



JOHN DEERE FINANCIAL

AMENDMENT TO MASTER LEASE AGREEMENT

This Amendment to Master Lease Agreement (this "Amendment") amends and supplements that certain Master Lease Agreement No. _____ dated as of the ____ day of March 2019 (the "Lease") by and between **Deere Credit, Inc.** ("Lessor", "we", "us" or "our") and **City of Commerce City, Colorado** ("Lessee", "you" or "your").

RECITALS

WHEREAS, Lessee and Lessor desire to amend the terms and conditions of the Lease to further clarify certain provisions set forth therein;

NOW, THEREFORE, in consideration of the mutual covenants contained in this Amendment and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the parties agree as follows:

1. Capitalized terms not defined in this Amendment shall have the meaning given to them in the Lease.

2. Section 1 of the Lease is hereby deleted in its entirety and replaced with the following:

"1. **Lease Term; Payments.** You agree to lease from us the property ("Equipment") described in each Schedule for the Lease Term. The Lease Term will begin on the Lease Term Start Date and end on the Lease Term End Date. All attachments and accessories itemized on the Schedule and all replacements, parts and repairs to the Equipment shall form part of the Equipment. A Schedule is not accepted by us until we sign it, even if you have made a payment to us. You agree to remit to us the Lease Payments indicated in the Schedule and all other amounts when due and payable each Billing Period, even if we do not send you a bill or an invoice. **TO THE EXTENT FUNDS ARE APPROPRIATED FOR THE EQUIPMENT, YOUR PAYMENT OBLIGATIONS ARE ABSOLUTE AND UNCONDITIONAL, AND ARE NOT SUBJECT TO CANCELLATION, REDUCTION OR SETOFF FOR ANY REASON WHATSOEVER.** For any payment which is not received by its due date, you agree to pay a late charge equal to 4% of the past due amount (not to exceed the maximum amount permitted by law) as reasonable collection costs, plus interest from the due date until paid at a rate of 1.5% per month, but in no event more than the maximum lawful rate. Restrictive endorsements on checks you send us will not change or reduce your obligations to us. If a payment is returned to us by the bank for any reason, you agree to pay us a fee of \$25.00, or the maximum amount permitted by law, whichever is less. Lease Payments and other payments may be applied, at our discretion, to any obligation you may have to us or any of our affiliates. If the total of all payments made during the Lease Term (and any Renewal Term), exceeds the total of all amounts due under the Lease by less than \$25.00, we may retain such excess."

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3. Section 13 of the Lease is hereby deleted in its entirety and replaced with the following:

“13. **Claims.** To the extent permitted by law, you are responsible for all losses, damage, claims, injuries to or the death of an individual, and attorneys’ fees and costs (“Claims”), incurred or asserted by any person, in any manner related to your lease, use or possession of the Equipment. You will promptly notify us of all Claims you become aware of. You agree to not bring any action for Claims against us as lessor of the Equipment. Nothing herein is intended to or shall be construed as a waiver of any rights or claims you may have against the manufacturer or distributor of the Equipment. This provision shall continue beyond the termination of a Schedule for acts or omissions which occurred during the Lease Term.”

4. Section 14 of the Lease is hereby deleted in its entirety and replaced with the following:

“14. **Representations and Warranties.** You represent and warrant to us, as of the date of this Master Agreement and of each Schedule, and covenant to us so long as the Lease is in effect, that: (a) you are a State, or a political subdivision thereof, for purposes of Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”); (b) any documents required to be delivered in connection with the Lease (collectively, the “Documents”) have been duly authorized by you in accordance with all applicable laws, rules, ordinances, and regulations; (c) the Documents are valid, legal, binding agreements, enforceable in accordance with their terms and the person(s) signing the Documents have the authority to do so, are acting with the full authorization of your governing body, and hold the offices indicated below their signatures; (d) the Equipment is essential to the immediate performance of a governmental or proprietary function by you within the scope of your authority and shall be used during the Lease Term only by you and only to perform such function; (e) you intend to use the Equipment for the entire Lease Term and take all necessary action to include in your annual budget any funds required to fulfill your obligations each fiscal period during the Lease Term; (f) you will comply with all applicable laws, ordinances and regulations; (g) your obligations to remit the first Lease Payment due in the current fiscal year under the Lease constitute a current expense and not a debt under applicable state law; (h) all financial information you have provided is true and a reasonable representation of your financial condition; (i) you shall not do or cause to be done any act which shall cause, or by omission of any act allow the interest portion of any Lease Payment to become includible in our gross income for Federal income taxation purposes under the Code; (j) you shall maintain a complete and accurate account of all assignments of the Lease in the form sufficient to comply with book entry requirements of Section 149(a) of the Code and the regulations prescribed thereunder from time to time; and (k) you shall comply with the information reporting requirements of Section 149(e) of the Code. Such compliance shall include, but not be limited to, the execution of 8038-G or 8038-GC Information Returns”

