

ORDINANCE NO. 2021-01-91 File # **2021-00003504**

CITY OF TONTITOWN, WASHINGTON COUNTY, ARKANSAS

AN ORDINANCE AUTHORIZING AND RATIFYING THE EXECUTION OF A STATE & LOCAL GOVERNMENT LEASE AGREEMENT WITH U.S. BANK EQUIPMENT FINANCE; AND PRESCRIBING OTHER MATTERS PERTAINING THERETO.

WHEREAS, the City of Tontitown, Arkansas (the "City") is authorized and empowered under the provisions of Amendment No. 78 to the Arkansas Constitution ("Amendment No. 78") and Title 14, Chapter 78 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation") to enter into a State & Local Government Lease Agreement ("Agreement") for the purpose of acquiring tangible personal property having an expected useful life of more than one (1) year; and

WHEREAS, the City proposes to lease and acquire office photocopiers for use at the City Hall (the "Equipment"); and

WHEREAS, it is proposed that the City enter into an Agreement with U.S. Bank Equipment Finance (the "Bank") for the purpose of acquiring the Equipment; and

WHEREAS, the City finds that it presently has the funds available for the purchase of the Equipment, but that authorizing and ratifying the Agreement is in the best interests of the citizens of the City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Tontitown, Arkansas:

Section 1. The City Council hereby finds that the Equipment will have a useful life of more than one (1) year and that the aggregate principal amount of the Agreement and any other obligations incurred under Amendment No. 78 and the Authorizing Legislation does not exceed five (5%) of the assessed value of taxable property located within the City as determined by the last tax assessment.

Section 2. As the City Council previously budgeted the lease and acquisition of the Equipment, the Agreement is hereby ratified and authorized and shall be in substantially the form submitted to this meeting with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval. The expiration date of the Agreement shall be thirty-six (36) months after the commencement date, unless earlier terminated in accordance with the Agreement. The commencement date for the Agreement shall be as set forth in the Agreement, or such other later date as is mutually agreed upon. The principal portion of the Agreement shall be \$27,900, paid in thirty-six monthly installments of \$775.00. Interest shall accrue at the rate of 0% per annum. Installments as set forth in the Agreement shall be made to the Bank.

Section 3. As provided in Amendment No. 78, the payments on the Agreement in each fiscal year (the "Payments") shall be charged against and paid from the general revenues of the City for such fiscal year. For the purpose of making the Payments, there is hereby appropriated

to pay the Agreement, an amount of general revenues of the City sufficient for such purposes. The Mayor and the City Clerk-Treasurer are hereby authorized and directed to withdraw from general revenues of the City the amounts and at the times necessary to make the Payments in accordance with the Agreement.

Section 4. (a) The City covenants that it shall not take any action or suffer or permit any action to be taken or condition to exist which causes or may cause the interest portion of the Agreement to be included in gross income for federal income tax purposes. Without limiting the generality of the foregoing, the City covenants that the proceeds of the Agreement will not be used directly or indirectly in such manner as to cause the Agreement to be treated as an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code").

(b) The City represents that it will not use or permit the use of the Equipment or the proceeds of the Agreement, in such manner as to cause the Agreement to be a "private activity bond" within the meaning of Section 141 of the Code. In this regard, the City covenants that (i) it will not use (directly or indirectly) the proceeds of the Agreement to make or finance loans to any person, and (ii) that while the Agreement is outstanding the Equipment will only be used by state and local governmental entities and by other persons on a basis as members of the general public.

(c) The Agreement is hereby designated as a "qualified tax exempt obligation" within the meaning of the Code. The City represents that the aggregate principal amount of its qualified tax exempt obligations (excluding "private activity bonds" within the meaning of Section 141 of the Code which are not "qualified 501(c)(3) bonds" within the meaning of Section 145 of the Code), including those of its subordinate entities, issued in calendar year 2020 will not exceed \$10,000,000.

