

**ARKANSAS MASTER LEASE AND OPTION AGREEMENT**

Lessor: Banc of America Leasing & Capital, LLC  
555 California Street, 4<sup>th</sup> Floor,  
San Francisco, CA 94104

Lessee: The City of Jonesboro, Arkansas  
515 W. Washington Avenue  
Jonesboro, AR 72401

This Arkansas Master Lease and Option Agreement (this "Agreement") dated as of March \_\_, 2006 ("the Dated Date") is between Banc of America Leasing & Capital, LLC ("Lessor") and the City of Jonesboro, Arkansas ("Lessee"), a municipal corporation and public body corporate and politic organized and existing under the laws of the State of Arkansas ("State");

**WITNESSETH:**

WHEREAS, Lessee desires to finance from time to time the purchase of equipment pursuant to the terms of this Agreement;

WHEREAS, Lessor desires to lease certain equipment (collectively, the "Equipment") to Lessee, and Lessee desires to lease the Equipment from Lessor, subject to the terms and conditions of and for the purposes set forth in this Agreement;

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 and in consideration for the premises hereinafter contained, the parties hereby agree as follows:

**ARTICLE I  
COVENANTS OF LESSEE**

Lessee represents, covenants and warrants, for the benefit of Lessor and its assignees, as follows:

(a) Lessee is a municipal corporation and public body corporate and politic, duly organized and existing under the laws of the State of Arkansas.

(b) Lessee will do or cause to be done all things necessary to preserve and keep in full force and affect its existence as a municipal corporation and body corporate and politic under the laws of the State of Arkansas.

(c) Lessee is authorized under the laws of the State, including particularly, Amendment 78 to the Constitution of the State of Arkansas, and Arkansas Code Annotated §14-78-101, *et seq.* (the "Act") to enter into this Agreement, and the Leases and transactions contemplated hereby, and to perform all of its obligations hereunder and under the Leases.

(d) Lessee has been duly authorized (d) execute, deliver and perform its obligations under this Agreement and the Leases by appropriate official approval pursuant to statutory authority. All

requirements have been met and procedures have occurred in order to insure the enforceability of the Agreement and the Leases, and Lessee has complied or will comply with such public bidding requirements as may be applicable to this Agreement, the Leases, and the acquisition by Lessee of the Equipment. Lessee shall cause to be executed an opinion of its counsel substantially in the form attached hereto as Exhibit A.

(e) The leases of Equipment (as identified in each Lease and related Payment Schedule) hereunder shall be evidenced by the Payment Schedule (as defined herein), executed by Lessor and Lessee and shall set forth the Equipment, the Rental Payments, the Lease Term (as defined herein), procedures for the disposition of the Equipment upon the expiration of the Lease Term and certain related matters with respect to the Equipment. The Original Term for each Lease shall commence as of the Commencement Date shown in each Lease and shall expire upon the last day of Lessee's then current fiscal year. Upon the expiration of the Original Term, each Lease shall be automatically renewed for an additional one (1) year and for successive one year periods thereafter (each "a Renewal Term") until the end of the Lease Term shown in the Lease or unless the governing body of Lessee fails to appropriate sufficient monies for the making of Rental Payments for any Lease for the next occurring Renewal Term as provided in Article 6 of this Agreement.

(f) Equipment acquired under this Agreement and each Lease will have a useful life in the hands of Lessee that is substantially in excess of the Lease Term specifically relating to it.

(g) All Equipment is, and during the related Lease Term will remain, personal property and when subjected to use by Lessee under this Agreement and the related Lease, will not be or become a fixture.

(h) During each 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 under each Lease.

(i) Lessee has kept, and throughout the Lease Term of any Lease shall keep, its books and records in accordance with accounting principles and practices required by the State and consistently applied, and shall deliver to Lessor (i) 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 notes, and (4) schedules and attachments to the financial statements) within 180 days of its fiscal year end, (ii) such other financial statements and information as Lessor may reasonably request, and (iii) its annual budget for the following fiscal year within 90 days of the current fiscal year end. The financial statements described in subsection (i) shall be accompanied by an opinion of Lessee's auditor or the Auditor of State. Credit information relating to Lessee may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns.

(j) In the event that Lessee does not spend the moneys in any Acquisition Fund related to a Lease within six (6) months of the date the deposit is made pursuant to Section 3.01, Lessee will, if required by section 148(f) of the Code to pay rebate: (i) establish a Rebate Account and deposit the Rebate Amount (as defined in Section 1.148-3(b) of the Federal Income Tax Regulations) for such Lease not less frequently than once per year after the applicable Commencement Date; and (ii) rebate to the United States, not less frequently than once every five (5) years after the applicable Commencement Date, an amount equal to at least 90% of the Rebate Amount for such Lease and within 60 days after payment of all Rental Payments or the Purchase Option Price for such Lease as provided in Article XI hereof, 100% of the Rebate Amount, as required by the Code and any regulations promulgated thereunder.

Lessee shall determine the Rebate Amount, if any, at least every year and upon payment of all Rental Payments or the Purchase Price and shall maintain such determination, together with any supporting documentation required to calculate the Rebate Amount, until six (6) years after the date of the final payment of the Rental Payments or the Purchase Price.

(k) There is no pending litigation, tax claim, proceeding or dispute that may adversely affect Lessee's financial condition or impair its ability to perform its obligations hereunder. 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 in order to protect Lessor's security interest in the Equipment and Lessor's rights and benefits under this Agreement and each Lease.

## **ARTICLE II DEFINITIONS**

The following terms shall have the meanings indicated below unless the context clearly requires otherwise:

"Acquisition Amount" means the amount specified in each Lease and represented by Lessee to be sufficient to acquire the Equipment listed in such Lease, which amount shall be not less than \$50,000.00 for each Lease and, when added to the Acquisition Amounts for all outstanding Leases, does not exceed the Maximum Equipment Cost.

"Acquisition Fund" means, with respect to any Lease, the fund established and held by the Acquisition Fund Custodian pursuant to the related Acquisition Fund Agreement, if any.

"Acquisition Fund Agreement" means, with respect to any Lease for which an Acquisition Fund is used, an Acquisition Fund Agreement, substantially in the form of Exhibit B attached hereto, in form and substance acceptable to and executed by Lessee, Lessor and the Acquisition Fund Custodian, pursuant to which an Acquisition Fund is established and administered.

"Acquisition Fund Custodian" means the Acquisition Fund Custodian identified in any Acquisition Fund Agreement, and its successors and assigns.

"Acquisition Period" means, with respect to each Lease, that period stated in the Payment Schedule to such Lease during which the Lease Proceeds attributable to such Lease may be expended on Equipment Costs.

"Certificate of Acceptance" means the Certificate of Acceptance attached hereto as Exhibit C, whereby Lessee will acknowledge receipt and acceptance of the Equipment in each Lease as being in good condition and sufficient for all purposes of this Agreement.

"Commencement Date" means, for each Lease, the date when Lessee's obligation to pay rent commences under such Lease, which date shall be the earlier of (i) the date on which the Equipment listed in such Lease is accepted by Lessee in the manner described in Section 3.02, and (ii) the date on which sufficient moneys requested to purchase the Equipment listed in such Lease are deposited for that purpose with an Acquisition Fund Custodian.

"Equipment" means the property listed in each of the Leases and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 3.02 or Article

VIII. Whenever reference is made in this Agreement to Equipment listed in a Lease, such reference shall be deemed to include all such replacements, repairs, restorations, modifications and improvements of or to such Equipment.

"Equipment Costs" means the total cost of the Equipment listed in each Lease, including all delivery charges, installation charges, capitalizable consulting and training fees approved by Lessor, legal fees, financing costs, and other costs necessary to vest full, clear legal title to the Equipment in Lessee, subject to the security interest granted to and retained by Lessor as set forth in each Lease, and otherwise incurred in connection with the financing provided by the lease-purchase of the Equipment as provided in each Lease; provided that in no event shall approved consulting and training fees or other non-capitalizable "soft" costs relating to the Equipment listed in any Lease which are to be financed by Lessor hereunder exceed 2% of the total cost of such Equipment as determined by Lessor; and provided further, that in no event shall capitalizable delivery charges, installation charges, taxes and similar capitalizable "soft costs" relating to such Equipment be included without Lessor's prior consent.

"Lease" means a Payment Schedule, the related list of Equipment and the terms of this Agreement which are incorporated by reference into such Payment Schedule. Each Payment Schedule shall constitute a separate and independent Lease.

"Lease Proceeds" means, with respect to each Lease, the total amount of money to be paid by Lessor to the (i) Vendor of the Equipment or (ii) to the Acquisition Fund Custodian for deposit and application in accordance with such Lease and the Acquisition Fund Agreement.

"Lessee" means the entity which is described in the first paragraph of this Agreement and which is leasing the Equipment from Lessor under the provisions of this Agreement and each Lease.