5. Section 15 of the Lease is hereby deleted in its entirety and replaced with the following:

“15. **Governing Law; Jurisdiction; Venue.** **EACH LEASE WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF COLORADO, WHERE THIS MASTER AGREEMENT IS ACCEPTED AND ENTERED INTO**, except for its conflict of laws provisions. You irrevocably submit to the non-exclusive jurisdiction and venue of federal and state courts of Colorado and will not claim it is an

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inconvenient forum for legal action. **YOU AND WE IRREVOCABLY WAIVE ANY RIGHT YOU AND WE MAY HAVE TO A JURY TRIAL.**

6. Section 16 of the Lease is hereby deleted in its entirety and replaced with the following:

“16. **Miscellaneous.** WE HAVE NOT MADE, AND DO NOT MAKE, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE EQUIPMENT’S MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, OR OTHERWISE. WE ARE NOT LIABLE FOR CONSEQUENTIAL OR SPECIAL DAMAGES. You acknowledge that no supplier or dealer of the Equipment is an agent of ours, or authorized to act for or bind us. You agree not to withhold any amount you owe us if you believe you have a claim against us, or any Equipment supplier(s) or manufacturer(s), but to pursue that claim independently. Any claim you have against us must be made within the applicable statutes of limitations pursuant to Colorado law. All notices must be in writing and will be deemed given 5 days after mailing to the intended recipient at its address indicated above, unless changed by a notice given in accordance with this Section. Each Lease supersedes and replaces all prior understandings and communications (oral or written) concerning the subject matter thereof. Except as otherwise provided in Section 11(d), no part of any Lease can be amended, waived or terminated except by a writing signed by both you and us. Any part of this Master Agreement may be signed in separate counterparts that, together, will constitute one document. If a court finds any part of this Master Agreement to be invalid or unenforceable, the remainder of this Master Agreement will remain in effect. You permit us to monitor and record telephone conversations between you and us.”

7. Section 17 of the Lease is hereby deleted in its entirety and replaced with the following:

“17. **Non-Appropriation of Funds.** You intend to remit to us all Lease Payments and other payments for the full Lease Term if funds are legally available. In the event you are not granted an appropriation of funds at any time during the Lease Term for the Equipment or for equipment which is functionally similar to the Equipment and operating funds are not otherwise available to you to remit Lease Payments and other payments due and to become due under the Lease, and there is no other legal procedure or available funds by or with which payment can be made to us, you shall have the right to return the Equipment in accordance with Section 9 of this Master Agreement and terminate the Lease on the last day of the fiscal period for which appropriations were received without penalty or expense to you, except as to the portion of the Lease Payments for which funds shall have been appropriated and budgeted. At least thirty (30) days prior to the end of your fiscal period, your chief executive officer (or legal counsel) shall certify in writing that (a) funds have not been appropriated for the fiscal period, and (b) you have exhausted all funds legally available to pay Lease Payments. If you terminate the Lease because of a non-appropriation of funds, you may not, to the extent permitted by applicable law, purchase, lease, or rent, during the subsequent fiscal period, equipment performing the same functions as, or functions taking the place of, those performed by the Equipment. This Section 17 shall not permit you to terminate the Lease in order to acquire any other equipment or to allocate funds directly or indirectly to perform essentially the application for which the Equipment is intended.

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If you terminate the Lease because of a non-appropriation of funds, the provisions of Section 8 shall not apply.”

8. Except as expressly amended by this Amendment, the terms and conditions of the Lease shall remain in full force and effect. This Amendment constitutes the complete understanding of the parties hereto and supersedes all prior understandings of the parties relating to the matters discussed herein. This Amendment may only be amended or modified by the terms of a written instrument signed by all parties hereto. This Amendment may be executed in any number of counterparts, each of which shall be an original and all of which, when taken together shall constitute one and the same document. This Amendment shall be governed by and construed in accordance with the laws of the State of Colorado.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized representatives as of this ____ day of March 2019.

DEERE CREDIT, INC.

CITY OF COMMERCE CITY, COLORADO

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney