner thereof; (b) the issuance of any public or private ruling of the Internal Revenue Service that the interest component of any Rental Payment is includable in the gross income of the owner thereof; or (c) receipt by Lessor or Lessee of a written opinion of a nationally recognized firm of attorneys experienced in matters pertaining to the tax-exempt status of interest on obligations issued by states and their political subdivisions, selected by Lessor and acceptable to Lessee, to the effect that the interest component of any Rental Payment has become includable in the gross income of the owner thereof for Federal income tax purposes. For all purposes of this definition, an Event of Taxability shall be deemed to occur on the date as of which the interest component of any Rental Payment is deemed includable in the gross income of the owner thereof for Federal income tax purposes.

Section 4.07. Mandatory Prepayment. Any funds not applied to Equipment Costs and remaining in the Escrow Account on the earlier of (a) the expiration of the Acquisition Period and (b) the date on which Lessee delivers to the Escrow Agent the executed Disbursement Request to effect the final disbursement to pay (or reimburse) Equipment Costs from the Escrow Account shall be applied by Lessor on each successive Rental Payment Date thereafter to all or a portion of the Rental Payment due and owing in the succeeding twelve (12) months and any remaining amounts shall be applied by Lessor as prepayment to the remaining principal balance owing hereunder in the inverse order of Rental Payment Dates, at a prepayment price equal to 102% of the principal balance being prepaid *plus* accrued interest on such principal balance to the date of prepayment.

ARTICLE V

Section 5.01. Delivery, Installation and Acceptance of Equipment. (a) Lessee shall order the Equipment, cause the Equipment to be designed, acquired, constructed, delivered and installed in accordance with the Vendor Agreement, and at the locations specified in the Equipment Schedule and pay any and all delivery and installation costs and other Equipment Costs in connection therewith. Lessee shall conduct such inspection and testing of the Equipment as it deems necessary and appropriate in order to determine the Equipment’s capability and functionality in order to accept such Equipment. When the Equipment has been delivered and installed, Lessee shall promptly accept such Equipment and evidence said

acceptance by executing and delivering Disbursement Requests to Lessor pursuant to the Escrow Agreement for the purpose of effecting disbursements from the Escrow Account to pay (or reimburse) Equipment Costs for the Equipment so acquired and installed. In connection with the execution and delivery by Lessee to Lessor of the final Disbursement Request, Lessee shall deliver to Lessor a "Final Acceptance Certificate" in the form attached hereto as *Exhibit E*.

(b) Lessee shall deliver to Lessor together with each Disbursement Request invoices (and proof of payment of such invoices if Lessee seeks reimbursement for prior expenditures) and bills of sale or other evidence of title transfer to Lessee relating to each item of Equipment accepted by Lessee as evidenced by such Disbursement Request. Once approved, Lessor shall deliver such Disbursement Request to the Escrow Agent for disbursement from the Escrow Account in accordance with the Escrow Agreement.

Section 5.02. Quiet Enjoyment of Equipment. So long as Lessee is not in default hereunder, neither Lessor nor any entity claiming by, through or under Lessor, shall interfere with Lessee's quiet use and enjoyment of the Equipment during the Lease Term.

Section 5.03. Location; Inspection. Once installed, no item of the Equipment will be moved or relocated from the location specified for it in the Equipment Schedule without Lessor's prior written consent, which consent shall not be unreasonably withheld; *provided*, however, that no such consent is required in order for the Lessee to replace, repair or otherwise maintain the Equipment in accordance with Section 5.04 hereof. Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the property where the Equipment is located for the purpose of inspecting the Equipment; *provided, that*, so long as no Event of Default or Event of Non-Appropriation has occurred or is continuing, Lessor shall first arrange with Lessee as to the times during regular business hours that Lessor may inspect the Equipment.

Section 5.04. Use and Maintenance of the Equipment. Lessee shall not install, use, operate or maintain the Equipment (or cause the Equipment to be installed, used, operated or maintained) improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated hereby. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative, or judicial body, including, without limitation, all anti-money laundering laws and regulations; *provided* that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Equipment or its interest or rights hereunder.

Lessee shall (a) use, operate, protect, maintain, preserve, and keep the Equipment in good repair, condition, appearance and operating order, in the same condition as when received, ordinary wear and tear excepted; (b) use, operate, protect and maintain the Equipment (i) consistent with prudent industry practice (but in no event less than the extent to which Lessee maintains other similar equipment in the prudent management of its assets and properties) and (ii) in compliance with all applicable insurance policies, laws, ordinances, rules, regulations and manufacturer's recommended maintenance and repair procedures; (c) proceed promptly, at its expense, to protect its rights and exercise its remedies under any warranty then in effect with

respect to the Equipment; and (d) replace or rebuild any component of the Equipment that becomes permanently unfit for normal use or inoperable during the Lease Term (herein, the “*Inoperable Component*”) in order to keep the Equipment as a whole in good repair and working order during the Lease Term. Lessee shall promptly notify Lessor in writing if at any time (individually or in the aggregate) more than the Cushion Percentage of Equipment is reasonably expected within forty-five (45) days to be or become an Inoperable Component(s). Lessee shall promptly replace or rebuild the Inoperable Component in excess of the Cushion Percentage of Equipment with a similar component of comparable or improved make and model that has at least the equivalent value and utility of the Inoperable Component, a remaining useful life of no less than the remaining Scheduled Term and such replacement or rebuilt component shall be in good operating condition and shall automatically become part of the Equipment. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Equipment. In all cases, Lessee agrees to pay any costs necessary for the manufacturer to re-certify the Equipment as eligible for manufacturer’s maintenance upon the return of the Equipment to Lessor as provided for in Sections 3.03 and 12.02(b) of this Agreement.

Lessee shall not alter any item of Equipment or install any accessory, equipment or device on an item of Equipment if that would impair any applicable warranty, the originally intended function or the value of that Equipment. All repairs, parts, accessories, equipment and devices furnished, affixed to or installed on any Equipment, excluding temporary replacements, shall thereupon become subject to the pledge in favor of and Lien and security interest of Lessor.

ARTICLE VI

Section 6.01. Title to the Equipment. During the Lease Term, and so long as Lessee is not in default under Article XII hereof, all right, title and interest in and to each item of the Equipment shall be vested in Lessee immediately upon its acceptance of each item of Equipment, subject to the terms and conditions hereof. Lessee shall at all times protect and defend, at its own cost and expense, its title in and to the Equipment and its senior pledge to Lessor of the Collateral and Lessor’s first priority security interest constituting a first Lien on the Collateral from and against all claims, Liens and legal processes of its creditors, and keep all Equipment and the Collateral free and clear of all such claims, Liens and processes. Lessee will, at its expense, do any further act and execute, acknowledge, deliver, file, register and record any further documents the Lessor may reasonably request in order to protect its senior pledge to Lessor of the Collateral and Lessor’s first priority security interest in the Collateral. Upon the occurrence of an Event of Default or upon termination of this Agreement pursuant to Section 3.03 hereof, full and unencumbered legal title to the Equipment shall, at Lessor’s option, pass to Lessor, and Lessee shall have no further interest therein. In addition, upon the occurrence of such an Event of Default or such termination, Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of such legal title to Lessor and the termination of Lessee’s interest therein, and upon request by Lessor shall deliver possession of the Equipment to Lessor in accordance with Section 3.03 or 12.02 of this Agreement, as applicable. Upon payment of all amounts due and owing hereunder by Lessee pursuant to Section 10.01 hereof, Lessor’s interests in the Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the termination of Lessor’s interests in the Equipment.

Section 6.02. Security Interest. As additional security for the payment and performance of all of Lessee's obligations hereunder, Lessee hereby pledges to Lessor on a senior basis and grants to Lessor a first priority security interest constituting a first Lien on (a) the Equipment together with all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to this Agreement and all accessories, equipment, parts and appurtenances appertaining or attached to any of the Equipment, and all substitutions, renewals, or replacements of and additions, improvements, accessions and accumulations to any and all of such Equipment, together with all the rents, issues, income, profits, proceeds and avails therefrom, (b) moneys and investments held from time to time in the Escrow Account, (c) all accounts, chattel paper, deposit accounts, documents, instruments, general intangibles and investment property (including any securities accounts and security entitlements relating thereto) evidenced by or arising out of or otherwise relating to the foregoing collateral described in clauses (a) and (b) above, as such terms are commonly defined in Article 9 of the Arizona Uniform Commercial Code (*provided that* to the extent Article 9 of the Arizona Uniform Commercial Code does not apply to Lessee, such UCC definitions are used to illustrate the categories of collateral pledged hereunder and are not intended to imply that Lessee is subject to Article 9 of the Arizona Uniform Commercial Code) and (d) any and all proceeds of any of the foregoing (collectively, the "*Collateral*"). The Collateral so pledged by Lessee to Lessor under this Agreement shall immediately be subject to the Lien and pledge of this Agreement without any physical delivery thereof or further act. Lessee authorizes Lessor to file (and Lessee agrees to execute, if applicable) such notices of assignment, chattel mortgages, financing statements and other documents, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain Lessee's senior pledge of the Collateral to Lessor and Lessor's first priority security interest in the Collateral, including, without limitation, such financing statements with respect to personal property and fixtures, to the extent it may legally agree to do so, under Article 9 of the Uniform Commercial Code in effect in the State.

Section 6.03. Personal Property, No Encumbrances. Lessee agrees that the Equipment is deemed to be and will remain personal property, and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Lessee shall not create, incur, assume or permit to exist (to the extent it may legally create, incur, assume or permit) any mortgage, pledge, Lien, security interest, charge or other encumbrance of any nature whatsoever on any of the real estate where the Equipment is or will be located or enter into any agreement to sell or assign or enter into any sale/leaseback arrangement of such real estate (each a "*Real Property Encumbrance*") without the prior written consent of Lessor; *provided*, that if Lessor or its assigns is furnished with a waiver of interest in the Equipment acceptable to Lessor or its assigns in its discretion from any party taking an interest in any such real estate prior to such interest taking effect, such consent shall not be unreasonably withheld; *provided further*, that if individually and in the aggregate such Real Property Encumbrance(s) do not and will not affect more than the Cushion Percentage of Equipment, such consent shall not be unreasonably withheld.

ARTICLE VII

Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee shall keep the Equipment free of all levies, Liens, and encumbrances except those created by this Agreement. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and that the Equipment will therefore be exempt from all property taxes. If the use, possession, sale, transfer or acquisition of any Equipment is nevertheless determined to be subject to taxation, Lessee shall pay when due all taxes, special assessments and other charges (governmental or otherwise) of any kind that are at any time lawfully assessed or levied against or with respect to the Equipment, the Rental Payments or any part of either thereof, or which become due during the Lease Term, whether assessed against Lessee or Lessor. Lessee shall pay all utility and other charges incurred in the operation, use and maintenance of the Equipment. Lessee shall pay such taxes, assessments or charges as the same may become due; *provided* that, with respect to any such taxes, assessments or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the Lease Term. Lessor will not claim ownership of the Equipment under this Agreement for the purposes of any tax credits, benefits or deductions with respect to such Equipment.

Section 7.02. Insurance. Lessee shall during the Lease Term maintain or cause to be maintained (a) casualty insurance naming Lessor and its assigns as loss payee and additional insured and insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, and any other risks reasonably required by Lessor, in an amount at least equal to the greater of (i) the then applicable Prepayment Price or (ii) the replacement cost of the Equipment; (b) liability insurance naming Lessor and its assigns as additional insured that protects Lessor from liability with limits of at least \$1,000,000 per occurrence/\$3,000,000 in the aggregate for bodily injury and property damage coverage, and excess liability umbrella coverage of at least \$5,000,000, and in all events under clauses (a) and (b) above issued in form and amount satisfactory to Lessor and by an insurance company that is authorized to do business in the State and having a financial strength rating by A.M. Best Company of "A-" or better; and (c) worker's compensation coverage as required by the laws of the State. Notwithstanding the foregoing, Lessee may self-insure against the risks described in clauses (a) and/or (b) through a government pooling arrangement, self-funded loss reserves, risk retention program or other self-insurance program, in each case with Lessor's prior written consent (which Lessor may grant, withhold or deny in its sole discretion) and *provided* that Lessee has delivered to Lessor such information as Lessor may request with respect to the adequacy of such self-insurance to cover the risks proposed to be self-insured and otherwise in form and substance acceptable to Lessor. In the event Lessee is permitted, at Lessor's sole discretion, to self-insure as provided in this Section 7.02, Lessee shall provide to Lessor a self-insurance letter in substantially the form attached hereto as *Exhibit F*. Lessee shall furnish to Lessor evidence of such insurance or self-insurance coverage throughout the Lease Term. Lessee shall not cancel or modify such insurance or self-insurance coverage in any way that would affect the interests of Lessor without first giving written notice thereof to Lessor at least thirty (30) days in advance of such cancellation or modification.

Section 7.03. Risk of Loss. Whether or not covered by insurance or self-insurance, Lessee hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Equipment from any cause whatsoever, and no such loss of or damage to or liability arising from the Equipment shall relieve Lessee of the obligation to make the Rental Payments or to perform any other obligation under this Agreement. Whether or not covered by insurance or self-insurance, Lessee hereby agrees to reimburse Lessor (to the fullest extent permitted by applicable law, but only from legally available funds) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Lessor, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into this Agreement or any of the transactions contemplated hereby, (b) the ordering, acquisition, ownership use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Equipment, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person, and/or (d) the breach of any covenant of Lessee under or in connection with this Agreement or any material misrepresentation provided by Lessee under or in connection with this Agreement. The provisions of this Section 7.03 shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

Section 7.04. Surety Bonds; Lessee to Pursue Remedies Against Contractors and Sub-Contractors and Their Sureties. Lessee shall secure from each Vendor directly employed by Lessee in connection with the acquisition, construction, installation, improvement or equipping of the Equipment, a Surety Bond executed by a surety company authorized to do business in the State, having a financial strength rating by A.M. Best Company of "A-" or better, and otherwise satisfactory to Lessor and naming Lessor as a co-obligee in a sum equal to the entire amount to become payable under each Vendor Agreement. Each Surety Bond shall be conditioned on the completion of the work in accordance with the plans and specifications for the Equipment and upon payment of all claims of subcontractors and suppliers. Lessee shall cause the surety company to add Lessor as a co-obligee on each Surety Bond, and shall deliver a certified copy of each Surety Bond to Lessor promptly upon receipt thereof by Lessee. Any proceeds from a Surety Bond shall be applied in accordance with such Surety Bond to the payment and performance of the Vendor's obligations in accordance with the related Vendor Agreement and, if for whatever reason such proceeds are not so applied, then first to amounts due Lessor under this Agreement, and any remaining amounts shall be payable to Lessee.

In the event of a material default of any Vendor under any Vendor Agreement in connection with the acquisition, construction, maintenance and/or servicing of the Equipment or in the event of a material breach of warranty with respect to any material workmanship or performance guaranty with respect to the Equipment, Lessee will promptly proceed to exhaust its remedies against the Vendor in default. Lessee shall advise Lessor of the steps it intends to take in connection with any such default. Any amounts received by Lessee in respect of damages, refunds and adjustments or otherwise in connection with the foregoing shall be paid to Lessor and applied against Lessee's obligations hereunder.

Section 7.05. Advances. In the event Lessee shall fail to keep the Equipment in good repair and working order or shall fail to maintain any insurance required by Section 7.02 hereof, Lessor may, but shall be under no obligation to, maintain and repair the Equipment or obtain and maintain any such insurance coverages, as the case may be, and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the then current Original Term or Renewal Term and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the date advanced until paid at a rate equal to the Contract Rate (or the Taxable Rate if then in effect) *plus* five percent (5%) per annum or the maximum amount permitted by law, whichever is less.

ARTICLE VIII

Section 8.01. Damage, Destruction and Condemnation. If, prior to the termination of the Lease Term, (a) the Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, (i) Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment or such part thereof and any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee or (ii) Lessee shall exercise its option to prepay the obligations hereunder in accordance with Section 10.01(b) hereof.

If Lessee elects to replace any item of the Equipment (the “*Replaced Equipment*”) pursuant to this Section 8.01, the replacement equipment (the “*Replacement Equipment*”) shall be new or of a quality, type, utility and condition at least as good as the Replaced Equipment, shall be of equal or greater value than the Replaced Equipment and shall provide at least the same level of energy and/or operational savings expected in the aggregate from the Replaced Equipment prior to such casualty, destruction or condemnation. Lessee shall pledge to Lessor on a senior basis and grant to Lessor a first priority security interest in any such Replacement Equipment. Lessee shall represent, warrant and covenant to Lessor that each item of Replacement Equipment is free and clear of all claims, Liens, security interests and encumbrances, excepting only those Liens created by or through Lessor, and shall provide to Lessor any and all documents as Lessor may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lessor evidencing Lessee’s senior pledge to Lessor and Lessor’s first priority security interest in the Replacement Equipment. Lessor and Lessee hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute “*Equipment*” for purposes of this Agreement. Lessee shall complete the documentation of Replacement Equipment on or before the next Rental Payment Date after the occurrence of a casualty event, or be required to exercise its option to prepay the obligations hereunder with respect to Equipment subject to casualty, destruction or condemnation in accordance with Section 10.01(b) hereof.

For purposes of this Article, the term “*Net Proceeds*” shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award or sale under threat of

condemnation after deducting all expenses, including attorneys' fees, incurred in the collection thereof.

Section 8.02. Insufficiency of Net Proceeds. (a) If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 8.01, Lessee shall either (i) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (ii) pay or cause to be paid to Lessor the amount of the then applicable Prepayment Price, and, upon such payment, the Lease Term shall terminate and Lessor's security interest in the Equipment shall terminate as provided in Section 6.01 hereof.

(b) If (x) a portion (and not all or substantially all) of the Equipment under this Agreement is destroyed, or is damaged by fire or other casualty or title to, or the temporary use of, a portion (and not all or substantially all) of the Equipment under this Agreement shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, and (y) the Net Proceeds are insufficient to pay in full the cost of any replacement, repair, restoration, modification or improvement referred to in Section 8.01, then, in lieu of paying the full applicable Prepayment Price as described in Section 8.02(a)(ii) above, Lessee shall have the option of partially prepaying Rental Payments pursuant to Section 10.01(b)(2) hereof.

(c) The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after prepaying Rental Payments and purchasing such Equipment shall be retained by Lessee. If Lessee shall make any payments pursuant to this Section 8.02, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article IV.

ARTICLE IX

Section 9.01. Disclaimer of Warranties. Lessor makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of any of the Equipment, or any other warranty or representation, express or implied, with respect thereto and, as to Lessor, Lessee's design, acquisition, construction, installation and equipping of the Equipment shall be on an "as is" basis. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, the Equipment or the existence, furnishing, functioning or Lessee's use of any item, product or service provided for in this Agreement.

Section 9.02. Vendor's Agreements; Warranties. Lessee covenants that it shall not in any material respect amend, modify, rescind or alter any Vendor Agreement without the prior written consent of Lessor. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default under this Agreement, to assert from time to time whatever claims and rights (including without limitation warranties) relating to the Equipment that Lessor may have against Vendor. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the applicable Vendor of the

Equipment, and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor under this Agreement, including the right to receive full and timely Rental Payments and other payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties relating to any of the Equipment.

ARTICLE X

Section 10.01. Prepayment Option. In addition to the prepayment provided by Section 4.07 hereof, Lessee shall have the option to prepay its obligations hereunder, at the following times and upon the following terms:

(a) *Optional Prepayment.* From and after the date specified (if any) in the Payment Schedule (the “*Prepayment Option Commencement Date*”), on the Rental Payment Dates specified in the Payment Schedule, upon not less than thirty (30) days’ prior written notice, and upon payment in full of the sum of (i) the Rental Payments then due and all other amounts then owing hereunder *plus* (ii) the then applicable Prepayment Price, which shall include a prepayment premium on the unpaid Outstanding Balance as set forth in the Payment Schedule *plus* (iii) all other amounts then owing hereunder; or

(b) *Casualty or Condemnation Prepayment.* (1) In the event of substantial damage to or destruction, title defect or condemnation of all or substantially all of the Equipment, on the day specified in Lessee’s notice to Lessor of its exercise of the prepayment option (which shall be the earlier of the next applicable Rental Payment Date or sixty (60) calendar days after the casualty title defect or condemnation event) upon payment in full to Lessor (A) in the event such prepayment occurs on a Rental Payment Date, the sum of (i) all Rental Payments then due *plus* (ii) the then applicable Prepayment Price, which shall include a prepayment premium on the unpaid Outstanding Balance as set forth in the Payment Schedule *plus* (iii) all other amounts then owing hereunder or (B) in the event such prepayment occurs on a date other than a Rental Payment Date, the sum of (i) of the applicable Prepayment Price shown on the Payment Schedule for the Rental Payment Date immediately preceding the prepayment date (or if such prepayment date occurs prior to the first Rental Payment Date, the earliest Prepayment Price shown on the Payment Schedule), which shall include a prepayment premium on the unpaid Outstanding Balance as set forth in the Payment Schedule *plus* (ii) accrued interest at the Contract Rate (or Taxable Rate, as applicable) on the Outstanding Balance as of the Rental Payment Date immediately preceding the applicable prepayment date from such Rental Payment Date (or if such prepayment date occurs prior to the first Rental Payment Date, the Commencement Date) to such prepayment date *plus* (iii) all other amounts then owing hereunder; or

(2) If (x) a portion (and not all or substantially all) of the Equipment is destroyed, or is damaged by fire or other casualty or title to, or the temporary use of, a portion (and not all or substantially all) of the Equipment shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, and (y) the Net

Proceeds are insufficient to pay in full the cost of any replacement, repair, restoration, modification or improvement referred to in Section 8.01, then, in lieu of paying the full applicable Prepayment Price for the Equipment as described in Section 10.01(b)(1) above, Lessee shall have the option of partially prepaying the Rental Payments by paying or causing to be paid to Lessor on the Partial Prepayment Date the principal portion of Rental Payments that are then unpaid under this Agreement in the amount equal to the Disposed Equipment Prepayment Amount *plus* accrued interest on such amount from the Rental Payment Date next preceding the applicable Partial Prepayment Date to such date *plus* all other amounts then due and owing by Lessee under this Agreement; *provided* that the annual energy savings to be generated by the remaining Equipment (after giving effect to such partial prepayment) for the remainder of the Scheduled Term will, as certified in writing to Lessor prior to the Partial Prepayment Date by a Vendor selected by Lessee and acceptable to Lessor, be equal to or greater than the sum of (A) annual Rental Payments to become due under this Agreement (after giving effect to such partial prepayment) that correspond to the related energy savings year for the remaining Scheduled Term plus (B) the annual amount of costs and expenses to be paid to a Vendor under the related Vendor Agreement to measure and verify annual energy savings for each corresponding energy savings year during the remaining Scheduled Term. If a Partial Prepayment Date is also a Rental Payment Date, Lessee shall also pay any Rental Payment due as of such date and all other amounts then due and owing by Lessee hereunder. Upon Lessor's receipt of the Disposed Equipment Prepayment Amount on the applicable Partial Prepayment Date plus all other amounts then due and owing by Lessee under this Section 10.01(b)(2), Lessor shall adjust the Rental Payments to be paid by Lessee from and after the applicable Partial Prepayment Date to reflect credit for payment of the Disposed Equipment Prepayment Amount as directed by Lessor either in the inverse order of the applicable Rental Payment Dates or on a pro rata basis so that the annual energy savings to be generated by the remaining Equipment (after giving effect to the application of such partial prepayment to remaining Rental Payments on an inverse or pro rata basis) for the remainder of the Scheduled Term will satisfy the proviso set forth above in this Section 10.01(b)(2); or

(c) *Payment in Full.* Upon the expiration of the Lease Term, upon payment in full of all Rental Payments then due and all other amounts then owing hereunder, and the payment of \$1.00 to Lessor.

In connection with any prepayment pursuant to subsections (a) or (b) of this Section 10.01, Lessee shall pay the prepayment premium and accrued interest portion of Rental Payments accrued to the prepayment date on such principal portion to be prepaid from funds legally available to Lessee for that purpose, but not from the Acquisition Amount.

After (i) payment of the applicable Prepayment Price and all other amounts then owing hereunder in accordance with Section 10.01(a) or (b)(1) of this Agreement or (ii) upon the expiration of the Lease Term, payment in full of all Rental Payments then due and all other amounts then owing hereunder in accordance with Section 10.01(c) of this Agreement, Lessor's interests in and to the Equipment will be terminated and Lessee will own such Equipment free and clear of Lessor's interests in such Equipment and Lessor shall execute and deliver to Lessee

such documents as Lessee may request the evidence of termination of Lessor's interest in the Equipment.

ARTICLE XI

Section 11.01. Assignment by Lessor. (a) Lessor's right, title and interest in and to this Agreement, the Rental Payments and any other amounts payable by Lessee hereunder, the Escrow Agreement, the pledge of and its security interest in the Collateral (collectively, the "Assigned Rights") may be assigned and reassigned by Lessor at any time in whole or in part to one or more assignees or sub-assignees, without the necessity of obtaining the consent of Lessee; *provided*, that any such assignment, transfer or conveyance (i) shall be made only to investors each of whom Lessor reasonably believes is a "qualified institutional buyer" as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, or an "accredited investor" as defined in Section 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, as amended, and in either case is purchasing the Assigned Rights (or any interest therein) for its own account with no present intention to resell or distribute such Assigned Rights (or interest therein), subject to each investor's right at any time to dispose of the Assigned Rights (or any interest therein) as it determines to be in its best interests, (ii) shall not result in more than 35 owners of the Assigned Rights or the creation of any interest in the Assigned Rights in an aggregate principal component that is less than \$100,000 and (iii) shall not require Lessee to make Rental Payments, to send notices or otherwise to deal with respect to matters arising hereunder or under the Escrow Agreement with or to more than one Lease Servicer (as such term is defined below), and any trust agreement, participation agreement or custodial agreement under which multiple ownership interests in the Assigned Rights are created shall provide the method by which the owners of such interests shall establish the rights and duties of a single entity, trustee, owner, servicer or other fiduciary or agent acting on behalf of all of the assignees (herein referred to as the "Lease Servicer") to act on their behalf with respect to the Assigned Rights, including with respect to the exercise of rights and remedies of Lessor on behalf of such owners upon the occurrence of an Event of Default or an Event of Non-appropriation under this Agreement. Lessor and Lessee hereby acknowledge and agree that the restrictions and limitations on transfer as provided in this Section 11.01 shall apply to the first and subsequent assignees and sub-assignees of any of the Assigned Rights (or any interest therein).