(d) The City covenants that it will submit to the Secretary of the Treasury of the United States, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the commencement date of the Agreement occurs, a statement concerning the Agreement which contains the information required by Section 149(e) of the Code.

(e) The City covenants that it will not reimburse itself from proceeds of the Agreement for any costs paid prior to the commencement date of the Agreement except in compliance with United States Treasury Regulation §1.150-2 (the "Regulation"). This Ordinance shall constitute an "official intent" for purposes of the Regulation.

(f) The City expects to spend all proceeds of the Agreement within six months of the commencement date of the Agreement.

Section 5. The Mayor, for and on behalf of the City, is hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Agreement and the performance of all obligations of the City thereunder, and the performance of all acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. The Mayor and City Clerk-Treasurer are hereby further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof. Further, all actions of the Mayor

and the City Clerk-Treasurer taken so far in the furtherance of the acquisition of the Equipment, including the execution of the Agreement, are hereby ratified and accepted by the City Council.

Section 6. The City Clerk-Treasurer is hereby authorized and directed to file in the office of the City Clerk-Treasurer, as a part of the minutes of the meeting at which this Ordinance is adopted, for inspection by any interested person, a copy of the Agreement and such document shall be on file for inspection by any interested person.


Section 7. The provisions of this Ordinance are hereby declared to be separable, and if any article, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the articles, phrases and provisions.

Section 8. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.


PASSED: January 5, 2021

APPROVED:

ATTEST:



Paul Colvin, Jr., Mayor



Rhonda Ardemagni, City Clerk-Treasurer

(SEAL)

CERTIFICATE

The undersigned, City Clerk-Treasurer of the City of Tontitown, Arkansas (the "City"), hereby certifies that the foregoing pages are a true and perfect copy of Ordinance No. _____, adopted at a _____ session of the City Council at _____ p.m., on the _____ day of January, 2021, and that the Ordinance is of record in Ordinance Record Book No. _____, Page _____, now in my possession.

GIVEN under my hand and seal on this _____ day of January 2021.

Rhonda Ardemagni, City Clerk-Treasurer

(SEAL)



State & Local Government Value Lease Agreement

APPLICATION NO. 2736934

AGREEMENT NO.

EQUIPMENT FINANCE

Send Account Inquiries to: 1310 Madrid Street, Suite 101 • Marshall, MN 56258 • Phone: (800) 328-5371 • Fax: (800) 328-9092
Send Payments to: P.O. Box 790448 • St. Louis, MO 63179-0448

The words "Lessee," "you" and "your" refer to Customer. The words "Lessor," "we," "us" and "our" refer to U.S. Bank Equipment Finance, a division of U.S. Bank National Association ("U.S. Bank Equipment Finance").

CUSTOMER INFORMATION

FULL LEGAL NAME: City of Tontitown; STREET ADDRESS: 235 E. Henri De Tonti Blvd; CITY: Springdale; STATE: AR; ZIP: 72762; PHONE: 479-361-2700; BILLING NAME: (IF DIFFERENT FROM ABOVE); EQUIPMENT LOCATION: (IF DIFFERENT FROM ABOVE)

SUPPLIER INFORMATION

FULL LEGAL NAME: AAA Business Systems, Inc.; STREET ADDRESS: 2715 N. Drake St.; CITY: Fayetteville; STATE: AR; ZIP: 72703; PHONE: 479-442-4185

EQUIPMENT DESCRIPTION

Table with columns: MAKE/MODEL/ACCESSORIES, SERIAL NO., STARTING METER, NOT FINANCED UNDER THIS AGREEMENT. Rows include Sharp MX-6071 and Brother MFC-L9570CDW.

together with all replacements, parts, repairs, additions, and accessories incorporated therein or attached thereto and any and all proceeds of the foregoing, including, without limitation, insurance recoveries.