"Lease Term" means the Original Term and all Renewal Terms provided for in this Agreement under Article I and Section 4.01 hereof

"Lessor" means (i) the entity acting as Lessor hereunder; (ii) any surviving resulting or transferee corporation; and (iii) except where the context requires otherwise, any assignee(s) of the right, title and interest of Lessor.

"Maximum Equipment Cost" means \$6,000,000.00.

"Original Term" means the period from the Commencement Date for each Lease until the end of the fiscal year of Lessee in effect at such Commencement Date.

"Payment Schedule" means that certain Payment Schedule which shall include a list of Equipment, the related Rental Payments to be made, the related Lease Term and other relevant provisions and which constitutes each Lease and incorporated by reference herein.

"Purchase Option Price" means the amount which Lessee may, in its discretion, pay to Lessor in order to purchase the Equipment related to and set forth in a Lease.

"Rebate Amount" has the meaning ascribed to it in Treasury Regulation §1.148-3(b).

"Renewal Terms" means the renewal terms of each Lease, each having a duration of one year and a term coextensive with Lessee's fiscal year, with the final Renewal Term ending on the date specified in the Payment Schedule applicable thereto.

"Rental Payments" mean the rental payments payable by Lessee pursuant to the provisions of this Agreement, each Lease and the related Payment Schedule during the related Lease Term, payable in consideration of the right of Lessee to use the related Equipment during the then current Original or Renewal Term. Rental Payments shall be payable by Lessee to the Lessor or its assignee in the amounts and at the times during the Lease Term, as set forth in the Payment Schedule.

"Utilization Period" means the date, with respect to each Lease not funded under an Acquisition Fund Agreement, by which Lessee must deliver a Certificate of Acceptance for the Equipment under such Lease as indicated in Section 3.02.

"Vendor" means the manufacturer/contractor of the Equipment and any agents or dealers of the manufacturer from whom Lessor purchased or is purchasing the Equipment under any Lease.

### **ARTICLE III ACQUISITION FUND, ACQUISITION AND LEASE OF EQUIPMENT**

Section 3.01. Deposit of Monies. If the acquisition of Equipment under a Lease is, at Lessee's choice, to be made by use of an Acquisition Fund, upon execution of the Lease and the Acquisition Fund Agreement, Lessor shall cause to be deposited in the Acquisition Fund, the Acquisition Amount to acquire the Equipment to be leased under the Lease.

#### Section 3.02. Acquisition of the Equipment.

(a) Lessee shall order the Equipment, cause the Equipment to be delivered and installed at the location specified in Lease and pay any and all delivery and installation costs and other Equipment Costs in connection therewith. When the Equipment listed in any Lease has been delivered and installed, Lessee shall promptly accept such Equipment and evidence said acceptance by executing and delivering to Lessor a Certificate of Acceptance in the form attached hereto as Exhibit C.

(b) Lessee shall deliver to Lessor original invoices and bills of sale (if title to such Equipment has passed to Lessee) relating to each item of Equipment accepted by Lessee. With respect to Equipment not purchased through an Acquisition Fund, Lessor shall, upon receipt of a Certificate of Acceptance from Lessee, prepare a Schedule of Equipment and Payment Schedule in the forms attached hereto as Exhibits D and E. Lessee shall execute and deliver such Schedules to Lessor within 5 business days of receipt.

Section 3.03. Payment of Acquisition Costs. Subject to the satisfaction of all of the conditions hereof, payment to Vendor(s) of the cost of acquiring the Equipment shall be made from advances directly to such Vendor(s) or from monies deposited by Lessor or its assignee as provided in Section 3.01 hereof, which shall be disbursed at the written direction of Lessee in accordance with the Acquisition Fund Agreement. Notwithstanding any provision of this Agreement to the contrary, an Acquisition Fund shall not be established without the approval of Lessee and, as a condition thereof, all disbursements made shall be at the written direction of Lessee with the written approval of Lessor, and shall be made only to those persons designated by Lessor and Lessee jointly. Money to be reimbursed to Lessee for acquisitions of Equipment pursuant to Section 3.02 shall be made by Lessor to Lessee upon presentation of the documents described in Section 3.02(b) and such other documentation contemplated hereby.

Section 3.04. Conditions to Lessor's Performance.

(a) As a prerequisite to the performance by Lessor of any of its obligations pursuant to any Lease, Lessee shall deliver to Lessor the following:

(i) A fully completed Payment Schedule, executed by Lessee;

(ii) An Acquisition Fund Agreement, executed by Lessee and the Acquisition Fund Custodian, unless Lessor pays 100% of the Acquisition Amount directly to the Vendor upon execution of the Lease;

(iii) A Certificate executed by a designated officer of Lessee in substantially the form attached hereto as Exhibit F, completed to the satisfaction of Lessor;

(iv) A certified copy of the Ordinance or other official action of Lessor's governing body authorizing the execution and delivery of the Lease and performance by Lessee of its obligations hereunder and under the Lease.

(v) An opinion of counsel to Lessee in substantially the form attached hereto as Exhibit A respecting this Master Lease and otherwise satisfactory to Lessor;

(vi) Evidence of insurance as required by Section 8.04 hereof;

(vii) 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 7.02;

(viii) A copy of a fully completed and executed Form 8038; and

(ix) Such other items, if any, as are set forth in such Lease or are reasonably required by Lessor.

**ARTICLE IV  
LEASE TERM**

Section 4.01. Commencement of Lease Term. The Original Term of each Lease and the obligation to pay Rental Payments in accordance with the related Payment Schedule shall commence on the Commencement Date set forth in the Lease, and shall terminate upon the last day of Lessee's then current fiscal year. The Lease Term will be automatically renewed at the end of the Original Term or any Renewal Term for an additional one year, subject to Article VI herein, unless the Lessee gives written notice to Lessor not less than thirty (30) days prior to the end of the Original Term or Renewal Term then in effect, of Lessee's intention to terminate the Lease at the end of the Original Term or the then current Renewal Term upon payment of the then applicable Purchase Option Price pursuant to Article IX or Article XI hereof, as the case may be. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term.

Section 4.02. Termination of Lease Term. The Lease Term for any Lease will terminate upon the earliest of any of the following events:

(a) The termination of the Lease in the Event of Non-Appropriation of funds as defined in and pursuant to Section 6.06 hereof.

(b) The exercise by Lessee of the option to purchase the Equipment subject to the Lease granted under the provisions of Articles IX or XI of this Agreement;

(c) A default by Lessee and Lessor's election to terminate any Lease under Article XIII hereof; or

(d) The payment by Lessee of all Rental Payments, payable by Lessee under a Payment Schedule.

The Lease Term shall automatically terminate in its entirety (except for any representations, warranties or indemnities made by Lessee, which shall survive the expiration or termination of the Lease Term) upon the last day of the last Renewal Term with respect to the Payment Schedule.

## **ARTICLE V ENJOYMENT OF EQUIPMENT**

Lessor hereby covenants to provide Lessee during the Lease Term of each Lease with the quiet use and enjoyment of the related Equipment, and Lessee shall during such Lease Term peaceably and quietly have and hold and enjoy the Equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Agreement or the related Lease.

Lessor shall have the right upon reasonable notice to inspect the Equipment.

## **ARTICLE VI RENTAL PAYMENTS**

Section 6.01. Rental Payments Constitute a Current Expense of Lessee. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments or any other payment or obligation under any Lease shall constitute a current expense of Lessee under the Act, and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by Lessee, nor shall anything contained herein or in any Lease constitute a pledge of the general tax revenues, funds or monies of Lessee in contravention of the Act.

Section 6.02. Payment of Rental Payments. Lessee shall pay Rental Payments, in lawful money of the United States of America to Lessor or in the event of assignment by Lessor to its assignee, in the amounts and no later than the dates set forth in the Payment Schedule for each Lease. Rental Payments under each Lease shall be in consideration for Lessee's use of the related Equipment during the fiscal year in which such Rental Payments are due.

Section 6.03. Interest and Principal Components. A portion of each Rental Payment payable under each Lease is paid as, and represents payment of, interest, and the balance of such Rental Payment payable under each Lease is paid as, and represents payment of, principal. Each Payment Schedule sets forth the interest component and the principal component of each Rental Payment during the Original Term and all Renewal Terms and the Purchase Option Price with respect to the Equipment under each Lease.

Section 6.04. Rental Payments to be Unconditional. The obligations of Lessee to make payment of the Rental Payments required under this Article VI and each Lease, and to perform and observe the covenants and agreements contained herein and therein, shall be absolute and unconditional in all events, except as expressly provided under this Agreement. Notwithstanding any dispute between Lessee and Lessor, any Vendor or any other person concerning any Lease, Lessee shall make all payments of Rental Payments under each Lease when due and shall not withhold any Rental Payments pending final resolution of such dispute, nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such payments required under this Agreement and under each Lease. Lessee's obligation to make Rental Payments during the Original Term or the then current Renewal Term shall not be abated through accident or unforeseen circumstances.

However, Lessee expressly reserves any and every claim, defense, counterclaim or other cause that Lessee may from time to time have against Lessor or an assignee, if any, to be asserted in the proper forum.

Section 6.05. Continuation of Lease Term by Lessee. Lessee intends, subject to the provisions of Section 6.06 hereof, to continue the lease of the Equipment under each Lease through the Original Term and all of the Renewal Terms in the related Payment Schedule and to pay the Rental Payments for each Lease due under the related Payment Schedule. Lessee reasonably believes that funds of an amount sufficient to make all Rental Payments under each Lease during the Original Term and each of the Renewal Terms can be obtained. Lessee further intends to do all things lawfully within its power to obtain and maintain funds from which the Rental Payments under each Lease may be made, including making provision for such payments to the extent necessary in each biennial or annual budget submitted and adopted in accordance with applicable provisions of the laws of the State, and to have such portion of the budget approved.

Section 6.06. Non-Appropriation. An Event of Non-Appropriation in respect of a Lease shall occur if no funds or insufficient funds are appropriated or if appropriations are not adequately funded in any fiscal period resulting in the inability on the part of the Lessee to make any Rental Payment or other payment under the Lease as the same shall become due (an "Event of Non-Appropriation"). If Lessee anticipates that an Event of Non-Appropriation will occur, Lessee will deliver at least thirty (30) days' written notice prior to the anticipated occurrence thereof. In the event Lessee learns of such lapse of appropriations or funding of same less than thirty (30) days before such occurrence, Lessee shall give reasonable notice of such occurrence to Lessor. If an Event of Non-Appropriation occurs, the related Lease shall terminate on the first day of the rental period following that period for which Rental Payments in respect of such Lease can be made in full from appropriated funds. In such an event, the related Lease shall terminate without penalty or expense to Lessee of any kind whatsoever except as to Rental Payments in respect of such Lease agreed to for the fiscal period for which sufficient funds are appropriated and adequately funded. In the event of such termination, Lessee agrees to peacefully surrender possession of the related Equipment to Lessor in normal working condition, normal wear and tear expected. On the date of such termination, Lessor shall have all legal and equitable rights to take possession of the related Equipment. Lessor shall have no right to accelerate payments hereunder or under such Lease.

Notwithstanding the foregoing, Lessee agrees (1) that it will not cancel this Agreement or any Lease under the provisions of this Section if all funds required hereunder or thereunder are appropriated to it for the acquisition, retention or operation of the Equipment under a Lease, and (2) that it will not during the Lease Term under any Lease give priority in the application of funds of substantially the same amount contemplated under any Lease to any other functionally similar equipment (including a transaction involving a greater amount on which the task performed by the related Equipment will be subsequently performed, in conjunction with additional tasks by other equipment). This paragraph will



be construed, to the extent lawful, so as not to permit Lessee to terminate this Agreement or any Lease in order to allocate substantially the same funds directly or indirectly to perform essentially the same application for which the related Equipment is intended, but to permit the performance of continuing public business in the event of the good faith non-appropriation or unavailability funds.

## **ARTICLE VII TITLE TO EQUIPMENT; SECURITY INTEREST**

Section 7.01. Title to the Equipment. During the term of each Lease, title to the related Equipment and any and all additions, repairs, replacements or modifications shall vest in Lessee, subject to the rights of Lessor under this Agreement and each Lease. In the event of default as set forth in Section 13.01 hereof or non-appropriation as set forth in Section 6.06 hereof, title to the related Equipment shall immediately vest in Lessor, and Lessee will peacefully surrender possession of the related Equipment to Lessor in the condition required pursuant to Section 6.06 hereof.

Section 7.02. Security Interest. To secure the payment of all Lessee's obligations under each Lease, Lessee grants to Lessor a security interest constituting a first lien on the related Equipment and on all additions, attachments, accessions and substitutions thereto. Lessee agrees to execute such additional documents, including financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest, and upon assignment, the security interest of any assignees of Lessor, in the related Equipment.

## **ARTICLE VIII MAINTENANCE; MODIFICATION; TAXES INSURANCE AND OTHER CHARGES**

Section 8.01. Maintenance of Equipment by Lessee. Lessee agrees that at all times during the Lease Term of each Lease, Lessee will direct the maintenance and preservation of the related Equipment so as to keep it in good repair, working order and condition, and that Lessee will from time to time cause to be made all necessary and proper repairs, replacements and renewals. Lessor shall have no responsibility in any of these matters, or for making of improvements or additions to the Equipment.

Section 8.02. Taxes. Other Governmental Charges and Utility Charges. The parties to this Agreement contemplate that the Equipment identified in each Lease will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Equipment identified in each Lease will be exempt from all taxes presently assessed and levied with respect to personal property. In the event that the uses, possession or acquisition of any Equipment is found to be subject to taxation in any form (except for income taxes of Lessor), Lessee will pay during the Lease Term of the related Lease, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the related Equipment.

Section 8.03. Tax Covenants. Lessee will not make or direct any use of the proceeds of the obligation provided herein or under any Lease or any other funds of Lessee which will cause such obligation to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code, of 1986, as amended (the "Code"), to be "federally guaranteed" within the meaning of Section 148 of the Code or to be a "private activity bond" within meaning of Section 141 (a) of the Code. To that end, so long as any Rental Payments under each Lease are unpaid, Lessee, with respect to such proceeds and such other funds, will comply with all requirements of such Code sections and all regulations of the United States Department of the Treasury issued thereunder to the extent that such requirements are, at the time,

applicable and in effect. Furthermore, to the extent applicable pursuant to Section 148 (f) of the Code, Lessee covenants to rebate all positive arbitrage to the United States of America. Lessee covenants that the Equipment under each Lease will be used only for the purpose of performing one or more governmental or proprietary functions of Lessee, and such Equipment will not be used in a trade or business of any person or entity other than the Lessee on a basis different from the general public. Lessee will not use or permit the use of any Equipment by any person for a "private business use" within the meaning of Section 141 (b) of the Code in such manner or to such extent as would result in the inclusion of interest received under any Lease in gross income for federal income tax purposes under Section 103 of the Code.

Lessor and Lessee shall at all times do and perform all acts and things permitted by law which are necessary or desirable in order to assure that the interest component of the Rental Payments in respect of each Lease will not be included in gross income for federal income tax purposes. However, Lessor acknowledges that Lessee makes no representation regarding whether Lessor will be able to obtain any deduction or other status regarding taxation as a result of this Agreement.

Lessee agrees and covenants, in addition to the above, to comply with all information filing requirements of Section 149(e) of the Code relating of this Agreement and each Lease when Lessor provides such forms to Lessee as are required thereby.

Section 8.04. Provisions Regarding Insurance. At its own expense Lessee shall cause property damage insurance to be carried and maintained, or shall demonstrate to the satisfaction of Lessor that adequate self-insurance is provided with respect to the Equipment, sufficient to protect the Full Insurable Value (as hereinafter defined) of such Equipment. All insurance proceeds shall be payable as hereinafter provided in this Agreement. Lessee shall furnish to Lessor certificates evidencing such coverage throughout the Lease Term and for the Payment Schedule in respect of each Lease. Alternatively, Lessee may insure the Equipment under any Lease under a blanket insurance policy or policies, which cover not only the Equipment but also other properties. If Lessee shall insure similar properties by self-insurance, Lessee, will insure the Equipment in respect of each Lease by means of an adequate insurance fund.

The term "Full Insurable Value" as used herein shall mean the full replacement value of the Equipment in respect of each Lease, but in no event less than the applicable Purchase Option Price.

Any insurance policy pursuant to this Section 8.04 shall be so written or endorsed as to make losses, if any, payable to Lessee and Lessor as their respective interests may appear. The Net Proceeds (as defined in Section 9.01 hereof) of the insurance required in this Section 8.04 shall be applied as provided in Article IX hereof Each insurance policy provided for in this Section 8.04 shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interest of Lessor without first giving written notice thereof to Lessor at least ten (10) days in advance of such cancellation.

Section 8.05. Advances. In the event Lessee shall fail to maintain the full insurance coverage required by this Agreement and each Lease or shall fail to keep the Equipment under any Lease in good repair and operating condition, Lessor may (but shall be under no obligation to) purchase the required policies of insurance and pay the premiums on the same or may cause to be made such repairs or replacements as are necessary and provide for payment thereof and Lessee agrees to reimburse Lessor upon demand, for such advances.

Section 8.06. Risk of Loss. Lessee hereby affirms that it assumes all risk of loss of, or damage to and liability related to injury or damage to 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 any Lease.

**ARTICLE IX  
DAMAGE, DESTRUCTION AND CONDEMNATION  
USE OF NET PROCEEDS**

Section 9.01. Damage, Destruction and Condemnation. Unless Lessee shall have exercised its option to purchase the Equipment identified in any Lease or by making payments of the related Purchase Option Price as provided in the Payment Schedule, if prior to the termination of the Lease Term (a) the Equipment under such Lease 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, such Equipment or any part thereof or the estate of Lessee or Lessor in such Equipment or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee and Lessor will cause the Net Proceeds (as defined below) of any insurance claim or condemnation award to be applied to the prompt repair, restoration, modification or improvement of the related Equipment. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee.

For purposes of Section 8.04 hereof and this Article IX, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorneys' fees) incurred in the collection of such claim or award as determined by and under the procedures of the Arkansas State Claims Commission.

Section 9.02. Insufficiency of Net Proceeds. Subject to Lessee's right to terminate the related Lease under Section 6.06 hereof, if the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 9.01 hereof, Lessee shall either (a) complete the work and pay any cost in excess of the amount of the Net Proceeds in which case Lessee shall not be entitled to any reimbursement therefore from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article VI hereof, or (b) if Lessee is not in default hereunder, Lessee shall pay to Lessor the amount of the then applicable Purchase Option Price set forth in the Payment Schedule for such Lease, and upon such payment, the Lease Term of the Payment Schedule for such Lease shall terminate and Lessor's security interest in the Equipment identified in the Lease shall terminate as provided in Article XI of this Agreement. Lessee may retain the amount of the Net Proceeds, if any, in excess of the then applicable Purchase Option Price.

**ARTICLE X  
DISCLAIMER OF WARRANTIES; VENDOR'S  
WARRANTIES; USE OF THE EQUIPMENT**

Section 10.01. Disclaimer of Warranties. Delivery of Equipment under a Lease to Lessee, Lessee's acceptance thereof and execution by Lessee of the Payment Schedule with respect thereto shall constitute Lessee's acknowledgment that the Equipment is in good order and condition and is of the manufacture, design and capacity selected by Lessee, that Lessee is satisfied that the same is suitable for its purpose and that Lessor makes no warranty or representation, either express or implied with respect to such Equipment, including without limitation, its value, design, capacity, condition, merchantability or fitness for particular purpose or fitness intended for use of the Equipment, or warranty with respect thereto and Lessor hereby disclaims all such representations and warranties. To the extent permitted by law Lessor shall not be liable for any incidental, indirect, special or consequential damage in connection

with or arising out of this Agreement or any Lease or the existence, furnishing or Lessee's use of any item or products or services provided for in this Agreement or any Lease.

Section 10.02. Vendor's Warranties. All of the Vendor's or any third party promises and warranties to Lessor under all supply contract(s) between said parties regarding any goods or services which are the subject of this Agreement or any Lease shall extend to Lessee herein and are assigned to Lessee hereby. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor of the related Equipment, and not against the Assignee, of Lessor, if any, nor shall such matter have any effect whatsoever on the rights and obligations of Lessor with respect to this Agreement or any Lease, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that an assignee, if any, of Lessor makes, and has made, no representation or warranties whatsoever, including but not limited to the existence or availability of such warranties of the Vendor of the related Equipment.

Section 10.03. Use of the Equipment. Lessee will not permit the installation, use, operation or maintenance of the Equipment under any Lease to be done improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement or the related Lease. Lessee shall provide or direct the providing of all permits and licenses, if any, necessary for the installation and operation of the Equipment under any Lease. In addition, Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Equipment under any Lease) with all laws of the jurisdictions in which its operation involving any item of such Equipment may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of such Equipment; provided, however, that Lessee may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor, adversely affect the estate of Lessor in and to any of the items of such Equipment or its interest or rights under this Agreement or any Lease.

## **ARTICLE XI OPTION TO PURCHASE**

Lessee hereby has the option to purchase the Equipment under each Lease and at the request of Lessee, Lessor's security interest in such Equipment will be terminated and the related Lease and Payment Schedule shall terminate:

(a) At the end of the Original Term and all possible Renewal Terms, upon payment in full of Rental Payments and any other amounts due under such Lease; or

(b) As of any Rental Payment due date, upon payment by Lessee of the then applicable Purchase Option Price as set forth in the related Payment Schedule; or

(c) If the Lease Term is terminated pursuant to Article IX of this Agreement, in the event of damage, destruction or condemnation of the Equipment under such Lease and, if Lessee is not on such date in default under such Lease, upon payment of the then applicable Purchase Option Price to Lessor, subject to Lessee's right to terminate this Agreement under Section 6.06 hereof

**ARTICLE XII  
ASSIGNMENT, SUBLEASING, INDEMNIFICATION  
MORTGAGING AND SELLING**

Section 12.01. Assignment by Lessor. This Agreement and each Lease, and Lessor's right to receive Rental Payments hereunder or thereunder, may be assigned and reassigned in whole or in part to one or more assignees or sub-assignees by Lessor at any time, without obtaining the consent of Lessee; provided, however, that no such assignment or reassignment shall be effective unless and until Lessee shall have received actual written notice of the assignment or reassignment disclosing the name and address of the assignee or sub-assignee and the assigned Lease. Upon receipt of notice of assignment, Lessee agrees to reflect in a book entry the assignee designated in such notice of assignment, and to make all payments under the assigned Lease to the assignee designated in the notice of assignment, notwithstanding any claim, defense, set-off or counterclaim whatsoever (whether arising from a breach of this Agreement or the assigned Lease or otherwise) that Lessee may from time to time have against Lessor, subject to the provisions of Section 6.06 hereof. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements, which may be reasonably requested by Lessor or its assignee to protect their interests in the related Equipment and in the assigned Lease.

Section 12.02. No Sale, Assignment or Subleasing by Lessee. This Agreement, any Lease, and the interest of Lessee in the related Equipment may not be sold, assigned or encumbered by Lessee without the prior written consent of Lessor and/or its assigns.

Section 12.03. Release and Indemnification Covenants. Lessee shall and does hereby hold harmless and indemnify Lessor and its assignee, if any, from and against any and all claims, actions, proceedings, expenses, except attorneys' fees, damages or liabilities arising from Lessee's selection, possession or use of the Equipment identified in any Lease; provided, however, any liability of Lessee under the foregoing shall be determined by and under the procedures of the Arkansas State Claims Commission.

**ARTICLE XIII  
EVENTS OF DEFAULT AND REMEDIES**

Section 13.01. Events of Default Defined. With respect to each Lease, in the event of an event of default as defined herein and as long as such event shall continue, Lessor may, at its option, exercise without further demand or notice, any one or combination of the following which are Lessor's sole remedies hereunder and under each Lease to the exclusion of those remedies provided in Arkansas Code Ann. Section 4-2A-501 et seq.;

(a) Failure by Lessee to pay any Rental Payment or other payment required to be paid under a Lease within ten (10) calendar days of written notification from Lessor; and

(b) Failure by Lessee to observe and perform any other covenant, condition or agreement on its part to be observed or performed under a Lease 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 (pursuant to the provisions of Section 14.01 hereof), unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, 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 deemed appropriate by Lessor in its sole discretion, is instituted by Lessee within the applicable period and diligently pursued until the default is corrected.

(c) Any default occurs under any Lease under this Master Lease if such default consists of (1) the failure to pay any indebtedness when due or (ii) the failure to perform any other obligation thereunder and gives the Lessor the right to accelerate the Lease; or

(d) 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 or a petition filed against Lessee in any bankruptcy, reorganization or insolvency proceeding.

The foregoing provisions of this Section 13.01 are subject to (i) the provisions of Section 6.06 hereof with respect to non-appropriation; and (ii) if by reason of force majeure (as defined below) Lessee is unable in whole or in part to carry out its agreement on its part herein contained, other than the obligations on the part of Lessee contained in Article VI hereof, Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies, orders or restraints of any kind of the government of the United States of America or of the state wherein Lessee is located or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; or explosions.

Section 13.02. Remedies on Default. In the event of an event of default as defined herein in respect of a Lease and as long as such event shall continue, Lessor may, at its option, exercise without further demand or notice, any one or combination of the following which are Lessor's sole remedies hereunder;

(a) Obtain possession of the Equipment identified in the defaulted Lease and any other Lease;

(b) Recover accrued Rental Payments under the defaulted Lease and amounts due up to the point of repossession and any un-amortized nonrecurring cost under the defaulted Lease as allowed by Arkansas law;

(c) Recover the expenses of the related Equipment's de-installation and repossession; and

(d) Recover the expenses of repair or return of the related Equipment to normal working order, normal wear and tear expected.

Any repossession or subsequent sale or lease by Lessor of the Equipment shall not bar an action against Lessee under Arkansas law for the aforementioned sole remedies of Lessor as stated in this Section 13.02. 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 and power may be exercised from time to time and as often as may be deemed expedient.

## ARTICLE XIV MISCELLANEOUS

Section 14.01. Notices. Except as otherwise provided herein, all notices, certificates or other communications hereunder or under any Lease shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at their respective places of business.

Section 14.02. Binding Effect. This Agreement and each Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 14.03. Severability. In the event any court of competent jurisdiction shall hold any provision of this Agreement or any Lease invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof or any Lease.

Section 14.04. Amendments. The terms of the Agreement or of any Lease or of the Payment Schedule shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by Lessor and Lessee, nor shall any such amendment that affects the rights of Lessor's assignee be effective without such assignee's consent.

Section 14.05. Execution in Counterparts. This Agreement and each Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument, and that this instrument and each Lease shall pertain to and govern the related Payment Schedule.

Section 14.06. Applicable Law. This Agreement and each Lease shall be governed by and construed in accordance with the laws of the State of Arkansas.

Section 14.07. Captions. Captions, headings and subheadings in this Agreement and each Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement and each Lease.

Section 14.08. Acquisition Fund.

(a) If an Event of Non-appropriation occurs prior to Lessee's acceptance of all the Equipment identified under a Lease, the amount then on deposit in the Acquisition Fund, if any, shall be applied to prepay the unpaid principal component of the related Rental Payments in whole on the first business day of the month next succeeding the occurrence of such event plus accrued interest to the payment date; provided, however, that the amount to be prepaid by Lessee pursuant to this Paragraph 14.08 (b) hereof shall first be paid from monies in the Acquisition Fund, if any, and then from legally available funds and other monies available for such purpose as a result of the exercise by Lessor of its rights and remedies under this Agreement and the related Lease. Any funds on deposit in the Acquisition Fund, if any, on the prepayment date described in this subparagraph (a) in excess of the unpaid principal component of the related Rental Payments to be prepaid plus accrued interest thereon to the prepayment date shall be paid promptly to Lessee.

(b) Upon the expiration of the Acquisition Period, or Lessee's acceptance of all the Equipment under a Lease and disbursement of the amounts from the related Acquisition Fund required to pay the acquisition cost for the related Equipment, any surplus amount then on deposit in the related Acquisition Fund shall be applied to pay on the next succeeding Rental Payment date (the "Partial Prepayment Date") a portion of the Purchase Option Price then applicable, and Lessor and/or the

Acquisition Fund Custodian shall have no further obligation or duty to advance or disburse any further amounts for the acquisition of any Equipment.

Section 14.09. Entire Agreement. This Agreement and each Lease with associated purchase orders constitute the entire Agreement between Lessor and Lessee. If there are any conflicts among these individual documents, the Lease will control.

No waiver, consent, modification or change of terms of this Agreement or any Lease shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, representations or warranties, express or implied, not specified in this Agreement, each Lease or Payment Schedule regarding this Agreement, each Lease or the leased Equipment.

[Signature page follows]



In WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

LESSOR:  
Banc of America Leasing & Capital, LLC  
555 California Street, 4<sup>th</sup> Floor  
San Francisco, California 94104

LESSEE:  
City of Jonesboro, Arkansas  
515 W. Washington Avenue  
Jonesboro, AR 72401

By \_\_\_\_\_  
Title \_\_\_\_\_

By \_\_\_\_\_  
Doug Forman, Mayor

ATTEST:

By \_\_\_\_\_  
Donna K. Jackson, City Clerk

**EXHIBIT A**

**OPINION OF COUNSEL TO LESSEE**

[Counsel letterhead]

Banc of America Leasing & Capital, LLC  
555 California Street, 4th Floor  
San Francisco, California 94104

Re: Arkansas Master Lease and Option Agreement, dated as of March \_\_, 2006, between Banc of America Leasing & Capital, LLC, as Lessor, and the City of Jonesboro, Arkansas, as Lessee

Ladies and Gentlemen:

As legal counsel to the City of Jonesboro, Arkansas ("Lessee"), I have examined (a) an executed counterpart of a certain Arkansas Master Lease and Option Agreement, dated as of March \_\_, 2006 and Exhibits thereto by and between Banc of America Leasing & Capital, LLC ("Lessor") and Lessee (the "Agreement") and an executed counterpart of Schedule of Property No. \_\_ dated \_\_\_\_\_, by and between Lessor and Lessee (the "Schedule"), which, among other things, provides for the lease of certain property listed in the Schedule (the "Equipment"), (b) an executed counterpart of the Ordinance of Lessee which, among other things, authorize Lessee to execute the Agreement and the Schedule and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. The Schedule and the terms and provisions of the Agreement incorporated therein by reference together with the Rental Payment Schedule attached to the Schedule are herein referred to collectively as the "Lease".

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

1. Lessee is a municipal corporation and public body corporate and politic, duly organized and existing under the laws of the State, and is a political subdivision of the state of Arkansas within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the "Code");
2. Lessee has the requisite power and authority to lease and acquire the Equipment and to execute and deliver the Lease and to perform its obligations under the Lease;
3. The Lease has been duly authorized, approved, executed and delivered by and on behalf of Lessee and the Lease is a valid and binding obligation of Lessee enforceable in accordance with its terms;
4. The authorization, approval, execution and delivery of the Lease 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; and
5. 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 Lease or the security interest of Lessor or its assigns, as the case may be, in the Equipment thereunder.

All capitalized terms herein shall have the same meanings as in the Lease unless otherwise provided herein. Lessor and its successors and assigns, and any counsel rendering an opinion on the tax-exempt status of the interest components of the Rental Payments, are entitled to rely on this opinion.

Sincerely yours,

By \_\_\_\_\_  
Phillip Crego, City Attorney

## EXHIBIT B

### ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT

This Acquisition Fund and Account Control Agreement (this "Agreement"), dated as of \_\_\_\_\_, by and among Banc of America Leasing & Capital, LLC, a Delaware limited liability company (hereinafter referred to as "Lessor"), the City of Jonesboro, Arkansas, a political subdivision of the State of Arkansas (hereinafter referred to as "Lessee") and Bank of America, N.A., a national banking association (hereinafter referred to as "Acquisition Fund Custodian").

Reference is made to that certain Arkansas Master Lease and Option Agreement dated as of March \_\_, 2006 between Lessor and Lessee (hereinafter referred to as the "Lease"), covering the acquisition and lease of certain Equipment described therein (the "Equipment"). It is a requirement of the Lease that the Equipment Cost of the Equipment (an amount not to exceed \_\_\_\_\_) be deposited into an escrow under terms satisfactory to Lessor, for the purpose of fully funding the Lease, and providing a mechanism for the application of such amounts to the purchase of and payment for the Equipment.

The parties agree as follows:

#### I. Creation of Acquisition Fund.

(a) There is hereby created a special trust fund to be known as the "[\_\_\_\_\_]" Acquisition Fund" (the "Acquisition Fund") to be held in trust by the Acquisition Fund Custodian for the purposes stated herein, for the benefit of Lessor and Lessee, to be held, disbursed and returned in accordance with the terms hereof.

(b) The Acquisition Fund Custodian shall invest and reinvest moneys on deposit in the Acquisition Fund in Qualified Investments in accordance with written instructions received from Lessee. Lessee shall be solely responsible for ascertaining that all proposed investments and reinvestments are Qualified Investments and that they comply with federal, state and local laws, regulations and ordinances governing investment of such funds and for providing appropriate notice to the Acquisition Fund Custodian for the reinvestment of any maturing investment. Accordingly, neither the Acquisition Fund Custodian nor Lessor shall be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to the investment or reinvestment of all or any portion of the moneys on deposit in the Acquisition Fund, and Lessee agrees to and does hereby release the Acquisition Fund Custodian and Lessor from any such liability, cost, expenses, loss or claim. Interest on the Acquisition Fund shall become part of the Acquisition Fund, and gains and losses on the investment of the moneys on deposit in the Acquisition Fund shall be borne by the Acquisition Fund. For purposes of this agreement, "Qualified Investments" means any investments which meet the requirements of [state law citation].

(c) Unless the Acquisition Fund is earlier terminated in accordance with the provisions of paragraph (d) below, amounts in the Acquisition Fund shall be disbursed by the Acquisition Fund Custodian in payment of amounts described in Section 2 hereof upon receipt of written authorization(s) from Lessor, as is more fully described in Section 2 hereof. If the amounts in the Acquisition Fund are insufficient to pay such amounts, Lessee shall provide any balance of the funds needed to complete the acquisition of the Equipment. Any moneys remaining in the Acquisition Fund after \_\_\_\_\_ (the "Acquisition Period") shall be applied as provided in Section 4 hereof.

(d) The Acquisition Fund shall be terminated at the earliest of (i) the final distribution of amounts in the Acquisition Fund or (ii) written notice given by Lessor of the occurrence of a default or termination of the Lease due to non-appropriation.

(e) The Acquisition Fund Custodian may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Acquisition Fund Custodian shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Acquisition Fund Custodian, and for the disposition of the same in accordance herewith.

(f) Unless the Acquisition Fund Custodian is guilty of gross negligence or willful misconduct with regard to its duties hereunder, Lessee agrees to and does hereby release and indemnify the Acquisition Fund Custodian and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Acquisition Fund Custodian under this agreement; and in connection therewith, does to the extent permitted by law indemnify the Acquisition Fund Custodian against any and all expenses; including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

(g) If Lessee and Lessor shall be in disagreement about the interpretation of the Lease, or about the rights and obligations, or the propriety of any action contemplated by the Acquisition Fund Custodian hereunder, the Acquisition Fund Custodian may, but shall not be required to, file an appropriate civil action to resolve the disagreement. The Acquisition Fund Custodian shall be reimbursed by Lessee for all costs, including reasonable attorneys' fees, in connection with such civil action, and shall be fully protected in suspending all or part of its activities under the Lease until a final judgment in such action is received.

(h) The Acquisition Fund Custodian may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such counsel. The Acquisition Fund Custodian shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its willful misconduct.

(i) Lessee shall reimburse the Acquisition Fund Custodian for all reasonable costs and expenses, including those of the Acquisition Fund Custodian's attorneys, agents and employees incurred for extra-ordinary administration of the Acquisition Fund and the performance of the Acquisition Fund Custodian's powers and duties hereunder in connection with any Event of Default under the Lease, or in connection with any dispute between Lessor and Lessee concerning the Acquisition Fund.

## 2. Acquisition of Property.

(a) Acquisition Contracts. Lessee will arrange for, supervise and provide for, or cause to be supervised and provided for, the acquisition of the Equipment, with moneys available in the Acquisition Fund. Lessee represents the estimated costs of the Equipment are within the funds estimated to be available therefor, and Lessor makes no warranty or representation with respect thereto. Lessor shall have no liability under any of the acquisition or construction contracts. Lessee shall obtain all necessary permits and approvals, if any, for the acquisition, equipping and installation of the Equipment, and the operation and maintenance thereof.

(b) Authorized Acquisition Fund Disbursements. Disbursements from the Acquisition Fund shall be made for the purpose of paying (including the reimbursement to Lessee for advances from its own funds to accomplish the purposes hereinafter described) the cost of acquiring the Equipment

(c) Requisition Procedure. No disbursement from the Acquisition Fund shall be made unless and until Lessor has approved such requisition. Prior to disbursement from the Acquisition Fund there shall be filed with the Acquisition Fund Custodian a requisition for such payment in the form of Disbursement Request attached hereto as Schedule I, stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due. Each such requisition shall be signed by an authorized representative of Lessee (an "Authorized Representative") and by Lessor, and shall be subject to the following:

1. Delivery to Lessor of a certificate of Lessee to the effect that:

(i) an obligation in the stated amount has been incurred by Lessee, and that the same is a proper charge against the Acquisition Fund for costs relating to the Equipment identified in the Lease, and has not been paid; (ii) the Authorized Representative has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made; (iii) such requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date of such certificate, entitled to retain; and (iv) the Equipment is insured in accordance with the Lease.

2. Delivery to Lessor of an Acceptance Certificate executed by Lessee, together with any Purchase Agreement Assignment or bill of sale and invoice therefor as required by Section 3.04 of the Lease;

3. The disbursement shall occur during the Acquisition Period set forth in the Schedule applicable to such Equipment;

4. There shall exist no Event of Default (nor any event which, with notice or lapse of time or both, would become an Event of Default); and

5. No material adverse change in Lessee's or any guarantor's financial condition shall have occurred since the date of the Lease.

3. Deposit to Acquisition Fund. Upon satisfaction of the conditions specified in Section 3.04 of the Lease, Lessor will cause the Lease Proceeds to be deposited in the Acquisition Fund. Lessee agrees to pay any costs with respect to the Equipment in excess of amounts available therefor in the Acquisition Fund.

4. Excessive Acquisition Fund. Following the final disbursement from the Acquisition Fund at the end of the Acquisition Period, or termination of the Acquisition Fund as otherwise provided herein, the Acquisition Fund Custodian shall transfer any remainder from the Acquisition Fund to Lessor for application to amounts owed under the Lease in accordance with Section 4.07 of the Lease.

5. Security Interest. The Acquisition Fund Custodian and Lessee acknowledge and agree that the Acquisition Fund and all proceeds thereof are being held by Acquisition Fund Custodian for disbursement or return as set forth herein. Lessee hereby grants to Lessor a first priority perfected security interest in the Acquisition Fund, and all proceeds thereof, and all investments made with any amounts in the Acquisition Fund. If the Acquisition Fund, or any part thereof, is converted to investments as set forth

in this agreement, such investments shall be made in the name of Acquisition Fund Custodian and the Acquisition Fund Custodian hereby agrees to hold such investments as bailee for Lessor so that Lessor is deemed to have possession of such investments for the purpose of perfecting its security interest.

6. Control of Acquisition Account. In order to perfect Lessor's security interest by means of control in (i) the Acquisition Fund established hereunder, (ii) all securities entitlements, investment property and other financial assets now or hereafter credited to the Acquisition Fund, (iii) all of Lessee's rights in respect of the Acquisition Fund, such securities entitlements, investment property and other financial assets, and (iv) all products, proceeds and revenues of and from any of the foregoing personal property (collectively, the "Collateral"), Lessor, Lessee and Acquisition Fund Custodian further agree as follows:

(a) All terms used in this Section 6 which are defined in the Commercial Code of the State of Arkansas ("Commercial Code") but are not otherwise defined herein shall have the meanings assigned to such terms in the Commercial Code, as in effect on the date of this Agreement.

(b) Acquisition Fund Custodian will comply with all entitlement orders originated by Lessor with respect to the Collateral, or any portion of the Collateral, without further consent by Lessee.

(c) Acquisition Fund Custodian hereby represents and warrants (a) that the records of Acquisition Fund Custodian show that Lessee is the sole owner of the Collateral, (b) that Acquisition Fund Custodian has not been served with any notice of levy or received any notice of any security interest in or other claim to the Collateral, or any portion of the Collateral, other than Lessor's claim pursuant to this Agreement, and (c) that Acquisition Fund Custodian is not presently obligated to accept any entitlement order from any person with respect to the Collateral, except for entitlement orders that Acquisition Fund Custodian is obligated to accept from Lessor under this Agreement and entitlement orders that Acquisition Fund Custodian, subject to the provisions of paragraph (e) below, is obligated to accept from Lessee.

(d) Without the prior written consent of Lessor, Acquisition Fund Custodian will not enter into any agreement by which Acquisition Fund Custodian agrees to comply with any entitlement order of any person other than Lessor or, subject to the provisions of paragraph (e) below, Lessee, with respect to any portion or all of the Collateral. Acquisition Fund Custodian shall promptly notify Lessor if any person requests Acquisition Fund Custodian to enter into any such agreement or otherwise asserts or seeks to assert a lien, encumbrance or adverse claim against any portion or all of the Collateral.

(e) Except as otherwise provided in this paragraph (e) and subject to Section 1(b) hereof, Acquisition Fund Custodian may allow Lessee to effect sales, trades, transfers and exchanges of Collateral within the Acquisition Fund, but will not, without the prior written consent of Lessor, allow Lessee to withdraw any Collateral from the Acquisition Fund. Acquisition Fund Custodian acknowledges that Lessor reserves the right, by delivery of written notice to Acquisition Fund Custodian, to prohibit Lessee from effecting any withdrawals (including withdrawals of ordinary cash dividends and interest income), sales, trades, transfers or exchanges of any Collateral held in the Acquisition Fund. Further, Acquisition Fund Custodian hereby agrees to comply with any and all written instructions delivered by Lessor to Acquisition Fund Custodian (once it has had a reasonable opportunity to comply therewith) and has no obligation to, and will not, investigate the reason for any action taken by Lessor, the amount of any obligations of Lessee to Lessor, the validity of any of Lessor's claims against or agreements with Lessee, the existence of any defaults under such agreements, or any other matter.

(f) Lessee hereby irrevocably authorizes Acquisition Fund Custodian to comply with all instructions and entitlement orders delivered by Lessor to Acquisition Fund Custodian.

(g) Acquisition Fund Custodian will not attempt to assert control, and does not claim and will not accept any security or other interest in, any part of the Collateral, and Acquisition Fund Custodian will not exercise, enforce or attempt to enforce any right of setoff against the Collateral, or otherwise charge or deduct from the Collateral any amount whatsoever.

(h) Acquisition Fund Custodian and Lessee hereby agree that any property held in the Acquisition Fund shall be treated as a financial asset under such section of the Commercial Code as corresponds with Section 8-102 of the Uniform Commercial Code, notwithstanding any contrary provision of any other agreement to which Acquisition Fund Custodian may be a party.

(i) Acquisition Fund Custodian is hereby authorized and instructed, and hereby agrees, to send to Lessor at its address set forth in Section 7 below, concurrently with the sending thereof to Lessee, duplicate copies of any and all monthly Acquisition Fund statements or reports issued or sent to Lessee with respect to the Acquisition Fund.

7. Miscellaneous. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease. This agreement may not be amended except in writing signed by all parties hereto. This agreement may be executed in one or more counterparts, each of which shall be deemed to be an original instrument and each shall have the force and effect of an original and all of which together constitute, and shall be deemed to constitute, one and the same instrument. Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below:

If to Lessor: Banc of America Leasing & Capital, LLC  
555 California Street, 4th Floor  
Mail Code: CA5-705-04-01  
San Francisco, CA 94104  
Attn: Contract Administration  
Fax: (415) 765-7373

If to Lessee: The City of Jonesboro, Arkansas  
515 W. Washington Avenue  
Jonesboro, AR 72401  
Attn: Mayor  
Fax: (870) \_\_\_\_\_

If to Acquisition Fund Custodian: Bank of America, N.A.  
200 W. Capitol Avenue  
Little Rock, Arkansas 72201  
Attn: Tim Cummins  
Phone: (501) 378-1425  
Fax: (501) 378-1445

[Signature page follows]



In Witness Whereof, the parties have executed this Acquisition Fund and Account Control Agreement as of the date first above written.

