Ivins City Staff Report
City Council Meeting 11/3/2016

Agenda Item: Backhoe Loader Lease Renewal

Submitted by: Charles Gillette, P.E., Public Works Director/City Engineer

Recommended City Council Action: Approve Backhoe Loader Lease Extension with Wheeler Machinery

BACKGROUND:

Ivins City has been leasing backhoe loaders for many years because of the low cost, low maintenance, and keeping up-to-date best performing equipment for the best productivity of the crew. The City has two backhoe loaders leased from Wheeler Machinery through the Utah State Procurement Contract pricing.

FINDINGS AND ANALYSIS:

The three-year lease for one of the backhoe loaders has expired and needs to be renewed. The other backhoe lease expires next year in October. We have evaluated renewing the lease with Wheeler or starting a new lease with John Deere. The pricing was the same for both leases except that the equipment that Wheeler was offering include a thumb attachment which is critical to our staff in many situations. Also the Wheeler Machinery maintenance responsiveness has been found to be superior to John Deere. Staff recommends we renew the lease with a new one-year contract as attached.

Staff at these times also considers the option of purchasing equipment versus leasing. A new machine would cost approximately $120,000 and all maintenance expenses would be carried by the City. This equipment would have to be replaced every 10 years and resale on a 10-year old machine might be $20,000, showing that depreciation is at least $10,000 each year. Based on this simple analysis of depreciation and not including maintenance, the lease option appears to be superior by far.

SUPPORT MATERIALS:

- Wheeler Machinery Rental Agreement

FINANCIAL IMPACT:

- $8,900 per year GL# 51-4025.1

Respectfully Submitted:

Charles R Gillette, P.E., Public Works Director/City Engineer

Content Review:

Dale Coulam, City Manager

1. Equipment Conditions; Damages: Unless notified by Lessee in writing to the contrary within forty-eight (48) hours after receipt, the Equipment shall be conclusively presumed to be in good order and repair when shipped by Lessor and when received by Lessee. Upon timely and proper notice Lessor shall, at its expense, put the Equipment in good order and repair or provide substitute Equipment of the same or similar kind. Lessor shall not be responsible for any expenses contracted by Lessee or any repairs done to the Equipment without Lessor's prior written consent. Failure to so timely notify Lessor will constitute unconditional acceptance of the Equipment and lessee shall thereafter maintain all the Equipment in good working condition throughout the term of this lease. Except as provided hereinbefore, LESSOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE EQUIPMENT NOR AS TO VISIBLE OR HIDDEN DEFECTS IN MATERIAL, WORKMANSHIP OR CAPACITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE OR JOB. In no event shall Lessor be liable to Lessee for any injury, delays or damages, consequential or otherwise, resulting from or by reason of, the use or condition of said Equipment, or by reason of any failures or delays in making delivery to Lessee, or for any loss or damage to the Equipment in transit, or from strikes or other contingencies beyond its control, or from any cause whatsoever.

2. Repairs: Lessor agrees to provide at its own expense, labor and materials for major mechanical repairs required on the Equipment arising from normal use under the terms of this lease. Lessor shall have the sole right to determine what are major repairs under this provision of the lease and what repairs arise from other than normal use. Cylinder head breakage is the sole responsibility of the Lessee. All labor and materials for normal operating repairs and maintenance including, but not limited to, all expendable items such as cables, end bits, cutting edges, antifreeze, belts, filters, O rings, hoses, repairs to the electrical system, and minor adjustments to the Equipment shall be the responsibility of the Lessee. Lessor will inspect the Equipment upon its return by Lessee and invoice Lessee for any damage or abnormal wear. Lessee will pay for all fuel and oil used during the term of this lease and will MAINTAIN PROPER OIL AND COOLANT LEVELS AT ALL TIMES. Any repair required because of abuse, negligence or abnormal use including, but not limited to speeding, lack of lubrication, or maintenance of necessary fluid levels, damage resulting from lack of normal services, collision, overturning or improper operation shall be at Lessee's sole expense.

3. Maintenance, Full Value: The Lessee agrees to take good care of the Equipment, to keep the same free and clear of all liens, claims and encumbrances of any kind whatsoever, and to keep the same in good order and repair at its own expense and cost, except for major mechanical repairs as described above. If as of the end of the guaranteed rental period and any extension thereof the Equipment should be lost, destroyed, or rendered unfit for service, or not returned, the Lessee shall thereupon be obligated to pay Lessor the full value thereof, together with interest thereon at the rate of twenty-four percent (24%) per annum from that date until the said sum is paid, less a reasonable and fair credit as determined by Lessor for the lease payments theretofore made. The Lessee shall not make any changes or modifications in any of the Equipment without written permission of Lessor.

4. Inspection Charges; Removal: The Lessee agrees to pay all charges for any work or inspection required by any labor union. The Lessor may, at its option, refuse to do any repair work on the Equipment in the event of strikes or for any other cause beyond its control or if such work would be a violation of a federal, state or local statute, ordinance, or regulation. The lessor reserves the right to remove the Equipment from any job or location where it may be found if in its opinion the Equipment is likely to be damaged or immobilized for a significant period, such as in the case of strikes, flood, storms, and other such conditions. The Lessor is likewise entitled to remove the Equipment from any job or location when it is deemed necessary for the purpose of repair or inspection.

5. Insurance: During the term of this agreement and all subsequent such agreements, Lessee shall provide and maintain General Liability, Automobile Liability (for licensed vehicles), Worker Compensation and Physical Damage Insurance, for the amounts and limits stated below. Lessee's General and/or Automobile liability policies shall be endorsed or amended to name Wheeler Machinery Co. as Additional Insured and state that Lessee's liability is primary and not contributory in any way to insurance coverage maintained by Wheeler Machinery Co. Said coverage shall be certified to Wheeler Machinery Co. and insurance company in a form acceptable to Wheeler Machinery Co.

All Customers are required to have general liability insurance and physical damage insurance as outlined below:

On-Highway Construction Equipment (Licensed for use on public highways)

1. Business auto liability insurance: $1,000,000 per occurrance
   - Statutory Worker Compensation Insurance
2. Auto physical damage insurance: Full value of the vehicle.
   - Specify on-highway vehicle rented or leased from Wheeler Machinery Co.
   - Include coverage for hired and non-owned autos
   - Name Wheeler Machinery Co. as an additional insured with primary coverage and loss payee
   - Wheeler Machinery's Physical Damage Waiver is not available for trucks licensed for use on public highways.

Off-Highway Construction Equipment

1. Commercial general liability insurance: $1,000,000 per occurrance, $2,000,000 aggregate.
   - Statutory Workers Compensation Insurance
2. Physical damage insurance:
   Full value of equipment covering:
   - Rented or leased equipment using a contractors equipment floater form or comparable form
   - Name Wheeler Machinery Co. as loss payee
   - The physical damage insurance requirement shall not apply if customer participates in and pays for Wheeler Machinery's Physical Damage Waiver.

6. Indemnification: Lessee shall indemnify and hold Lessor harmless from any and all claims, actions, proceedings, expenses, damages, costs and liabilities arising in connection with the Equipment including, without limitation, its selection, purchase, manufacture, delivery, possession, use, operation or return and from any injury to property or to life caused in any way by the Equipment during the lease term or any extensions thereof.

7. Transportation Charges; Rental Period: The Lessee agrees to pay all transportation charges on the Equipment from the point of shipment to the point of operation and return therefrom or to such place as Lessor shall designate, it being understood, however, that Lessee shall be put to no greater expense for the return of the Equipment than if the Equipment were returned to Lessor's place of business in Salt Lake City, Utah. The rental period shall begin at the time when the Equipment is loaded at the shipping point for shipment to Lessee and shall cease when the Equipment is received at Lessor's place of business, or authorized alternative site.

8. Taxes: In the event that any sales, use or other personal property tax or assessment is hereafter levied by any public authority upon the transaction herein specified, or on the property which is the subject of this transaction, or any part thereof, then the Lessee agrees to pay any such taxes or assessments upon demand and, upon the request of Lessor, submit written proof of having done so.

9. Location: The Equipment shall not be used in violation of any federal, state or municipal statute, order or regulation. Lessor shall have the right to inspect the Equipment at any reasonable time. Lessee shall inform Lessor in writing prior to moving the unit to any location other than that indicated on the face of the document.

10. Return: Lessee agrees and guarantees that upon the termination of this lease it will promptly return the Equipment to Lessor in as good condition as when received and, if otherwise, to pay the expense of putting it in such condition, less ordinary wear incident to normal use in the hands of a competent operator. This guarantee is absolute and may not be excused by theft, vandalism, fire, weather, act of God, or for any other reason whatsoever. Lessee shall be liable to Lessor for any loss of Equipment or parts, or damage to or breakage of the same during the lease term, or extension thereof.

11. Rental Schedule; Standard Conditions: Lessee acknowledges receipt of Lessor's current Rental Schedule and Standard Conditions which is incorporated herein by reference and made a part of this lease. In the event of a conflict or inconsistency between the terms of this lease and the terms of the Rental Schedule, the terms of this lease shall apply.

12. Time Of Essence: Time is the essence of this lease. Acceptance by Lessor of any late payment shall not be construed as a waiver of Lessor's right to have each subsequent payment made on the due date thereof. Similarly, the failure of Lessor to timely notify Lessee of any breach of the terms hereof shall not constitute a waiver by Lessor, of such provisions as to any subsequent breach of the same, or of any other provision hereof. All amounts due under the terms of this lease shall be due on the date of receipt of the invoice or such later date as may be specified on the invoice. Accounts not paid in full prior to the last day of the month when due will incur interest at the highest lawful rate.

13. Default, Attorney's Fees; Lien: Lessee agrees that, in the event it shall fail in the payment of rental when due or shall fail to perform any of its obligations hereunder, or bankruptcy, receivership, assignment for benefit of creditors or other insolvency proceedings are commenced by or against Lessee, Lessee shall be in default of this lease and Lessee shall, without notice, immediately be indebted to and hereby agrees to pay Lessor forthwith, all sums due hereunder. In the event this lease is placed by Lessor in the hands of an attorney after default for enforcement or collection, Lessee will pay all costs and expenses therefor, including a reasonable attorney's fee. In the event Lessor elects to file a notice of lien with respect to the Equipment or its use, either with or without the default of Lessee, Lessee will pay all costs and expenses therefor.

14. Repossession: If at any time Lessor, in its sole discretion, determines that its rights to the Equipment are endangered, or that the Equipment is being used improperly or beyond its capacity, or in any manner improperly cared for or abused, or if there shall be any default by Lessee in the payment of any installment of the rental called for hereunder at the time herein provided or in the terms and conditions of this lease, Lessor may REPOSSESS the Equipment, lock or remove the same from the job site and, at its option, terminate this lease. Repossession alone shall not be construed to be an acceptance of surrender of this lease, and neither termination nor repossession shall deprive Lessor of the right to recover unpaid rentals and damages for Lessee's breach of this lease.

15. Venue: This lease is made to be performed in, and any liability hereunder arises at, and all sums due hereunder shall be paid to Lessor's office at Salt Lake City, Utah. Venue of any action under this lease brought in the State of Utah shall be in Salt Lake County unless Lessor otherwise elects.

16. Offsets: No waivers, counterclaims, or offsets of any kind or nature shall be set up or urged against Lessor unless the same shall be in writing signed by the Lessor.

17. Assignment: Lessee shall not assign, transfer, pledge, mortgage, hypothecate, hire out or otherwise dispose of this lease, the Equipment or any interest therein or sublet or lien the Equipment, surrender or part with its possession, custody or control, or permit it to be used by anyone other than Lessee or Lessee's employees.

18. Renewal: So long as Lessee is not in default it may renew this Lease from month to month after the guaranteed term by giving at least five (5) days written notice thereof to the Lessor prior to the expiration of the lease term, or any extension thereof, and at the same time paying the rentals called for herein. Any renewal shall be subject to any increase in the rental rate for the Equipment imposed by Lessor on similar lessees of similar equipment.

19. Exposure to Hazardous Material or Waste: Lessee shall not expose the Equipment to any hazardous material or waste. In the event the Equipment is exposed to any hazardous material or waste, Lessee shall immediately (1) notify Lessor, (2) remove the Equipment from such exposure and (3) completely clean and decontaminate the Equipment. If the Equipment cannot be completely cleaned, decontaminated and otherwise discharge from all adverse effects of such exposure, Lessee shall pay Lessor the full value of the Equipment, together with interest thereon at the rate of twenty-four percent (24%) per annum from that date until the said sum is paid in full. Lessee indemnifies and holds Lessor harmless from any and all claims, actions, expenses, damages, costs and liabilities arising from any such exposure of the Equipment to hazardous material or waste. This indemnification survives and continues after the term of this lease.

20. Miscellaneous: If any word, phrase, clause, sentence or paragraph of this lease is or shall be invalid for any reason, the same shall be deemed severable from the remainder hereof and shall in no way affect or impair the validity of this lease or of any other portion thereof. It is agreed that this agreement constitutes neither a sales contract nor an option to purchase, and that title to the Equipment above-described remains with the Lessor and Lessee shall have no rights to the said Equipment other than as specifically provided herein. At the option of Lessor, this lease may be recorded or filed with any appropriate governmental entity to evidence Lessor's interest in the equipment. This lease shall not be considered in full force until accepted by the Lessor and executed by its proper officer in Salt Lake City, Utah. All the terms and conditions of this lease shall be binding upon and shall insure to the benefit of the respective parties and their heirs, successors in interest, personal and/or legal representatives and assigns (where permission to assign has been given by Lessor). In the event that the Equipment is damaged and requires repair by Lessor or by any other service facility, the terms and conditions set forth herein shall continue during the period of repair. This lease contains all of the covenants between the parties hereto and any representation or understanding not contained here in shall be of no force or effect whatsoever. Performance by Lessor shall be subject to delay by strikes, breakage, fires, unforeseen commercial delays, insurrection, wars, acts of God, or governmental regulations or other actions. All remedies given Lessor hereunder are cumulative and the exercise of any one remedy by Lessor shall not be to the exclusion of any other remedy. All words used herein shall be construed to be of such gender and number as the circumstances may require. This lease shall be governed by the laws of the State of Utah (except for its choice of law rules).

Wheeler CAT

THE CAT Rental STORE
1-800 RENT CAT

RENTAL AGREEMENT

5275 West Wheeler Way
Hurricane, UT 84737 (435) 634-9904

SOLD TO	SHIP TO
IVINS CITY	IVINS, UT
55 NORTH MAIN	55 NORTH MAIN
IVINS UT 84738	

INVOICE NUMBER	INVOICE DATE	CUSTOMER NO.	CUSTOMER ORDER NUMBER	STORE	DIV	SALESMAN	TERMS	PAGE
	10/24/16	047030	SHILO	05	B	242	2	1

AGREEMENT NO.	DOC. DATE	PC	LC	MC	SHIP VIA	YEAR	INV SEQ NO.
515729	10/26/16			10	WMC/RYAN	2016	

MAKE	MODEL	SERIAL NUMBER	EQUIPMENT NUMBER	METER READING	MACH ID NO.
AA	420F2 E	0HWC01679		5.0	LKE03503

RENTAL INFORMATION

CUSTOMER CONTACT: SHILO PHONE: 435 680 1089

NEW 2016 420F2 E BACKHOE LOADER DCA3R;
LEASE PERIOD 10/24/16 THRU 10/23/17
THREE YEAR RENTAL AT $8,500 P/YEAR; OVERTIME
RATE OF $12.50 P/HOUR OVER 500 HOURS P/YEAR.
ATTACHED: LKE03503B BUCKET-24" DF160109788
NP016239 THUMB DJ151204904
NP017125 KIT, HYD ONP017125
LKE03503A BUCKET-MP 160701938
*WHEELER MACHINERY WILL SUPPLY ONE SET OF CUTTING EDGES AND BUCKET TEETH, UNDER NORMAL OPERATING CONDITIONS P/YEAR.
**CUSTOMER RESPONSIBILITIES:
-GREASE MACHINE EVERY TEN HOURS OF OPERATION.
-MONITOR/MAINTAIN PROPER FLUID LEVELS.
-CALL WMC EVERY 500 OPERATIONAL HOURS, TO SCHEDULE SERVICING.
-ABNORMAL TIRE WEAR, FLATS & DAMAGE.
-MACHINE DAMAGE.
-LIABILITY, THEFT AND DAMAGE INSURANCE.
-ALL WEAR ITEMS (TIRES, CUTTING EDGES, ETC.) MUST BE 50% OR BETTER UPON RETURN.
-TO BE FULLY FUELED UPON RETURN.

Lessee is responsible for the maintenance of this equipment including service meter while in his possession; any damage to this equipment resulting from improper care or maintenance will be charged directly to lessee.

Standard usage is 8 hours per day, 40 hours per week, or 176 hours per month. Overtime usage is determined by the service meter hour readings. The contract shall extend beyond the term, at the same terms, if the lessee holds the machine over the specified term of the lease.

TIRE CHARGE

In addition to the rental charges, lessee agrees to pay a charge, payable at the end of the lease term, for all wear or damage to rubber tires used on the equipment. Upon return of the equipment the rubber tires will be appraised by the lessor as to their then condition and lessee agrees to pay for any exhaustion through tread wear, cuts, cord separation, or any deterioration whatsoever during the use by lessee. Any new rubber installed by lessee will be taken into account in computing usage on the foregoing basis.

UNDERCARRIAGE

Undercarriage wear will be based on a service life of 4,000 hours. Undercarriage components include tracks, rails, shoes, rollers, idlers, and sprockets. Charges for accelerated wear will be assessed upon return of the equipment and lessee agrees to pay for any excessive wear.

Lessee hereby leases the equipment described above from lessor and agrees to the rental terms and conditions on the reverse side.

X _____ _____

LESSEE - CUSTOMER SIGNATURE LESSEE - (Print Name)

_____ _____

LESSOR - WHEELER MACHINERY CO. LESSOR - (Print Name)

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All Customers are required to have general liability insurance and physical damage insurance as outlined below:

On-Highway Construction Equipment (Licensed for use on public highways)

1. Business auto liability insurance: $1,000,000 per occurrance
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17. Assignment: Lessee shall not assign, transfer, pledge, mortgage, hypothecate, hire out or otherwise dispose of this lease, the Equipment or any interest therein or sublet or lien the Equipment, surrender or part with its possession, custody or control, or permit it to be used by anyone other than Lessee or Lessee's employees.

18. Renewal: So long as Lessee is not in default it may renew this Lease from month to month after the guaranteed term by giving at least five (5) days written notice thereof to the Lessor prior to the expiration of the lease term, or any extension thereof, and at the same time paying the rentals called for herein. Any renewal shall be subject to any increase in the rental rate for the Equipment imposed by Lessor on similar lessees of similar equipment.

19. Exposure to Hazardous Material or Waste: Lessee shall not expose the Equipment to any hazardous material or waste. In the event the Equipment is exposed to any hazardous material or waste, Lessee shall immediately (1) notify Lessor, (2) remove the Equipment from such exposure and (3) completely clean and decontaminate the Equipment. If the Equipment cannot be completely cleaned, decontaminated and otherwise discharge from all adverse effects of such exposure, Lessee shall pay Lessor the full value of the Equipment, together with interest thereon at the rate of twenty-four percent (24%) per annum from that date until the said sum is paid in full. Lessee indemnifies and holds Lessor harmless from any and all claims, actions, expenses, damages, costs and liabilities arising from any such exposure of the Equipment to hazardous material or waste. This indemnification survives and continues after the term of this lease.

20. Miscellaneous: If any word, phrase, clause, sentence or paragraph of this lease is or shall be invalid for any reason, the same shall be deemed severable from the remainder hereof and shall in no way affect or impair the validity of this lease or of any other portion thereof. It is agreed that this agreement constitutes neither a sales contract nor an option to purchase, and that title to the Equipment above-described remains with the Lessor and Lessee shall have no rights to the said Equipment other than as specifically provided herein. At the option of Lessor, this lease may be recorded or filed with any appropriate governmental entity to evidence Lessor's interest in the equipment. This lease shall not be considered in full force until accepted by the Lessor and executed by its proper officer in Salt Lake City, Utah. All the terms and conditions of this lease shall be binding upon and shall insure to the benefit of the respective parties and their heirs, successors in interest, personal and/or legal representatives and assigns (where permission to assign has been given by Lessor). In the event that the Equipment is damaged and requires repair by Lessor or by any other service facility, the terms and conditions set forth herein shall continue during the period of repair. This lease contains all of the covenants between the parties hereto and any representation or understanding not contained here in shall be of no force or effect whatsoever. Performance by Lessor shall be subject to delay by strikes, breakage, fires, unforeseen commercial delays, insurrection, wars, acts of God, or governmental regulations or other actions. All remedies given Lessor hereunder are cumulative and the exercise of any one remedy by Lessor shall not be to the exclusion of any other remedy. All words used herein shall be construed to be of such gender and number as the circumstances may require. This lease shall be governed by the laws of the State of Utah (except for its choice of law rules).

Wheeler CAT

THE CAT Rental STORE
1-800 RENT CAT

RENTAL AGREEMENT

5275 West Wheeler Way
Hurricane, UT 84737 (435) 634-9904

SOLD TO	SHIP TO
IVINS CITY	IVINS, UT
55 NORTH MAIN	55 NORTH MAIN
IVINS UT 84738	

INVOICE NUMBER	INVOICE DATE	CUSTOMER NO.	CUSTOMER ORDER NUMBER	STORE	DIV	SALESMAN	TERMS	PAGE
	10/24/16	047030	SHILO	05	B	242	2	1

AGREEMENT NO.	DOC. DATE	PC	LC	MC	SHIP VIA		INV SEQ NO.
515729	10/26/16			10	WMC/RYAN	2016	

MAKE	MODEL	SERIAL NUMBER	EQUIPMENT NUMBER	METER READING	MACH ID NO.
AA	420F2 E	0HWC01679		5.0	LKE03503

RENTAL INFORMATION

CUSTOMER CONTACT: SHILO PHONE: 435 680 1089

NEW 2016 420F2 E BACKHOE LOADER DCA3R;
LEASE PERIOD 10/24/16 THRU 10/23/17
THREE YEAR RENTAL AT $8,500 P/YEAR; OVERTIME
RATE OF $12.50 P/HOUR OVER 500 HOURS P/YEAR.
ATTACHED: LKE03503B BUCKET-24" DF160109788
NP016239 THUMB DJ151204904
NP017125 KIT, HYD ONP017125
LKE03503A BUCKET-MP 160701938
*WHEELER MACHINERY WILL SUPPLY ONE SET OF CUTTING EDGES AND BUCKET TEETH, UNDER NORMAL OPERATING CONDITIONS P/YEAR.
**CUSTOMER RESPONSIBILITIES:
-GREASE MACHINE EVERY TEN HOURS OF OPERATION.
-MONITOR/MAINTAIN PROPER FLUID LEVELS.
-CALL WMC EVERY 500 OPERATIONAL HOURS, TO SCHEDULE SERVICING.
-ABNORMAL TIRE WEAR, FLATS & DAMAGE.
-MACHINE DAMAGE.
-LIABILITY, THEFT AND DAMAGE INSURANCE.
-ALL WEAR ITEMS (TIRES, CUTTING EDGES, ETC.) MUST BE 50% OR BETTER UPON RETURN.
-TO BE FULLY FUELED UPON RETURN.

Lessee is responsible for the maintenance of this equipment including service meter while in his possession; any damage to this equipment resulting from improper care or maintenance will be charged directly to lessee.

Standard usage is 8 hours per day, 40 hours per week, or 176 hours per month. Overtime usage is determined by the service meter hour readings. The contract shall extend beyond the term, at the same terms, if the lessee holds the machine over the specified term of the lease.

TIRE CHARGE

In addition to the rental charges, lessee agrees to pay a charge, payable at the end of the lease term, for all wear or damage to rubber tires used on the equipment. Upon return of the equipment the rubber tires will be appraised by the lessor as to their then condition and lessee agrees to pay for any exhaustion through tread wear, cuts, cord separation, or any deterioration whatsoever during the use by lessee. Any new rubber installed by lessee will be taken into account in computing usage on the foregoing basis.

UNDERCARRIAGE

Undercarriage wear will be based on a service life of 4,000 hours. Undercarriage components include tracks, rails, shoes, rollers, idlers, and sprockets. Charges for accelerated wear will be assessed upon return of the equipment and lessee agrees to pay for any excessive wear.

Lessee hereby leases the equipment described above from lessor and agrees to the rental terms and conditions on the reverse side.

X _____
LESSEE - CUSTOMER SIGNATURE

_____
LESSOR - WHEELER MACHINERY CO.

1. Equipment Conditions; Damages: Unless notified by Lessee in writing to the contrary within forty-eight (48) hours after receipt, the Equipment shall be conclusively presumed to be in good order and repair when shipped by Lessor and when received by Lessee. Upon timely and proper notice Lessor shall, at its expense, put the Equipment in good order and repair or provide substitute Equipment of the same or similar kind. Lessor shall not be responsible for any expenses contracted by Lessee or any repairs done to the Equipment without Lessor's prior written consent. Failure to so timely notify Lessor will constitute unconditional acceptance of the Equipment and lessee shall thereafter maintain all the Equipment in good working condition throughout the term of this lease. Except as provided hereinbefore, LESSOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE EQUIPMENT NOR AS TO VISIBLE OR HIDDEN DEFECTS IN MATERIAL, WORKMANSHIP OR CAPACITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE OR JOB. In no event shall Lessor be liable to Lessee for any injury, delays or damages, consequential or otherwise, resulting from or by reason of, the use or condition of said Equipment, or by reason of any failures or delays in making delivery to Lessee, or for any loss or damage to the Equipment in transit, or from strikes or other contingencies beyond its control, or from any cause whatsoever.

2. Repairs: Lessor agrees to provide at its own expense, labor and materials for major mechanical repairs required on the Equipment arising from normal use under the terms of this lease. Lessor shall have the sole right to determine what are major repairs under this provision of the lease and what repairs arise from other than normal use. Cylinder head breakage is the sole responsibility of the Lessee. All labor and materials for normal operating repairs and maintenance including, but not limited to, all expendable items such as cables, end bits, cutting edges, antifreeze, belts, filters, O rings, hoses, repairs to the electrical system, and minor adjustments to the Equipment shall be the responsibility of the Lessee. Lessor will inspect the Equipment upon its return by Lessee and invoice Lessee for any damage or abnormal wear. Lessee will pay for all fuel and oil used during the term of this lease and will MAINTAIN PROPER OIL AND COOLANT LEVELS AT ALL TIMES. Any repair required because of abuse, negligence or abnormal use including, but not limited to speeding, lack of lubrication, or maintenance of necessary fluid levels, damage resulting from lack of normal services, collision, overturning or improper operation shall be at Lessee's sole expense.

3. Maintenance, Full Value: The Lessee agrees to take good care of the Equipment, to keep the same free and clear of all liens, claims and encumbrances of any kind whatsoever, and to keep the same in good order and repair at its own expense and cost, except for major mechanical repairs as described above. If as of the end of the guaranteed rental period and any extension thereof the Equipment should be lost, destroyed, or rendered unfit for service, or not returned, the Lessee shall thereupon be obligated to pay Lessor the full value thereof, together with interest thereon at the rate of twenty-four percent (24%) per annum from that date until the said sum is paid, less a reasonable and fair credit as determined by Lessor for the lease payments theretofore made. The Lessee shall not make any changes or modifications in any of the Equipment without written permission of Lessor.

4. Inspection Charges; Removal: The Lessee agrees to pay all charges for any work or inspection required by any labor union. The Lessor may, at its option, refuse to do any repair work on the Equipment in the event of strikes or for any other cause beyond its control or if such work would be a violation of a federal, state or local statute, ordinance, or regulation. The lessor reserves the right to remove the Equipment from any job or location where it may be found if in its opinion the Equipment is likely to be damaged or immobilized for a significant period, such as in the case of strikes, flood, storms, and other such conditions. The Lessor is likewise entitled to remove the Equipment from any job or location when it is deemed necessary for the purpose of repair or inspection.

5. Insurance: During the term of this agreement and all subsequent such agreements, Lessee shall provide and maintain General Liability, Automobile Liability (for licensed vehicles), Worker Compensation and Physical Damage Insurance, for the amounts and limits stated below. Lessee's General and/or Automobile liability policies shall be endorsed or amended to name Wheeler Machinery Co. as Additional Insured and state that Lessee's liability is primary and not contributory in any way to insurance coverage maintained by Wheeler Machinery Co. Said coverage shall be certified to Wheeler Machinery Co. and insurance company in a form acceptable to Wheeler Machinery Co.

All Customers are required to have general liability insurance and physical damage insurance as outlined below:

On-Highway Construction Equipment (Licensed for use on public highways)

1. Business auto liability insurance: $1,000,000 per occurrance
   - Statutory Worker Compensation Insurance
2. Auto physical damage insurance: Full value of the vehicle.
   - Specify on-highway vehicle rented or leased from Wheeler Machinery Co.
   - Include coverage for hired and non-owned autos
   - Name Wheeler Machinery Co. as an additional insured with primary coverage and loss payee
   - Wheeler Machinery's Physical Damage Waiver is not available for trucks licensed for use on public highways.

Off-Highway Construction Equipment

1. Commercial general liability insurance: $1,000,000 per occurrence, $2,000,000 aggregate.
   - Statutory Workers Compensation Insurance
2. Physical damage insurance:
   Full value of equipment covering:
   - Rented or leased equipment using a contractors equipment floater form or comparable form
   - Name Wheeler Machinery Co. as loss payee
   - The physical damage insurance requirement shall not apply if customer participates in and pays for Wheeler Machinery's Physical Damage Waiver.

6. Indemnification: Lessee shall indemnify and hold Lessor harmless from any and all claims, actions, proceedings, expenses, damages, costs and liabilities arising in connection with the Equipment including, without limitation, its selection, purchase, manufacture, delivery, possession, use, operation or return and from any injury to property or to life caused in any way by the Equipment during the lease term or any extensions thereof.

7. Transportation Charges; Rental Period: The Lessee agrees to pay all transportation charges on the Equipment from the point of shipment to the point of operation and return therefrom or to such place as Lessor shall designate, it being understood, however, that Lessee shall be put to no greater expense for the return of the Equipment than if the Equipment were returned to Lessor's place of business in Salt Lake City, Utah. The rental period shall begin at the time when the Equipment is loaded at the shipping point for shipment to Lessee and shall cease when the Equipment is received at Lessor's place of business, or authorized alternative site.

8. Taxes: In the event that any sales, use or other personal property tax or assessment is hereafter levied by any public authority upon the transaction herein specified, or on the property which is the subject of this transaction, or any part thereof, then the Lessee agrees to pay any such taxes or assessments upon demand and, upon the request of Lessor, submit written proof of having done so.

9. Location: The Equipment shall not be used in violation of any federal, state or municipal statute, order or regulation. Lessor shall have the right to inspect the Equipment at any reasonable time. Lessee shall inform Lessor in writing prior to moving the unit to any location other than that indicated on the face of the document.

10. Return: Lessee agrees and guarantees that upon the termination of this lease it will promptly return the Equipment to Lessor in as good condition as when received and, if otherwise, to pay the expense of putting it in such condition, less ordinary wear incident to normal use in the hands of a competent operator. This guarantee is absolute and may not be excused by theft, vandalism, fire, weather, act of God, or for any other reason whatsoever. Lessee shall be liable to Lessor for any loss of Equipment or parts, or damage to or breakage of the same during the lease term, or extension thereof.

11. Rental Schedule; Standard Conditions: Lessee acknowledges receipt of Lessor's current Rental Schedule and Standard Conditions which is incorporated herein by reference and made a part of this lease. In the event of a conflict or inconsistency between the terms of this lease and the terms of the Rental Schedule, the terms of this lease shall apply.

12. Time Of Essence: Time is the essence of this lease. Acceptance by Lessor of any late payment shall not be construed as a waiver of Lessor's right to have each subsequent payment made on the due date thereof. Similarly, the failure of Lessor to timely notify Lessee of any breach of the terms hereof shall not constitute a waiver by Lessor, of such provisions as to any subsequent breach of the same, or of any other provision hereof. All amounts due under the terms of this lease shall be due on the date of receipt of the invoice or such later date as may be specified on the invoice. Accounts not paid in full prior to the last day of the month when due will incur interest at the highest lawful rate.

13. Default, Attorney's Fees; Lien: Lessee agrees that, in the event it shall fail in the payment of rental when due or shall fail to perform any of its obligations hereunder, or bankruptcy, receivership, assignment for benefit of creditors or other insolvency proceedings are commenced by or against Lessee, Lessee shall be in default of this lease and Lessee shall, without notice, immediately be indebted to and hereby agrees to pay Lessor forthwith, all sums due hereunder. In the event this lease is placed by Lessor in the hands of an attorney after default for enforcement or collection, Lessee will pay all costs and expenses therefor, including a reasonable attorney's fee. In the event Lessor elects to file a notice of lien with respect to the Equipment or its use, either with or without the default of Lessee, Lessee will pay all costs and expenses therefor.

14. Repossession: If at any time Lessor, in its sole discretion, determines that its rights to the Equipment are endangered, or that the Equipment is being used improperly or beyond its capacity, or in any manner improperly cared for or abused, or if there shall be any default by Lessee in the payment of any installment of the rental called for hereunder at the time herein provided or in the terms and conditions of this lease, Lessor may REPOSSESS the Equipment, lock or remove the same from the job site and, at its option, terminate this lease. Repossession alone shall not be construed to be an acceptance of surrender of this lease, and neither termination nor repossession shall deprive Lessor of the right to recover unpaid rentals and damages for Lessee's breach of this lease.

15. Venue: This lease is made to be performed in, and any liability hereunder arises at, and all sums due hereunder shall be paid to Lessor's office at Salt Lake City, Utah. Venue of any action under this lease brought in the State of Utah shall be in Salt Lake County unless Lessor otherwise elects.

16. Offsets: No waivers, counterclaims, or offsets of any kind or nature shall be set up or urged against Lessor unless the same shall be in writing signed by the Lessor.

17. Assignment: Lessee shall not assign, transfer, pledge, mortgage, hypothecate, hire out or otherwise dispose of this lease, the Equipment or any interest therein or sublet or lien the Equipment, surrender or part with its possession, custody or control, or permit it to be used by anyone other than Lessee or Lessee's employees.

18. Renewal: So long as Lessee is not in default it may renew this Lease from month to month after the guaranteed term by giving at least five (5) days written notice thereof to the Lessor prior to the expiration of the lease term, or any extension thereof, and at the same time paying the rentals called for herein. Any renewal shall be subject to any increase in the rental rate for the Equipment imposed by Lessor on similar lessees of similar equipment.

19. Exposure to Hazardous Material or Waste: Lessee shall not expose the Equipment to any hazardous material or waste. In the event the Equipment is exposed to any hazardous material or waste, Lessee shall immediately (1) notify Lessor, (2) remove the Equipment from such exposure and (3) completely clean and decontaminate the Equipment. If the Equipment cannot be completely cleaned, decontaminated and otherwise discharge from all adverse effects of such exposure, Lessee shall pay Lessor the full value of the Equipment, together with interest thereon at the rate of twenty-four percent (24%) per annum from that date until the said sum is paid in full. Lessee indemnifies and holds Lessor harmless from any and all claims, actions, expenses, damages, costs and liabilities arising from any such exposure of the Equipment to hazardous material or waste. This indemnification survives and continues after the term of this lease.

20. Miscellaneous: If any word, phrase, clause, sentence or paragraph of this lease is or shall be invalid for any reason, the same shall be deemed severable from the remainder hereof and shall in no way affect or impair the validity of this lease or of any other portion thereof. It is agreed that this agreement constitutes neither a sales contract nor an option to purchase, and that title to the Equipment above-described remains with the Lessor and Lessee shall have no rights to the said Equipment other than as specifically provided herein. At the option of Lessor, this lease may be recorded or filed with any appropriate governmental entity to evidence Lessor's interest in the equipment. This lease shall not be considered in full force until accepted by the Lessor and executed by its proper officer in Salt Lake City, Utah. All the terms and conditions of this lease shall be binding upon and shall insure to the benefit of the respective parties and their heirs, successors in interest, personal and/or legal representatives and assigns (where permission to assign has been given by Lessor). In the event that the Equipment is damaged and requires repair by Lessor or by any other service facility, the terms and conditions set forth herein shall continue during the period of repair. This lease contains all of the covenants between the parties hereto and any representation or understanding not contained here in shall be of no force or effect whatsoever. Performance by Lessor shall be subject to delay by strikes, breakage, fires, unforeseen commercial delays, insurrection, wars, acts of God, or governmental regulations or other actions. All remedies given Lessor hereunder are cumulative and the exercise of any one remedy by Lessor shall not be to the exclusion of any other remedy. All words used herein shall be construed to be of such gender and number as the circumstances may require. This lease shall be governed by the laws of the State of Utah (except for its choice of law rules).

Wheeler CAT

THE CAT Rental STORE
1-800 RENT CAT

RENTAL AGREEMENT

5275 West Wheeler Way
Hurricane, UT 84737 (435) 634-9904

SOLD TO

IVINS CITY
55 NORTH MAIN
IVINS UT 84738

SHIP TO

IVINS, UT
55 NORTH MAIN

INVOICE NUMBER	INVOICE DATE	CUSTOMER NO.	CUSTOMER ORDER NUMBER	STORE	DIV	SALESMAN	TERMS	PAGE
	10/24/16	047030	SHILO	05	B	242	2	2

AGREEMENT NO.	DOC. DATE	PC	LC	MC	SHIP VIA	YEAR	INV SEQ NO.
515729	10/26/16			10	WMC/RYAN	2016	

MAKE	MODEL	SERIAL NUMBER	EQUIPMENT NUMBER	METER READING	MACH ID NO.
				.0	

RENTAL INFORMATION

CSA INCLUDED LT

ITEM	QUANTITY
IDNO: LKE03503 MODEL: 420F2 E	1.0

SERIAL NUMBER: OHWC01679
PIN: *CAT0420FEHWC01679*
DESC: BACKHOE LOADER 420
TIME OUT: 15:03 DATE OUT: 10/24/16 EXPECTED RETURN DATE: 10/23/17
METER OUT: 5.0 SHIP VIA: WMC/RYAN
OPTION PRICE: 122,500 FOB POINT: STGE, UT

Lessee is responsible for the maintenance of this equipment including service meter while in his possession; any damage to this equipment resulting from improper care or maintenance will be charged directly to lessee.

Standard usage is 8 hours per day, 40 hours per week, or 176 hours per month. Overtime usage is determined by the service meter hour readings. The contract shall extend beyond the term, at the same terms, if the lessee holds the machine over the specified term of the lease.

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Undercarriage wear will be based on a service life of 4,000 hours. Undercarriage components include tracks, rails, shoes, rollers, idlers, and sprockets. Charges for accelerated wear will be assessed upon return of the equipment and lessee agrees to pay for any excessive wear.

Lessee hereby leases the equipment described above from lessor and agrees to the rental terms and conditions on the reverse side.

X _____
LESSEE - CUSTOMER SIGNATURE

_____
LESSEE - (Print Name)

_____
LESSOR - WHEELER MACHINERY CO.

_____
LESSOR - (Print Name)

Form: WMCRNTAGRE 122013

ORIGINAL

1. Equipment Conditions; Damages: Unless notified by Lessee in writing to the contrary within forty-eight (48) hours after receipt, the Equipment shall be conclusively presumed to be in good order and repair when shipped by Lessor and when received by Lessee. Upon timely and proper notice Lessor shall, at its expense, put the Equipment in good order and repair or provide substitute Equipment of the same or similar kind. Lessor shall not be responsible for any expenses contracted by Lessee or any repairs done to the Equipment without Lessor's prior written consent. Failure to so timely notify Lessor will constitute unconditional acceptance of the Equipment and lessee shall thereafter maintain all the Equipment in good working condition throughout the term of this lease. Except as provided hereinbefore, LESSOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE EQUIPMENT NOR AS TO VISIBLE OR HIDDEN DEFECTS IN MATERIAL, WORKMANSHIP OR CAPACITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE OR JOB. In no event shall Lessor be liable to Lessee for any injury, delays or damages, consequential or otherwise, resulting from or by reason of, the use or condition of said Equipment, or by reason of any failures or delays in making delivery to Lessee, or for any loss or damage to the Equipment in transit, or from strikes or other contingencies beyond its control, or from any cause whatsoever.

2. Repairs: Lessor agrees to provide at its own expense, labor and materials for major mechanical repairs required on the Equipment arising from normal use under the terms of this lease. Lessor shall have the sole right to determine what are major repairs under this provision of the lease and what repairs arise from other than normal use. Cylinder head breakage is the sole responsibility of the Lessee. All labor and materials for normal operating repairs and maintenance including, but not limited to, all expendable items such as cables, end bits, cutting edges, antifreeze, belts, filters, O rings, hoses, repairs to the electrical system, and minor adjustments to the Equipment shall be the responsibility of the Lessee. Lessor will inspect the Equipment upon its return by Lessee and invoice Lessee for any damage or abnormal wear. Lessee will pay for all fuel and oil used during the term of this lease and will MAINTAIN PROPER OIL AND COOLANT LEVELS AT ALL TIMES. Any repair required because of abuse, negligence or abnormal use including, but not limited to speeding, lack of lubrication, or maintenance of necessary fluid levels, damage resulting from lack of normal services, collision, overturning or improper operation shall be at Lessee's sole expense.

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5. Insurance: During the term of this agreement and all subsequent such agreements, Lessee shall provide and maintain General Liability, Automobile Liability (for licensed vehicles), Worker Compensation and Physical Damage Insurance, for the amounts and limits stated below. Lessee's General and/or Automobile liability policies shall be endorsed or amended to name Wheeler Machinery Co. as Additional Insured and state that Lessee's liability is primary and not contributory in any way to insurance coverage maintained by Wheeler Machinery Co. Said coverage shall be certified to Wheeler Machinery Co. and insurance company in a form acceptable to Wheeler Machinery Co.

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On-Highway Construction Equipment (Licensed for use on public highways)

1. Business auto liability insurance: $1,000,000 per occurrance
   - Statutory Worker Compensation Insurance
2. Auto physical damage insurance: Full value of the vehicle.
   - Specify on-highway vehicle rented or leased from Wheeler Machinery Co.
   - Include coverage for hired and non-owned autos
   - Name Wheeler Machinery Co. as an additional insured with primary coverage and loss payee
   - Wheeler Machinery's Physical Damage Waiver is not available for trucks licensed for use on public highways.

Off-Highway Construction Equipment

1. Commercial general liability insurance: $1,000,000 per occurrance, $2,000,000 aggregate.
   - Statutory Workers Compensation Insurance
2. Physical damage insurance:
   Full value of equipment covering:
   - Rented or leased equipment using a contractors equipment floater form or comparable form
   - Name Wheeler Machinery Co. as loss payee
   - The physical damage insurance requirement shall not apply if customer participates in and pays for Wheeler Machinery's Physical Damage Waiver.