TERM AND PAYMENT INFORMATION

36 Payments of \$ 775.00; Payment includes 2000 B&W pages per month; Payment includes 8500 Color pages per month

END OF TERM OPTIONS

You may choose one of the following options, which you may exercise at the end of the term, provided that no event of default, non-appropriation or nonrenewal under this Agreement, as applicable, has occurred and is continuing. [] Purchase all of the Equipment for its Fair Market Value, renew this Agreement, or return the Equipment.

LESSOR ACCEPTANCE

U.S. Bank Equipment Finance; LESSOR SIGNATURE; TITLE; DATED

CUSTOMER ACCEPTANCE

BY SIGNING BELOW OR AUTHENTICATING AN ELECTRONIC RECORD HEREOF, YOU CERTIFY THAT YOU HAVE REVIEWED AND DO AGREE TO ALL TERMS AND CONDITIONS OF THIS AGREEMENT ON THIS PAGE AND ON PAGES 2 AND 3 ATTACHED HERETO.

City of Tontitown; CUSTOMER SIGNATURE: Paul Colvin, Jr; TITLE; DATED: 12-31-20

DELIVERY & ACCEPTANCE CERTIFICATE

You certify and acknowledge that all of the Equipment listed above: 1) has been received, installed and inspected; and 2) is fully operational and unconditionally accepted. Upon you signing below,

1. AGREEMENT: You agree to lease from us the goods ("Equipment") and, if applicable, finance certain software, software license(s), software components and/or professional services in connection with software (collectively, the "Financed Items," which are included in the word "Equipment" unless separately stated) from software licensor(s) and/or supplier(s) (collectively, the "Supplier"), all as described in this Agreement and in any attached schedule, addendum or amendment hereto ("Agreement"). You agree to all of the terms and conditions contained in this Agreement, which, with the acceptance certification, is the entire agreement between you and us regarding the Equipment and which supersedes any purchase order, invoice, request for proposal, response or other related document. This Agreement becomes valid upon execution by us. If any provision of this Agreement is declared unenforceable, the other provisions herein shall remain in full force and effect to the fullest extent permitted by law.

2. REPRESENTATIONS AND WARRANTIES: CUSTOMER: You hereby represent and warrant that: (i) you have been duly authorized under the Constitution and laws of the applicable jurisdiction and by a resolution or other authority of your governing body to execute and deliver this Agreement and to carry out your obligations hereunder; (ii) all legal requirements have been met, and procedures have been followed, including public bidding, in order to ensure the enforceability of this Agreement; (iii) this Agreement is in compliance with all laws applicable to you, including any debt limitations or limitations on interest rates or finance charges; (iv) the Equipment will be used only for your essential governmental or proprietary functions consistent with the scope of your authority, will not be used in a trade or business of any person or entity, by the federal government or for any personal, family or household use, and your need for the Equipment is not expected to diminish during the term of this Agreement; (v) you have funds available to pay Payments until the end of your current appropriation period, and you intend to request funds to make Payments in each appropriation period from now until the end of the term of this Agreement; and (vi) your exact legal name is as set forth on page one of this Agreement.

3. OWNERSHIP; PAYMENTS; TAXES AND FEES: Except as expressly stated herein, we own the Equipment, excluding any Financed Items. Ownership of any Financed Items shall remain with Supplier thereof. Subject to paragraph 4, you will pay all Payments, as adjusted, when due, without notice or demand and without abatement, set-off, counterclaim or deduction of any amount whatsoever. If any part of a Payment is more than 5 days late, you agree to pay a late charge of 10% of the Payment which is late or, if less, the maximum charge allowed by law. The Payment may be adjusted proportionately upward or downward: (i) if the shipping charges or taxes differ from the estimate given to you; and/or (ii) to comply with the tax laws of the state in which the Equipment is located. You shall pay all applicable taxes, assessments and penalties related to this Agreement, whether levied or assessed on this Agreement, on us (except on our income) or you, or on the Equipment, its lease, sale, ownership, possession, use or operation. If we pay any taxes or other expenses that are owed hereunder, you agree to reimburse us when we request. You agree to pay us a yearly processing fee of up to \$50 for personal property taxes we pay related to the Equipment. You agree to pay us a fee of up to \$50 for filing and/or searching costs required under the Uniform Commercial Code ("UCC") or other laws. You agree to pay us an origination fee of up to \$125 for all closing costs. We may apply all sums received from you to any amounts due and owed to us under the terms of this Agreement. If for any reason your check is returned for insufficient funds, you will pay us a service charge of \$30 or, if less, the maximum charge allowed by law. We may make a profit on any fees, estimated tax payments and other charges paid under this Agreement.