**Banc of America Leasing & Capital, LLC,  
as Lessor**

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

**City of Jonesboro, Arkansas,  
as Lessee**

By: \_\_\_\_\_  
Doug Forman, Mayor

**Bank of America, N.A.,  
As Acquisition Fund Custodian**

By: \_\_\_\_\_  
Tim Cummins, Senior Vice President

**SCHEDULE 1**

**FORM OF DISBURSEMENT REQUEST**

Re: Arkansas Master Lease and Option Agreement dated as of March \_\_, 2006 by and between Banc of America Leasing & Capital, LLC, as Lessor and the City of Jonesboro, Arkansas, as Lessee (the "Lease")

In accordance with the terms of the Acquisition Fund and Account Control Agreement, dated as of March \_\_, 2006 (the "Acquisition Fund and Account Control Agreement") by and among Banc of America Leasing & Capital, LLC ("Lessor"), the City of Jonesboro, Arkansas ("Lessee") and Bank of America, N.A., (the "Acquisition Fund Custodian"), the undersigned hereby requests the Acquisition Fund Custodian pay the following persons the following amounts from the Acquisition Fund created under the Acquisition Fund and Account Control Agreement (the "Acquisition Fund") for the following purposes.

<u>Payee's Name and Address</u>	<u>Invoice Number</u>	<u>Dollar Amount</u>	<u>Purpose</u>
---------------------------------	-----------------------	----------------------	----------------

The undersigned hereby certifies as follows:

(i) An obligation in the stated amount has been incurred by Lessee, and the same is a proper charge against the Acquisition Fund for costs relating to the Equipment identified in the Lease, and has not been paid. Attached hereto is the original invoice with respect to such obligation.

(ii) The undersigned, as Authorized Representative, has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made.

(iii) This requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date hereof, entitled to retain.

(iv) The Equipment is insured in accordance with the Lease.

(v) No Event of Default, and no event which with notice or lapse of time, or both, would become an Event of Default, under the Lease has occurred and is continuing at the date hereof.

(vi) The disbursement shall occur during the Acquisition Period set forth in the Schedule applicable to such Equipment

(vii) No material adverse change in Lessee's or any guarantor's financial condition shall have occurred since the date of the Lease.

Dated: \_\_\_\_\_

City of Jonesboro, Arkansas

By: \_\_\_\_\_  
Doug Forman, Mayor

Disbursement of funds from the Acquisition  
Fund in accordance with the foregoing  
Disbursement Request hereby is authorized

Banc of America Leasing & Capital, LLC,  
as Lessor under the Lease

By: \_\_\_\_\_  
Title: Vice President

**EXHIBIT C**

**ACCEPTANCE CERTIFICATE**

Banc of America Leasing & Capital, LLC  
555 California Street, 4th Floor  
San Francisco, California 94104

Re: Schedule of Property No. \_\_\_\_\_, dated \_\_\_\_\_ to Arkansas Master Lease and Option Agreement, dated as of March \_\_, 2006, between Banc of America Leasing & Capital, LLC, as Lessor, and the City of Jonesboro, Arkansas, as Lessee.

Ladies and Gentlemen:

In accordance with the Arkansas Master Lease and Option Agreement (the "Agreement"), the undersigned Lessee hereby certifies and represents to, and agrees with Lessor as follows:

1. All of the Equipment (as such term is defined in the Agreement) listed in the above-referenced Schedule of Property (the "Schedule") has been delivered, installed and accepted on the date hereof.

2. Lessee has conducted such inspection and/or testing of the Equipment listed in the Schedule as it deems necessary and appropriate 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. 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

Date: \_\_\_\_\_

LESSEE:  
City of Jonesboro, Arkansas

By \_\_\_\_\_  
Doug Forman, Mayor

**EXHIBIT D**

**SCHEDULE OF PROPERTY NO.**

Re: Arkansas Master Lease and Option Agreement, dated as of March \_\_, 2006 between Banc of America Leasing & Capital, LLC, as Lessor, and the City of Jonesboro, Arkansas, as Lessee

1. *Defined Terms.* All terms used herein have the meanings ascribed to them in the above-referenced Arkansas Master Lease and Option Agreement (the “*Master Equipment Lease*”).

2. *Equipment.* The following items of Equipment are hereby included under this Schedule of the Master Equipment Lease.

Quantity	Description	Serial No.	Model No.	Location

3. *Payment Schedule.*

(a) *Rental Payments.* The Rental Payments shall be in such amounts and payable on such dates as set forth in the Rental Payment Schedule attached to this Schedule as Exhibit A-1. Rental Payments shall commence on the date on which the Equipment listed in this Schedule is accepted by Lessee, as indicated in an Acceptance Certificate substantially in the form of Exhibit B to the Master Equipment Lease or the date on which sufficient moneys to purchase the Equipment are deposited for that purpose with an Acquisition Fund Custodian, whichever is earlier.

(b) *Purchase Price Schedule.* The Purchase Price on each Rental Payment date for the Term Estate in the Equipment listed in this Schedule shall be the amount set forth for such Rental Payment date in the “Purchase Price” column of the Rental Payment Schedule attached to this Schedule. The Purchase Price is in addition to all Rental Payments then due under this Schedule (including the Rental Payment shown on the same line in the Rental Payment Schedule).

4. *Representations, Warranties and Covenants.* Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Master Equipment Lease are true and correct as though made on the date of commencement of Rental Payments on this Schedule. Lessee further represents and warrants that no material adverse change in Lessee’s financial condition has occurred since the date of the Master Equipment Lease.

5. *The Lease.* The terms and provisions of the Master Equipment Lease (other than to the extent that they relate solely to other Schedules or Equipment listed on other Schedules) are hereby incorporated into this Schedule by reference and made a part hereof.

**[OPTION: IF ACQUISITION FUND AGREEMENT IS USED:**

6. *Lease Proceeds.* The Lease Proceeds which Lessor shall pay to the Acquisition Fund Custodian in connection with this Schedule is \$\_\_\_\_\_, of which \$\_\_\_\_\_ is for deposit to the Expense Fund and the balance is for deposit to the Acquisition Fund.

**OR IF VENDOR PAID DIRECTLY USE:**

6. *Acquisition Amount.* The Acquisition Amount for the Equipment described in this Schedule to be paid to the Vendor is \$\_\_\_\_\_.]

**[OPTION: IF ACQUISITION FUND AGREEMENT IS USED:**

7. *Acquisition Period.* The Acquisition Period applicable to this Schedule shall end at the conclusion of the \_\_\_ month following the date hereof.]

[7][8]. *Lease Term.* The Lease Term shall consist of the Original Term and consecutive Renewal Terms, with the final Renewal Term ending on \_\_\_\_\_

[8][9]. *Purchase Option Commencement Date.* For purposes of Article XI of the Lease, the Purchase Option Commencement Date is \_\_\_\_\_

Dated: \_\_\_\_\_

LESSOR:  
Banc of America Leasing & Capital, LLC  
555 California Street, 4th Floor  
San Francisco, California 94104

LESSEE:  
City of Jonesboro, Arkansas  
515 W. Washington Avenue  
Jonesboro, AR 72401

By \_\_\_\_\_  
Title \_\_\_\_\_

By \_\_\_\_\_  
Doug Forman, Mayor

Counterpart No. \_\_\_\_\_ of \_\_\_\_\_ manually executed and serially numbered counterparts. To the extent that this Lease constitutes chattel paper (as defined in the Uniform Commercial Code), no security interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

**EXHIBIT E**

**RENTAL PAYMENT SCHEDULE**

Rental Payment Date	Rental Payment Amount	Interest Portion	Principal Portion	Purchase Price	Fiscal Year

LESSEE:

City of Jonesboro, Arkansas

By \_\_\_\_\_  
Doug Forman, Mayor

## EXHIBIT F

### ARBITRAGE AND TAX CERTIFICATE

I, the undersigned Mayor of the City of Jonesboro, Arkansas (the "Issuer"), do hereby certify that this Certificate is issued pursuant to Sections 1.141-1 through 1.141-16, 1.148-0 through 1.148-1, 1.150-1 and 1.150-2 of the Treasury Regulations (the "Regulations") promulgated pursuant to the Internal Revenue Code of 1986, as amended (the "Code"), to set forth the Issuer's reasonable expectations on the date of issue of the obligations of the Issuer under that certain Lease and Option Agreement (as hereinafter defined) and as to future events regarding the amount and use of the proceeds thereof.

#### The Lease/Purchase Agreement

1. The undersigned is charged, together with other officials and officers, with the responsibility for entering into the \$6,000,000 Arkansas Master Lease and Option Agreement, dated as of March \_\_, 2006 (the "Lease and Option Agreement") between the Issuer and Banc of America Leasing Capital, LLC, an affiliate of Bank of America, N.A. (the "Lessor"), which is authorized pursuant to A.C.A. §6-20-402, and an Ordinance adopted by the City Council of the Issuer on February 21, 2006 (the "Ordinance"). This certificate shall constitute a document related to the Lease/Purchase Agreement. This certificate is given with the understanding that it may be relied upon by Wright, Lindsey & Jennings LLP in rendering its opinion of even date herewith with respect to the exclusion of the interest portion of the Rental Payments (as defined herein) from gross income for federal tax purposes.

2. The Lease/Purchase Agreement is being entered into to finance the cost of certain Equipment described in the Lease/Purchase Agreement. As contemplated by the Lease/Purchase Agreement, the Lessor will fund the Equipment Cost to the vendors thereof and will lease the Equipment back to the Issuer, and the Issuer will agree to make rental payments under the Lease/Purchase Agreement (the "Rental Payments") to the Lessor. The Equipment will be used for a public purpose of the Issuer.

#### Proceeds

3. The Issuer will receive from the Lessor as a result of the financing of the Equipment as contemplated by the Lease/Purchase Agreement \$\_\_\_\_\_ (the "Equipment Proceeds"). The Equipment Proceeds shall be immediately used for the acquisition of the Equipment or to reimburse the Issuer for the cost of purchasing the Equipment, which purchase did not occur more than sixty (60) days prior to the adoption of the Ordinance by Issuer. No investment of the Equipment Proceeds is expected. Completion of the acquisition of the Equipment is expected to occur prior to \_\_\_\_\_, 200\_. Issuer has entered into, or will enter into within six months after the date hereof, binding contracts or commitments obligating the expenditure of at least five percent (5%) of the Equipment Proceeds. At least eighty-five percent (85%) of the Equipment Proceeds will be expended to pay issuance costs or to acquire the Equipment within three years after the date hereof.

4. The total cost of the Equipment is anticipated to be equal to the Equipment Proceeds. It is not anticipated that any proceeds from the issue will be used to pay the expenses of issuing the Lease/Purchase Agreement obligations.

#### Equipment

5. The Equipment Proceeds and anticipated investment earnings on such proceeds do not exceed the amount necessary to complete the acquisition of the Equipment.



6. The Issuer represents that the Equipment will not be used in such a manner so as to cause the Lease/Purchase Agreement to constitute "private activity bonds" as defined in Section 141(a) of the Code and Sections 1.141-0 through 1.141-16 of the Regulations.

7. All Equipment financed by the Lease/Purchase Agreement will be owned by the Issuer in accordance with Section 141 of the Code. The Issuer represents and covenants that while the Lease/Purchase Agreement is in effect, it will not sell, lease or otherwise dispose of any portion of the Equipment, except that a portion of the Equipment may be disposed of in the normal course such as by reason of obsolescence and normal wear and tear; without providing to the Lessor an opinion of bond counsel that such sale, lease or other disposition will not adversely affect the exclusion of the interest portion of the Rental Payments made under the Lease/Purchase Agreement from the gross income of the Lessor for federal income tax purposes.

#### Yield

8. The Issuer represents that no other obligations of the Issuer (1) were or will be sold within 15 days of the lease of the Equipment as contemplated by the Lease/Purchase Agreement; (2) are being sold pursuant to a plan of financing common with the sales contemplated by the Lease/Purchase Agreement; and (3) are payable from substantially the same source of funds as the Lease/Purchase Agreement.

9. For purposes of this Certificate, "yield" means yield computed by the actuarial method using a 360-day year and semi-annual compounding, resulting in a discount rate which, when used in computing the present worth of all payments of principal and interest to be paid on an obligation, produces an amount equal to the issue price, fair market value, present value or purchase price thereof, as applicable, and is determined in all respects in accordance with Section 148 of the Code and the Regulations.

10. As of the Closing Date, the Issuer expects that the purchase price of \$ \_\_\_\_\_ is the issue price of the obligations under the Lease/Purchase Agreement to the public (excluding bond houses, brokers and other intermediaries). Based upon such price, the Lessor has advised the Issuer that the yield on the Lease/Purchase Agreement is computed as \_\_\_\_\_%.

#### Arbitrage Certifications

11. No sinking fund has been established in connection with the payment of the principal of and interest under the Lease/Purchase Agreement, and no other similar fund or reserve or replacement fund has or will be created or established, nor does the Issuer expect to create or establish such a fund. The Issuer will pay Rental Payments directly to the Lessor on the due dates thereof.

12. The Lease/Purchase Agreement has a weighted average maturity of \_\_\_\_\_ years. As of the Closing Date, the Issuer expects that the term of the Lease/Purchase Agreement is not longer than reasonably necessary for the governmental purpose of the Lease/Purchase Agreement. As of the Closing Date, the Issuer does not expect to have available amounts (within the meaning of Section 1.148-1(c)(4) of the Regulations) during the period in which the Lease/Purchase Agreement is in effect.

13. The Issuer acknowledges its rebate obligations under Section 148 of the Code. The Issuer will maintain such records as to the investments and earnings on the Equipment Proceeds as may be necessary and appropriate to determine the amount, if any, that it is required to rebate to the U.S. Treasury (the "Rebate Amount") because the earnings on such investments exceed the amount that would have been earned if such proceeds had been invested at the yield payable as the interest portion of the Rental

Payments on the Lease/Purchase Agreement. In the event that the Issuer invests any of the Equipment Proceeds or any investment proceeds in investments that have a yield in excess of \_\_\_\_\_%, the Issuer agrees to retain a rebate advisor to assist the Issuer in complying with Section 148 of the Code. The Issuer will make the calculations of its liability, file such reports and make any required payments at the time or times as are now or may hereafter be prescribed under Section 148 (or a successor provision) of the Code.

14. Except as expressly permitted hereunder, the Issuer will not use any gross proceeds of the Lease/Purchase Agreement to acquire investments with a yield considered as a class higher than the yield payable as the interest portion of the Rental Payments on the Lease/Purchase Agreement or to replace funds which are used to directly or indirectly acquire investments with a yield higher than the yield payable as the interest portion of the Rental Payments on the Lease/Purchase Agreement.

15. The Lease/Purchase Agreement is not and will not be part of a transaction or series of transactions that attempts to circumvent the provisions of Section 148 of the Code or the Regulations (a) enabling the Issuer to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage; or (b) overburdening the market for tax-exempt obligations.

#### Miscellaneous

16. The Lease/Purchase Agreement will not be federally guaranteed within the meaning of Section 149(b) of the Code.

17. The Issuer shall file or cause to be filed, the requisite Form 8038-G on or before the 45th day of the second month after the calendar quarter in which the Lease/Purchase Agreement is executed. The Issuer has reviewed the Form 8038-G prepared for the Lease/Purchase Agreement and all of the information contained therein is, to the best of the Issuer's knowledge, true and complete.

18. At least 85% of the net Equipment Proceeds of the Lease/Purchase Agreement will be allocated to expenditures for the Project no later than three years from the date hereof and therefore not more than 50% of the proceeds of the Lease/Purchase Agreement will be invested in nonpurpose investments (as defined in Section 148 of the Code) having a substantially guaranteed yield for four years or more.

19. The Issuer has not received notice of deficiency or other notice from the Internal Revenue Service, the Department of Treasury or any other governmental agency or department challenging or questioning in any way the status of the interest portion of the Rental Payments as being excludable from gross income for federal income tax purposes, nor has the Issuer been notified of any listing or proposed listing of it by the Internal Revenue Service as an issuer that may not enter into the type of lease/purchase transaction as contemplated here.

On the basis of the foregoing facts, estimates and circumstances in existence on the date hereof it is not expected that the proceeds of the Lease/Purchase Agreement will be used in a manner that would cause the Lease/Purchase Agreement to be "arbitrage bonds" under Section 148 of the Code and the Regulations. To the best of our knowledge and belief there are no other facts, estimates or circumstances which would materially change such expectations.

Dated this 2/01 day of February, 2006

IN WITNESS WHEREOF, I have hereunto set my hand.

**EXHIBIT A-1**

**INSTALLMENT PAYMENT SCHEDULE**

Pmt #	Payment Date	Payment Amount	Interest	Principal	Purchase Price	Outstanding Balance
	4/21/2006					\$183,400.00
1	7/1/2006	\$38,643.29	\$1,668.94	\$36,974.35	\$149,354.16	\$146,425.65
2	7/1/2007	\$38,643.29	\$6,852.72	\$31,790.57	\$116,927.78	\$114,635.08
3	7/1/2008	\$120,000.00	\$5,364.92	\$114,635.08	\$0.00	\$0.00
Totals:		\$197,286.58	\$13,886.58	\$183,400.00	Rate 4.680%	