(b) Unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance permitted by this Section 11.01 shall be effective as against Lessee until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided*, that if such assignment is made to a bank, trust company as trustee or paying agent for owners of certificates of participation, participation interests, trust certificates or partnership interests with respect to the Rental Payments payable under this Agreement, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank, trust company or other entity that acts as the Lease Servicer. Notices of assignment provided pursuant to this Section 11.01(b) shall contain a confirmation of compliance with the transfer requirements imposed by Section 11.01(a) hereof. During the Lease Term, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. Lessee shall retain all

such notices as a register of all assignees and shall make all payments to the assignee or assignees or Lease Servicer last designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor or a Vendor. Assignments in part may include without limitation assignment of all of the pledge of and Lessor's security interest in and to the Equipment and all rights in, to and under this Agreement related to such Equipment, and all of the pledge of and Lessor's security interest in and to the Escrow Account, or all rights in, to and under the Escrow Agreement.

(c) If Lessor notifies Lessee of its intent to assign this Agreement, Lessee agrees that it shall execute and deliver to Lessor a Notice and Acknowledgement of Assignment substantially in the form of Exhibit H attached hereto within five (5) business days after its receipt of such request.

Section 11.02. Assignment and Subleasing by Lessee. **None of Lessee's right, title, and interest in, to and under this Agreement or any portion of the Equipment, the Escrow Agreement, the Escrow Account may be assigned, encumbered or subleased by Lessee for any reason, and any purported assignment, encumbrance or sublease without Lessor's prior written consent shall be null and void.**

ARTICLE XII

Section 12.01. Events of Default Defined. Any of the following events shall constitute an "Event of Default" under this Agreement:

(a) Failure by Lessee to (i) pay any Rental Payment or other payment required to be paid under this Agreement within ten (10) days of the date when due as specified herein or (ii) maintain insurance as required herein, or (iii) observe and perform any covenant, condition or agreement on its part to be observed or performed under Section 2.01(n), 6.01 or 6.02 hereof;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement contained in this Agreement on its part to be observed or performed, other than as referred to in subparagraph (a) above and (g) below, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; *provided* that, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

(c) Any statement, representation or warranty made by Lessee in or pursuant to this Agreement or its execution, delivery or performance shall prove to have been false, incorrect, misleading, or breached in any material respect on the date when made;

(d) Any payment default or any other material default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit

under which Lessee is an obligor, if such default (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by Lessor or any affiliate of Lessor; or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregated amount in excess of \$1,000,000 and such default results in acceleration of any of the amounts payable thereunder;

(e) Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization, liquidation, readjustment, moratorium or insolvency proceeding;

(f) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator for Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of thirty (30) consecutive days; or

(g) Lessee fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under Section 2.01(k) for a period of five (5) consecutive days which affects more than the Cushion Percentage of the Equipment.

Section 12.02. Remedies on Default. Whenever any Event of Default exists, Lessor shall have the right, at its sole option without any further demand or notice except as provided herein, to take one or any combination of the following remedial steps *provided* that the exercise of any such remedies respecting any such Event of Default shall not relieve Lessee of any other liabilities hereunder or with respect to the Equipment:

(a) By written notice to Lessee, Lessor may declare all Rental Payments payable by Lessee and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term to be immediately due and payable;

(b) With or without terminating the Lease Term, Lessor may enter the premises where the Equipment is located and retake possession of such Equipment or require Lessee at Lessee's expense to promptly return any or all of such Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease such Equipment or, for the account of Lessee, sublease such Equipment, continuing to hold Lessee liable, but solely from legally available funds, for the difference between (i) the Rental Payments payable by Lessee and other amounts hereunder that are payable by Lessee to the end of the then current Original Term or Renewal Term, as the case may be, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lessor in exercising its remedies hereunder ,

including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing such Equipment and all brokerage, auctioneer's and attorney's fees), subject, however, to the provisions of Section 3.03 of this Agreement;

(c) Lessor may terminate the Escrow Agreement and apply any proceeds in the Escrow Account to the Rental Payments scheduled to be paid hereunder; and/or

(d) Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Agreement or the Escrow Agreement or as a secured party in any or all of the Equipment or the Escrow Account.

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

ARTICLE XIII

Section 13.01. Notices. All notices, certificates or other communications under this Agreement shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, or delivered by overnight courier, or sent by facsimile transmission (with electronic confirmation) to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party) and to any assignee at its address as it appears on the registration books maintained by Lessee.

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

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

Section 13.04. Amendments, Changes and Modifications. This Agreement may only be amended by Lessor and Lessee in writing.

Section 13.05. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.06. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 13.07. Captions. The captions or headings in this Agreement are for convenience only and in no way, define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 13.08. Transactional Conflicts of Interest. As required by the provisions of the Arizona Revised Statutes Section 38-511, notice is hereby given that Lessee may, within three (3) years of the execution hereof, cancel this Agreement without penalty or further obligations, if any person significantly involved in initiating, negotiation, securing, drafting or creating this Agreement on behalf of the Lessee is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent of the Lessor or a consultant to the Lessor with respect to the subject matter of this Agreement. The cancellation shall be effective when written notice from the Lessee is received the Lessor unless the notice specifies a later time.

Section 13.09. Entire Agreement. The parties agree that this Agreement constitutes the final and entire agreement between the parties superseding all conflicting terms or provisions of any prior proposals, term sheets, solicitation documents, requests for proposals, award notices, approval letters or any other agreements or understandings between the parties.

[Remainder of Page Intentionally Left Blank]

[Signature Page Follows]

IN WITNESS WHEREOF, Lessor and Lessee have caused this Tax-Exempt Equipment Lease/Purchase Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

LESSOR:

LESSEE:

BANC OF AMERICA PUBLIC CAPITAL CORP

CITY OF AVONDALE, ARIZONA

11333 McCormick Road
Hunt Valley II
M/C MD5-032-07-05
Hunt Valley, MD 21031
Attention: Contract Administration
Fax No.: (443) 541-3057

11465 West Civic Center Drive
Avondale, AZ 85323
Attention: Steven Montague, Finance and
Budget Department
Email: smontague@avondale.org
Telephone No.: (623) 333-2013
Fax No.: (623) 333-0200.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

(Seal)

Attest:

By: _____
Name: _____
Title: _____

LIST OF EXHIBITS

EXHIBIT A	—	Equipment Schedule
EXHIBIT B	—	Payment Schedule
EXHIBIT C-1	—	Form of Authorizing Resolution
EXHIBIT C-2	—	Form of Incumbency and Authorization Certificate
EXHIBIT D	—	Form of Opinion of Lessee's Counsel
EXHIBIT E	—	Form of Final Acceptance Certificate
EXHIBIT F	—	Form of Self-Insurance Certificate
EXHIBIT G	—	Reserved
EXHIBIT H	—	Form of Notice and Acknowledgement of Assignment
EXHIBIT I	—	Form of Escrow and Account Control Agreement

EXHIBIT A

EQUIPMENT SCHEDULE

Location of Equipment:

Equipment Description (Scope of Work):

EXHIBIT B**PAYMENT SCHEDULE**

RENTAL PAYMENT DATE	RENTAL PAYMENT AMOUNT	INTEREST PORTION	PRINCIPAL PORTION	OUTSTANDING BALANCE	PREPAYMENT PRICE (INCLUDING PREPAYMENT PREMIUM, IF APPLICABLE)
12/1/18	\$109,503.96	\$45,070.04	\$64,433.92	\$1,800,512.08	\$1,836,522.32
6/1/19	\$109,503.96	\$21,696.17	\$87,807.79	\$1,712,704.29	\$1,746,958.38
12/1/19	\$94,838.46	\$20,638.09	\$74,200.37	\$1,638,503.92	\$1,671,274.00
6/1/20	\$94,838.46	\$19,743.97	\$75,094.49	\$1,563,409.43	\$1,594,677.62
12/1/20	\$97,652.96	\$18,839.08	\$78,813.88	\$1,484,595.55	\$1,514,287.46
6/1/21	\$97,652.96	\$17,889.38	\$79,763.58	\$1,404,831.97	\$1,432,928.61
12/1/21	\$100,551.42	\$16,928.22	\$83,623.20	\$1,321,208.77	\$1,347,632.95
6/1/22	\$100,551.42	\$15,920.57	\$84,630.85	\$1,236,577.92	\$1,261,309.48
12/1/22	\$103,535.02	\$14,900.76	\$88,634.26	\$1,147,943.66	\$1,170,902.53
6/1/23	\$103,535.02	\$13,832.72	\$89,702.30	\$1,058,241.36	\$1,079,406.19
12/1/23	\$106,607.05	\$12,751.81	\$93,855.24	\$964,386.12	\$983,673.84
6/1/24	\$106,607.05	\$11,620.85	\$94,986.20	\$869,399.92	\$886,787.92
12/1/24	\$109,769.77	\$10,476.27	\$99,293.50	\$770,106.42	\$785,508.55
6/1/25	\$109,769.77	\$9,279.78	\$100,489.99	\$669,616.43	\$683,008.76
12/1/25	\$113,025.96	\$8,068.88	\$104,957.08	\$564,659.35	\$575,952.54
6/1/26	\$113,025.96	\$6,804.14	\$106,221.82	\$458,437.53	\$467,606.28
12/1/26	\$116,377.88	\$5,524.17	\$110,853.71	\$347,583.82	\$354,535.50
6/1/27	\$116,377.88	\$4,188.38	\$112,189.50	\$235,394.32	\$240,102.21
12/1/27	\$119,828.78	\$2,836.50	\$116,992.28	\$118,402.04	\$120,770.08
6/1/28	\$119,828.78	\$1,426.74	\$118,402.04	(\$0.00)	(\$0.00)
TOTAL	<u>\$2,143,382.52</u>	<u>\$278,436.52</u>	<u>\$1,864,946.00</u>		

Contract Rate; Taxable Rate. The Contract Rate is 2.41% per annum. The Taxable Rate is 3.77% per annum.

Prepayment Option Commencement Date. For purposes of Section 10.01 of the Agreement, the Prepayment Option Commencement Date is December 1, 2018.

LESSOR:

Banc of America Public Capital Corp

LESSEE:

City of Avondale, Arizona

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT C-1

FORM OF AUTHORIZING RESOLUTION

A Resolution of the governing body of City of Avondale, Arizona, authorizing the execution and delivery of a Tax-Exempt Equipment Lease/Purchase Agreement with respect to the acquisition, purchase, Financing and leasing of certain equipment for the public benefit; authorizing the execution and delivery of documents required in connection therewith; and authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by this resolution.

Whereas, the City of Avondale, Arizona (the "*Lessee*"), a body politic and corporate duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State of Arizona, is authorized by the laws of the State of Arizona to purchase, acquire and lease personal property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

Whereas, the Lessee desires to purchase, acquire, finance and lease certain equipment with a cost not to exceed \$[] constituting personal property necessary for the Lessee to perform essential governmental functions (the "*Equipment*"); and

Whereas, in order to acquire such equipment, the Lessee proposes to enter into that certain Tax-Exempt Equipment Lease/Purchase Agreement (the "*Agreement*") with Banc of America Public Capital Corp (or one of its affiliates) (the "*Lessor*"), the form of which has been presented to the governing body of the Lessee at this meeting; and

Whereas, the governing body of the Lessee deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Agreement and the documentation relate to the financing of the Equipment for the purchase, acquisition and leasing of the equipment to be therein described on the terms and conditions therein provided;

Now, Therefore, Be It And It Is Hereby Resolved by the governing body of Lessee as follows:

Section 1. Findings and Determinations. It is hereby found and determined that the terms of the Agreement, in the form presented to the governing body of Lessee at this meeting, are in the best interests of the Lessee for the acquisition, purchase, financing and leasing of the Equipment.

Section 2. Approval of Documents. The form, terms and provisions of the Agreement are hereby approved in substantially the forms presented at this meeting, with such insertions, omissions and changes as shall be approved by the [] of the Lessee or other members of the governing body of the Lessee executing the same, the execution of such documents being conclusive evidence of such approval; and the [] of the Lessee is hereby authorized and directed to execute, and the [] of the

Lessee is hereby authorized and directed to attest, the Agreement and any related Exhibits attached thereto and to deliver the Agreement (including such Exhibits) to the respective parties thereto, and the [_____] of the Lessee is hereby authorized to affix the seal of the Lessee to such documents.