4. NON-APPROPRIATION OR RENEWAL: If either sufficient funds are not appropriated to make Payments or any other amounts due under this Agreement or (to the extent required by applicable law) this Agreement is not renewed either automatically or by mutual ratification, this Agreement shall terminate and you shall not be obligated to make Payments under this Agreement beyond the then-current fiscal year for which funds have been appropriated. Upon such an event, you shall, no later than the end of the fiscal year for which Payments have been appropriated or the term of this Agreement has been renewed, deliver possession of the Equipment to us. If you fail to deliver possession of the Equipment to us, the termination shall nevertheless be effective but you shall be responsible, to the extent permitted by law and legally available funds, for the payment of damages in an amount equal to the portion of Payments thereafter coming due that is attributable to the number of days after the termination during which you fail to deliver possession and for any other loss suffered by us as a result of your failure to deliver possession as required. You shall notify us in writing within seven days after (i) your failure to appropriate funds sufficient for the payment of the Payments or (ii) to the extent required by applicable law, (a) this Agreement is not renewed or (b) this Agreement is renewed by you (in which event this Agreement shall be mutually ratified and renewed), provided that your failure to give any such notice under clause (i) or (ii) of this sentence shall not operate to extend this Agreement or result in any liability to you.

5. EQUIPMENT; SECURITY INTEREST: At your expense, you shall keep the Equipment: (i) in good repair, condition and working order, in compliance with applicable laws, ordinances and manufacturers' and regulatory standards; (ii) free and clear of all liens and claims other than liens and claims under this Agreement; and (iii) at your address shown on page 1 of this Agreement, and you agree not to move the Equipment unless we agree in writing. To the extent permitted by law, you grant us a security interest in the Equipment to secure all amounts you owe us under this Agreement and any supplements hereto. You authorize and ratify our filing of any financing statement(s) to show our interest.

6. INSURANCE; COLLATERAL PROTECTION; RISK OF LOSS; LOSS OR DAMAGE: You agree to keep the Equipment fully insured against all risk, with us named as lender's loss payee, in an amount not less than the full replacement value of the Equipment until this Agreement is terminated. You also agree to maintain commercial general liability insurance with such coverage and from such insurance carrier as shall be satisfactory to us and to include us as an additional insured on the policy. You will provide written notice to us within 10 days of any modification or cancellation of your insurance policy(s). You agree to provide us certificates or other evidence of insurance acceptable to us. If you do not provide us with acceptable evidence of property insurance within 30 days after the start of this Agreement, we may, at our sole discretion, charge you a monthly property damage surcharge of up to .0035 of the Equipment cost as a result of our credit risk and administrative and other costs, as would be further described on a letter from us to you. We may make a profit on this program. NOTHING IN THIS PARAGRAPH WILL RELIEVE YOU OF RESPONSIBILITY FOR LIABILITY INSURANCE ON THE EQUIPMENT. As between you and us, and to the extent permitted by law and legally available funds, you are responsible for and shall bear the risk of loss for, shall pay directly, and shall defend against any and all claims, liabilities, proceedings, actions, expenses, damages or losses arising under or related to the Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof, except that you shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses, damages or losses that arise directly from events occurring after you have surrendered possession of the Equipment in accordance with the terms of this Agreement to us or that arise directly from our gross negligence or willful misconduct. You are responsible for any loss, theft, destruction or damage to the Equipment ("Loss"), regardless of cause, whether or not insured. You agree to promptly notify us in writing of any Loss. If a Loss occurs and we have not otherwise agreed in writing, you will promptly pay to us the unpaid balance of this Agreement, including any future Payments to the end of the term plus the anticipated residual value of the Equipment, both discounted to present value at 2%. Any proceeds of insurance will be paid to us and credited against the Loss. You authorize us to sign on your behalf and appoint us as your attorney-in-fact to endorse in your name any insurance drafts or checks issued due to a Loss.

7. ASSIGNMENT: YOU SHALL NOT SELL, TRANSFER, ASSIGN, ENCUMBER, PLEDGE OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT, without our prior written consent. You shall not consolidate or merge with or into any other entity, distribute, sell or dispose of all or any substantial portion of your assets other than in the ordinary course of business, without our prior written consent, and the surviving, or successor entity or the transferee of such assets, as the case may be, shall assume all of your obligations under this Agreement by a written instrument acceptable to us. No event shall occur which causes or results in a transfer of majority ownership of you while any obligations are outstanding hereunder. We may sell, assign, or transfer this Agreement without notice to or consent from you, and you waive any right you may have to such notice or consent. You agree that if we sell, assign or transfer this Agreement, our assignee will have the same rights and benefits that we have now and will not have to perform any of our obligations. You agree that our assignee will not be subject to any claims, defenses, or offsets that you may have against us. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

8. DEFAULT AND REMEDIES: You will be in default if: (i) you do not pay any Payment or other sum due to us under this Agreement when due or you fail to perform in accordance with the covenants, terms and conditions of this Agreement; (ii) you make or have made any false statement or misrepresentation to us; or (iii) you dissolve, liquidate, terminate your existence or are in bankruptcy. If you are ever in default, at our option, we can cancel this Agreement and require that you pay the unpaid balance of this Agreement, including any future Payments to the end of term plus the anticipated residual value of the Equipment, both discounted to present value at 2%. We may recover default interest on any unpaid amount at the rate of 12% per year. Concurrently and cumulatively, we may also use any remedies available to us under the UCC and any other law and we may require that you immediately stop using any Financed Items. If we take possession of the Equipment, you agree to pay the costs of repossession, moving, storage, repair and sale. The net proceeds of the sale of any Equipment will be credited against what you owe us under this Agreement and you will be responsible for any deficiency. In the event of any enforcement of our rights under this Agreement after a default by you, you agree to pay our costs and expenses, including reasonable attorneys' fees and collection agency fee. WE SHALL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES FOR ANY DEFAULT, ACT OR OMISSION BY ANYONE. Any delay or failure to enforce our rights under this Agreement will not prevent us from enforcing any rights at a later time. You agree that this Agreement is a "Finance Lease" as defined by Article 2A of the UCC and your rights and remedies are governed exclusively by this Agreement. You waive all rights under sections 2A-508 through 522 of the UCC. If interest is charged or collected in excess of the maximum lawful rate, we will refund such excess to you, which will be your sole remedy. In the event that legal proceedings relating to this Agreement (other than our enforcement of this Agreement after a default by you) are commenced in any court or before any other tribunal of competent jurisdiction, the legal fees and other reasonable costs and expenses of the prevailing party shall be paid by the non-prevailing party on demand of the prevailing party.

9. INSPECTIONS AND REPORTS: We have the right, at any reasonable time, to inspect the Equipment and any documents relating to its installation, use, maintenance and repair. Within 30 days after our request (or such longer period as provided herein), you will deliver all requested information which we deem reasonably necessary to determine your current financial condition and faithful performance of the terms hereof, including the appropriation of funds to pay amounts due under this Agreement. This may include compiled, reviewed or audited annual financial statements within 120 days after your fiscal year end, all in reasonable detail without any qualification or exception deemed material by us. Unless otherwise accepted by us, each financial statement shall be prepared in accordance with generally accepted accounting principles consistently applied and shall fairly and accurately present your financial condition and results of operations for the period to which it pertains.

10. END OF TERM: Unless the purchase option is \$1.00, at the end of the initial term, this Agreement shall renew on a month-to-month basis under the same terms hereof unless you send us written notice at least 30 days before the end of any term that you want to purchase or return the Equipment, and you timely purchase or return the Equipment. You shall continue making Payments and paying all other amounts due until the Equipment is purchased or returned. As long as you have given us the required written notice, if you do not purchase the Equipment, you will return all of the Equipment to a location we specify, at your expense, in retail re-saleable condition, full working order and complete repair. YOU ARE SOLELY RESPONSIBLE FOR REMOVING ANY DATA THAT MAY RESIDE IN THE EQUIPMENT, INCLUDING BUT NOT LIMITED TO HARD DRIVES, DISK DRIVES OR ANY OTHER FORM OF MEMORY.

11. MISCELLANEOUS: Unless otherwise stated in an addendum hereto, the parties agree that: (i) this Agreement and any related documents hereto may be authenticated by electronic means; (ii) the "original" of this Agreement shall be the copy that bears your manual, facsimile, scanned or electronic signature and that also bears our manually or electronically signed signature and is held or controlled by us; and (iii) to the extent this Agreement constitutes chattel paper (as defined by the UCC), a security interest may only be created in the original. You agree not to raise as a defense to the enforcement of this Agreement or any related documents that you or we executed or authenticated such documents by electronic or digital means or that you used facsimile or other electronic means to transmit your signature on such documents. Notwithstanding anything to the contrary herein, we reserve the right to require you to sign this Agreement or any related documents hereto manually and to send to us the manually signed, duly executed documents via overnight courier on the same day that you send us the facsimile, scanned or electronic transmission of the documents. You agree to execute any further documents that we may request to carry out the intents and purposes of this Agreement. Whenever our consent is required, we may withhold or condition such consent in our sole discretion, except as otherwise expressly stated herein. From time to time, Supplier may extend to us payment terms for Equipment financed under this Agreement that are more favorable than what has been quoted to you or the general public, and we may provide Supplier information regarding this Agreement if Supplier has assigned or referred it to us. All notices shall be mailed or delivered by facsimile transmission or overnight courier to the respective parties at the addresses shown on this Agreement or such other address as a party may provide in writing from time to time. By providing us with a telephone number for a cellular phone or other wireless device, including a number that you later convert to a cellular number, you are expressly consenting to receiving communications, including but not limited to prerecorded or artificial voice message calls, text messages, and calls made by an automatic telephone dialing system, from us and our affiliates and agents at that number. This express consent applies to each such telephone number that you provide to us now or in the future and permits such calls for non-marketing purposes. Calls and messages may incur access fees from your cellular provider. You authorize us to make non-material amendments (including completing and conforming the description of the Equipment) on any document in connection with this Agreement. Unless stated otherwise herein, all other modifications to this Agreement must be in writing and signed by each party or in a duly authenticated electronic record. This Agreement may not be modified by course of performance. Any provision in this Agreement requiring you to pay amounts due under this Agreement upon the occurrence of a default, failure to appropriate funds or failure to renew this Agreement is hereby amended to limit such requirement to the extent permitted by law and legally available funds.

12. WARRANTY DISCLAIMERS: WE ARE LEASING THE EQUIPMENT TO YOU "AS-IS." YOU HAVE SELECTED SUPPLIER AND THE EQUIPMENT BASED UPON YOUR OWN JUDGMENT. WE DO NOT TAKE RESPONSIBILITY FOR THE INSTALLATION OR PERFORMANCE OF THE EQUIPMENT. SUPPLIER IS NOT AN AGENT OF OURS AND WE ARE NOT AN AGENT OF SUPPLIER, AND NOTHING SUPPLIER STATES OR DOES CAN AFFECT YOUR OBLIGATIONS HEREUNDER. YOU WILL MAKE ALL PAYMENTS UNDER THIS AGREEMENT REGARDLESS OF ANY CLAIM OR COMPLAINT AGAINST ANY SUPPLIER, LICENSOR OR MANUFACTURER, AND ANY FAILURE OF A SERVICE PROVIDER TO PROVIDE SERVICES WILL NOT EXCUSE YOUR OBLIGATIONS TO US UNDER THIS AGREEMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, OF, AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, CONDITION, QUALITY, ADEQUACY, TITLE, DATA ACCURACY, SYSTEM INTEGRATION, FUNCTION, DEFECTS, INFRINGEMENT OR ANY OTHER ISSUE IN REGARD TO THE EQUIPMENT, ANY ASSOCIATED SOFTWARE AND ANY FINANCED ITEMS. SO LONG AS YOU ARE NOT IN DEFAULT UNDER THIS AGREEMENT, WE ASSIGN TO YOU ANY WARRANTIES IN THE EQUIPMENT GIVEN TO US.

13. LAW; JURY WAIVER: This Agreement will be governed by and construed in accordance with the law of the state in which you are located. You consent to jurisdiction and venue of any state or federal court in such state and waive the defense of inconvenient forum. For any action arising out of or relating to this Agreement or the Equipment, **BOTH PARTIES WAIVE ALL RIGHTS TO A TRIAL BY JURY.**

14. MAINTENANCE AND SUPPLIES: You have elected to enter into a separate arrangement with Supplier for maintenance, inspection, adjustment, parts replacement, drums, cleaning material required for proper operation and toner and developer ("Arrangement"). You agree to pay all amounts owing under this Agreement regardless of any claim you have against Supplier relating to the Arrangement. Supplier will be solely responsible for performing all services and providing all supplies under the Arrangement. You agree not to hold Lessor (if different from Supplier) or any assignee of this Agreement responsible for Supplier's obligations under the Arrangement. As a convenience to you, we will provide you with one invoice covering amounts owing under this Agreement and the Arrangement. If necessary, Supplier's obligations to you under the Arrangement may be assigned by us. You agree to pay a monthly supply freight fee to cover the costs of shipping supplies to you. Each month, you are entitled to produce the minimum number of pages shown on page 1 for each applicable page type. Regardless of the number of pages made, you will never pay less than the minimum Payment. You agree to provide periodic meter readings on the Equipment. You agree to pay the applicable overage charge for each metered page that exceeds the applicable minimum number of pages. Pages made on equipment marked as not financed under this Agreement will be included in determining your page and overage charges. At the end of the first year of this Agreement, and once each successive 12-month period thereafter, the maintenance and supplies portion of the Payment and the overage charges may be increased by a maximum of 15% of the existing payment or charge. In order to facilitate an orderly transition, the start date of this Agreement will be the date the Equipment is delivered to you or a date designated by us, as shown on the first invoice. If a later start date is designated, in addition to all Payments and other amounts due hereunder, you agree to pay us a transitional payment equal to

Washington County, AR

I certify this instrument was filed on
01/28/2021 02:58:36 PM
and recorded in Real Estate
File Number 2021-00003504
Kyle Sylvester - Circuit Clerk

by



less than 10% of the lots remaining in said Phase, in which case said lot owner shall owe its share of any assessment.

29. **Powers:** The POA shall have the power to enforce the covenants contained herein on behalf of the lot owners in the addition and shall have the power to take legal actions necessary to do the same. The POA shall also have the power to take whatever other actions that are deemed reasonable and foreseeable for a POA to take for the betterment of the addition, including, but not limited to electing officers and establishing the rules and guidelines regarding payment of POA dues, use of the common areas, and planning all addition events.
30. **Insurance/Indemnity:** The POA shall carry reasonable liability insurance purchased from a reputable, excellent-rated insurance company. All lot owners, tenants, and guests thereof, hereby indemnify the POA and its board members from any and all liability resulting from all POA actions excluding criminal activity, gross negligence, or breach of contract.

Article 4

Common Areas: Development, Maintenance, Uses and Liabilities

31. **Creation and Development of Common Areas:** The Development Owner (of Phase I) shall create common areas within the addition for the enjoyment of the POA members of all phases of Hickory Meadows PUD and their accompanied guests, including, but not limited to, a community pool and pavilion and the central lawn area.
32. **Maintenance of Common Areas:** It shall be the responsibility of the POA to properly and reasonably maintain the common areas in the addition. The POA shall use the annual dues collected from lot owners for these purposes and may, only in special circumstances, levy a special assessment for the purposes of paying for upkeep and development of the common areas.
33. **Use of the Common Areas:** The common areas are being developed for the enjoyment of the lot owners and tenants of the addition and their guests, although any guests of an addition lot owner or tenant must be accompanied by said lot owner or tenant while the guest uses the common areas. The POA may set additional guidelines for member and guest use.
34. **Liability for Common Areas:** The POA shall maintain proper liability insurance coverage for the common areas. The POA shall hereby indemnify and hold harmless the Development Owner for any and all claims and causes of actions related to the common areas in the absence of a showing of the highest level of gross negligence on the part of the Development Owner in construction of said areas.

Article 5

Miscellaneous Provisions

35. **Covenants to Run with the Land:** All covenants and restrictions set out in these covenants are to run with the land and shall be binding on all the parties, their heirs, and assigns. However, after the Development Owners turns over the operation of the POA to the lot owners at the sale of 95% of the lots to end users, the members may choose to modify the covenants and restrictions, except for covenants relating to the establishment and operation of the POA, if the vote for any change is approved by at least 75% of the POA votes in such addition. For any such change only one vote per lot shall be permitted, except that Development Owner shall have 5 votes per lot in consideration of the size of its investment in the PUD. Such amendments shall be made within, drafted so as to be recorded with the county clerk.
36. **Violations:** If the parties herein or any of them or their heirs or assigns or any other person shall violate or attempt to violate any of the covenants or restrictions herein while said covenants or restrictions are still in force it shall be lawful for any person or persons owning any interest in any lot or lots in said PUD to prosecute in law or equity any violation or attempted violation of any such covenant or restriction, either to enjoin the person from doing so or to recover damages or other available penalties in law or equity for such violation or violations.
- a. **Delinquent Dues:** The POA may file a lien on the property of any delinquent lot owner 90 days after the due date for said payment. If said dues are still not paid within 180 days after their due date, the POA may foreclose on the property to seek payment for its lien.
 - b. **Fines:** The POA may levy reasonable fines for covenant violations and file liens on a lot for unpaid fines and/or unpaid expenses incurred by the POA in relation to corrective action taken in the face of covenant violations. If said fines and unreimbursed expenses are not paid to the POA within 180 days after the filing of the lien, the POA may foreclose on the lot and force payment of the same.
 - c. **If within a 1 year time period a lot owner has 3 covenant violations and notice of each violation is sent by the POA via certified letter to the lot owner, the lot owner hereby agrees to sell its lot (including any improvements thereon) to the POA for 90% of the appraised value of the property, if the POA chooses to exercise this option.**
37. **Development Owner Right to Amend:** The Development Owner has the right to amend these covenants and make any POA Bylaw amendments in its sole discretion, without notice to or approval of any lot owner, builder, or homeowner for a period of 3 years from the date of filing hereof in the Washington County, Arkansas land records.
38. **Severability of covenants:** Invalidation of any one of these covenants by judgment or court order shall, in no way, affect any other provisions herein contained.

Signed,

Solomon Properties, LLC
Development Owner of Hickory Meadows PUD of Tontitown, AR, as of _____,
2020.

Washington County, AR

I certify this instrument was filed on

01/28/2021 03:04:38 PM

and recorded in Real Estate

File Number 2021-00003507

Kyle Sylvester - Circuit Clerk

by