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7. Transportation Charges; Rental Period: The Lessee agrees to pay all transportation charges on the Equipment from the point of shipment to the point of operation and return therefrom or to such place as Lessor shall designate, it being understood, however, that Lessee shall be put to no greater expense for the return of the Equipment than if the Equipment were returned to Lessor's place of business in Salt Lake City, Utah. The rental period shall begin at the time when the Equipment is loaded at the shipping point for shipment to Lessee and shall cease when the Equipment is received at Lessor's place of business, or authorized alternative site.

8. Taxes: In the event that any sales, use or other personal property tax or assessment is hereafter levied by any public authority upon the transaction herein specified, or on the property which is the subject of this transaction, or any part thereof, then the Lessee agrees to pay any such taxes or assessments upon demand and, upon the request of Lessor, submit written proof of having done so.

9. Location: The Equipment shall not be used in violation of any federal, state or municipal statute, order or regulation. Lessor shall have the right to inspect the Equipment at any reasonable time. Lessee shall inform Lessor in writing prior to moving the unit to any location other than that indicated on the face of the document.

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11. Rental Schedule; Standard Conditions: Lessee acknowledges receipt of Lessor's current Rental Schedule and Standard Conditions which is incorporated herein by reference and made a part of this lease. In the event of a conflict or inconsistency between the terms of this lease and the terms of the Rental Schedule, the terms of this lease shall apply.

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13. Default, Attorney's Fees; Lien: Lessee agrees that, in the event it shall fail in the payment of rental when due or shall fail to perform any of its obligations hereunder, or bankruptcy, receivership, assignment for benefit of creditors or other insolvency proceedings are commenced by or against Lessee, Lessee shall be in default of this lease and Lessee shall, without notice, immediately be indebted to and hereby agrees to pay Lessor forthwith, all sums due hereunder. In the event this lease is placed by Lessor in the hands of an attorney after default for enforcement or collection, Lessee will pay all costs and expenses therefor, including a reasonable attorney's fee. In the event Lessor elects to file a notice of lien with respect to the Equipment or its use, either with or without the default of Lessee, Lessee will pay all costs and expenses therefor.

14. Repossession: If at any time Lessor, in its sole discretion, determines that its rights to the Equipment are endangered, or that the Equipment is being used improperly or beyond its capacity, or in any manner improperly cared for or abused, or if there shall be any default by Lessee in the payment of any installment of the rental called for hereunder at the time herein provided or in the terms and conditions of this lease, Lessor may REPOSSESS the Equipment, lock or remove the same from the job site and, at its option, terminate this lease. Repossession alone shall not be construed to be an acceptance of surrender of this lease, and neither termination nor repossession shall deprive Lessor of the right to recover unpaid rentals and damages for Lessee's breach of this lease.

15. Venue: This lease is made to be performed in, and any liability hereunder arises at, and all sums due hereunder shall be paid to Lessor's office at Salt Lake City, Utah. Venue of any action under this lease brought in the State of Utah shall be in Salt Lake County unless Lessor otherwise elects.

16. Offsets: No waivers, counterclaims, or offsets of any kind or nature shall be set up or urged against Lessor unless the same shall be in writing signed by the Lessor.

17. Assignment: Lessee shall not assign, transfer, pledge, mortgage, hypothecate, hire out or otherwise dispose of this lease, the Equipment or any interest therein or sublet or lien the Equipment, surrender or part with its possession, custody or control, or permit it to be used by anyone other than Lessee or Lessee's employees.

18. Renewal: So long as Lessee is not in default it may renew this Lease from month to month after the guaranteed term by giving at least five (5) days written notice thereof to the Lessor prior to the expiration of the lease term, or any extension thereof, and at the same time paying the rentals called for herein. Any renewal shall be subject to any increase in the rental rate for the Equipment imposed by Lessor on similar lessees of similar equipment.

19. Exposure to Hazardous Material or Waste: Lessee shall not expose the Equipment to any hazardous material or waste. In the event the Equipment is exposed to any hazardous material or waste, Lessee shall immediately (1) notify Lessor, (2) remove the Equipment from such exposure and (3) completely clean and decontaminate the Equipment. If the Equipment cannot be completely cleaned, decontaminated and otherwise discharge from all adverse effects of such exposure, Lessee shall pay Lessor the full value of the Equipment, together with interest thereon at the rate of twenty-four percent (24%) per annum from that date until the said sum is paid in full. Lessee indemnifies and holds Lessor harmless from any and all claims, actions, expenses, damages, costs and liabilities arising from any such exposure of the Equipment to hazardous material or waste. This indemnification survives and continues after the term of this lease.

20. Miscellaneous: If any word, phrase, clause, sentence or paragraph of this lease is or shall be invalid for any reason, the same shall be deemed severable from the remainder hereof and shall in no way affect or impair the validity of this lease or of any other portion thereof. It is agreed that this agreement constitutes neither a sales contract nor an option to purchase, and that title to the Equipment above-described remains with the Lessor and Lessee shall have no rights to the said Equipment other than as specifically provided herein. At the option of Lessor, this lease may be recorded or filed with any appropriate governmental entity to evidence Lessor's interest in the equipment. This lease shall not be considered in full force until accepted by the Lessor and executed by its proper officer in Salt Lake City, Utah. All the terms and conditions of this lease shall be binding upon and shall insure to the benefit of the respective parties and their heirs, successors in interest, personal and/or legal representatives and assigns (where permission to assign has been given by Lessor). In the event that the Equipment is damaged and requires repair by Lessor or by any other service facility, the terms and conditions set forth herein shall continue during the period of repair. This lease contains all of the covenants between the parties hereto and any representation or understanding not contained here in shall be of no force or effect whatsoever. Performance by Lessor shall be subject to delay by strikes, breakage, fires, unforeseen commercial delays, insurrection, wars, acts of God, or governmental regulations or other actions. All remedies given Lessor hereunder are cumulative and the exercise of any one remedy by Lessor shall not be to the exclusion of any other remedy. All words used herein shall be construed to be of such gender and number as the circumstances may require. This lease shall be governed by the laws of the State of Utah (except for its choice of law rules).