Section 3. Other Actions Authorized. The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of a Final Acceptance Certificate, an Escrow Agreement, Disbursement Requests and any tax certificate and agreement, as contemplated in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement.

Section 4. No General Liability. Nothing contained in this Resolution, the Agreement, the Escrow Agreement nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement, the Escrow Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under the Agreement are limited obligations of the Lessee subject to annual appropriation by its governing body, as provided in the Agreement.

Section 5. Appointment of Authorized Lessee Representatives. The [_____] and [_____] of the Lessee are each hereby designated to act as authorized representatives of the Lessee for purposes of the Agreement and the Escrow Agreement until such time as the governing body of the Lessee shall designate any other or different authorized representative for purposes of the Agreement or the Escrow Agreement.

Section 6. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 7. Repealer. All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency with respect to this Resolution. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 8. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

Adopted and Approved by the governing body of the Lessee this _____ day of _____.

City of Avondale, Arizona,
as lessee

[SEAL]

By: _____
Printed Name: _____
Title: _____

ATTEST:

By: _____
Printed Name: _____
Title: _____

The undersigned, a duly elected or appointed and acting City Clerk of the Lessee identified in the above Resolution No. ____ (the "*Resolution*"), hereby certifies that the Resolution is a full, true and correct copy of such Resolution as adopted by the governing body of the Lessee on _____, 20___. The Resolution is in full force and effect on the date hereof and has not been amended, modified or otherwise changed by the governing body of the Lessee since the date of adoption of the Resolution.

DATED this ____ day of _____, 20__.

Name: _____

Title: _____

EXHIBIT C-2

FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE

The undersigned, a duly elected or appointed and acting City Clerk of the City of Avondale, Arizona (“*Lessee*”) certifies as follows:

A. The following listed persons are duly elected or appointed and acting officials of Lessee (the “*Officials*”) in the capacity set forth opposite their respective names below and that the facsimile signatures below are true and correct as of the date hereof; and

B. The Officials are duly authorized, on behalf of Lessee, to negotiate, execute and deliver the Tax-Exempt Equipment Lease/Purchase Agreement dated as of November 30, 2017 by and between Lessee and Banc of America Public Capital Corp (“*Lessor*”), the Escrow and Account Control Agreement dated as of November 30, 2017 among Lessor, Lessee and Bank of America, N.A., as Escrow Agent, and all documents related thereto and delivered in connection therewith (collectively, the “*Operative Agreements*”), and the Operative Agreements each are the binding and authorized agreements of Lessee, enforceable in all respects in accordance with their respective terms.

NAME OF OFFICIAL	TITLE	SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____

Dated:

By: _____
Name: _____
Title: _____

(The signer of this Certificate cannot be listed above as authorized to execute the Operative Agreements.)

EXHIBIT D

**FORM OF OPINION OF COUNSEL TO LESSEE
(TO BE TYPED ON LETTERHEAD OF COUNSEL)**

[Closing Date]

Banc of America Public Capital Corp
Mail Code: MD5-032-07-05
Hunt Valley, MD 21031
Attn: Contract Administration

Re: Tax-Exempt Equipment Lease/Purchase Agreement,
dated as of November 30, 2017, between
Banc of America Public Capital Corp,
as Lessor, and the City of Avondale, Arizona, as Lessee

Ladies and Gentlemen:

As legal counsel to the City of Avondale, Arizona ("*Lessee*"), I have examined (a) an executed counterpart of a certain Tax-Exempt Equipment Lease/Purchase Agreement, dated as of November 30, 2017, and Exhibits thereto by and Banc of America Public Capital Corp ("*Lessor*") and Lessee (the "*Agreement*"), which, among other things, provides for the lease of certain property (the "*Equipment*") and a certain Escrow and Account Control Agreement among Lessor, Lessee, and Bank of America, National Association, as Escrow Agent, dated November 30, 2017 (the "*Escrow Agreement*"), (b) an executed counterpart of the ordinances or resolutions of Lessee with respect to authorization of the transactions contemplated by the Agreement, the Escrow Agreement, and documents related thereto and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. The Agreement, the Escrow Agreement and the documents relating thereto are referred to collectively as the "Transaction Documents."

Based on the foregoing, I am of the following opinions:

1. Lessee is a city and public body corporate and politic, duly organized and existing under the laws of the State, and is a political subdivision of the State within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the "Code") and the obligations of Lessee under the Agreement will constitute an obligation of Lessee within the meaning of Section 103(a) of the Code, notwithstanding Section 103(b) of the Code.
2. Lessee has the requisite power and authority to lease and acquire the Equipment and to execute and deliver the Transaction Documents and to perform its obligations under the Transaction Documents.

3. The Transaction Documents have been duly authorized, approved, executed and delivered by and on behalf of Lessee and the Transaction Documents are legal, valid and binding obligations of Lessee enforceable against Lessee in accordance with their respective terms, except to the extent limited by State and federal law affecting creditor's remedies and by bankruptcy, reorganization, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights.

4. The authorization, approval, execution and delivery of the Transaction Documents and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state or federal laws.

5. Based on a litigation search one day prior to the date hereof, there is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Transaction Documents or Lessee's pledge of, and the Lien and security interest of Lessor or its assigns, as the case may be, in the Collateral.

6. The portion of Rental Payments designated as and constituting interest paid by Lessee and received by Lessor is excluded from Lessor's gross income for Federal income tax purposes under Section 103 of the Code and is exempt from State of Arizona personal income taxes; and such interest is not a specific item of tax preference or other collateral for purposes of the Federal individual or corporate alternative minimum taxes.

All capitalized terms herein shall have the same meanings as in the Transaction Documents unless otherwise provided herein. Lessor and its successors and assigns are entitled to rely on this opinion.

Sincerely,

EXHIBIT E

FORM OF FINAL ACCEPTANCE CERTIFICATE

Banc of America Public Capital Corp
11333 McCormick Road
Mail Code: MD5-032-07-05
Hunt Valley, MD 21031
Attn: Contract Administration

Re: Tax-Exempt Equipment Lease/Purchase Agreement,
dated as of November 30, 2017, between
Banc of America Public Capital Corp
as Lessor, and the City of Avondale, Arizona, as Lessee

Ladies and Gentlemen:

In accordance with the Tax-Exempt Equipment Lease/Purchase Agreement (the "*Agreement*") referenced above, the undersigned Lessee hereby certifies and represents to, and agrees with Lessor as follows:

1. All of the Equipment has been delivered, installed, is operating in a manner consistent with the manufacturer's intended use and has been inspected and finally accepted for all purposes by Lessee and title thereto has transferred to Lessee and any security interest of Vendor therein has been released.
2. Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate in order to determine the Equipment's capability and functionality in order to accept such Equipment and hereby acknowledges that it accepts the Equipment for all purposes.
3. Lessee is currently maintaining the insurance coverage required by Section 7.02 of the Agreement.
4. Lessee hereby reaffirms that the representations, warranties and covenants contained in the Agreement are true and correct as of the date hereof.
5. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof.
6. No Material Adverse Change (as defined in the Agreement) has occurred since the date of the execution and delivery of the Agreement.

7. No Event of Non-appropriation has occurred or been threatened.

Capitalized terms used, but not defined, in this Final Acceptance Certificate shall have the same meanings as when such terms are used in the Agreement.

Date: _____

LESSEE:

City of Avondale, Arizona

By: _____

Name: _____

Title: _____

(Seal)

EXHIBIT F

FORM OF SELF INSURANCE CERTIFICATE

Banc of America Public Capital Corp
11333 McCormick Road
Mail Code: MD5-032-07-05
Hunt Valley, MD 21031
Attn: Contract Administration

Re: Tax-Exempt Equipment Lease/Purchase Agreement,
dated as November 30, 2017, between
Banc of America Public Capital Corp
as Lessor, and the City of Avondale, Arizona, as Lessee

In connection with the above-referenced Agreement, the City of Avondale, Arizona (the "Lessee"), the Lessee warrants and represents to Banc of America Public Capital Corp the following information. The terms capitalized herein but not defined herein shall have the meanings assigned to them in the Agreement.

1. The Lessee is self-insured for damage or destruction to the Equipment. The dollar amount limit for property damage to the Equipment under such self-insurance program is \$_____. **[The Lessee maintains an umbrella insurance policy for claims in excess of Lessee's self-insurance limits for property damage to the Equipment which policy has a dollar limit for property damage to the Equipment under such policy of \$_____.]**

2. The Lessee is self-insured for liability for injury or death of any person or damage or loss of property arising out of or relating to the condition or operation of the Equipment. The dollar limit for such liability claims under the Lessee's self-insurance program is \$_____. **[The Lessee maintains an umbrella insurance policy for claims in excess of Lessee's self-insurance limits for liability which policy has a dollar limit for liabilities for injury and death to persons as well as damage or loss of property arising out of or relating to the condition or operation of the Equipment in the amount of \$_____.]**

[3]. The Lessee maintains a self-insurance fund. Monies in the self-insurance fund **[are/are not]** subject to annual appropriation. The total amount maintained in the self-insurance fund to cover Lessee's self-insurance liabilities is \$_____. **[Amounts paid from the Lessee's self-insurance fund are subject to a dollar per claim of \$_____.]**

[3]. The Lessee does not maintain a self-insurance fund. The Lessee obtains funds to pay claims for which it has self-insured from the following sources:

_____. Amounts payable for claims from the such sources are limited as follows: _____

4. Attached hereto are copies of certificates of insurance with respect to policies maintained by Lessee.

LESSEE:

City of Avondale, Arizona

By: _____

Name: _____

Title: _____

EXHIBIT G

RESERVED

EXHIBIT H

FORM OF NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT

DATED _____

Banc of America Public Capital Corp ("*Assignor*") hereby gives notice that it has assigned and sold to _____ ("*Assignee*") all of Assignor's right, title and interest in, to and under the Tax-Exempt Equipment Lease/Purchase Agreement (the "*Agreement*") dated as of November 30, 2017, between Assignor and the City of Avondale, Arizona ("*Lessee*"), together with all exhibits, schedules, addenda and attachments related thereto, and all certifications and other documents delivered in connection therewith, the Rental Payments and other amounts due under the Agreement, all of Assignor's right, title and interest in the Equipment (as defined in the Agreement), and all of Assignor's right, title and interest in, to and under the Escrow and Account Control Agreement dated as of November 30, 2017 (the "*Escrow Agreement*") by and among Lessee, Assignor and Bank of America, N.A., as Escrow Agent, together with the Escrow Account related thereto (collectively, the "*Assigned Property*"). Each capitalized term used but not defined herein has the meaning set forth in the Agreement.

1. Lessee hereby acknowledges the effect of the assignment of the Assigned Property and absolutely and unconditionally agrees to deliver to Assignee all Rental Payments and other amounts coming due under the Agreement in accordance with the terms thereof on and after the date of this Acknowledgment.

2. Lessee hereby agrees that: (i) Assignee shall have all the rights of Lessor under the Agreement and all related documents, including, but not limited to, the rights to issue or receive all notices and reports, to give all consents or agreements to modifications thereto, to receive title to the Equipment in accordance with the terms of the Agreement, to declare a default and to exercise all rights and remedies thereunder in connection with the occurrence of an Event of Non-appropriation or an Event of Default; and (ii) except as provided in Section 3.03 of the Agreement, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in the Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense.

3. Lessee agrees that, as of the date of this Notice and Acknowledgment of Assignment (this "*Acknowledgement*"), the following information about the Agreement is true, accurate and complete:

Number of Rental Payments Remaining	–	_____
Amount of Each Rental Payment	–	\$ _____
Total Amount of Rental Payments Remaining	–	\$ _____
Frequency of Rental Payments	–	_____
Next Rental Payment Due	–	_____
Funds Remaining in Escrow Account	–	\$ _____

4. The Agreement remains in full force and effect, has not been amended, no Event of Default (or event which with the passage of time or the giving of notice or both would constitute a default) has occurred thereunder and no Event of Non-appropriation has occurred or is threatened with respect thereto.

5. Assignor hereby acknowledges the transfer restrictions imposed by Section 11.01 of the Agreement and confirms that the assignment to Assignee has been made in accordance with the provisions of that Section.

6. Any inquiries of Lessee related to the Agreement and any requests for disbursements from the Escrow Account, and all Rental Payments and other amounts coming due pursuant to the Agreement on and after the date of this Acknowledgment should be remitted to Assignee at the following address (or such other address as provided to Lessee in writing from time to time by Assignee):

ACKNOWLEDGED AND AGREED:

LESSEE: City of Avondale, Arizona

By: _____
Name: _____
Title: _____

ASSIGNOR: Banc of America Public Capital Corp

By: _____
Name: _____
Title: _____

EXHIBIT I

FORM OF ESCROW AND ACCOUNT CONTROL AGREEMENT

See Item # __ in Transcript