

MACHINERY AND EQUIPMENT LEASE

This Lease Agreement (this "lease") is made as of the date fully executed below, by and between Park City Equipment Rental ("Lessor"), a Utah limited liability company, having its principal place of business at 477 Saddle View #25, Park City, UT 84060, and [name on contract] ("Lessee").

WITNESSETH:

For and in consideration of the mutual covenants and promises hereinafter set forth, the parties hereto agree as follows:

- 1. Lease.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, all machinery and equipment listed on page one of contract [redacted] (collectively, the "Leased Property").
- 2. Term of Lease.** The term of this lease commences on the date of execution below and continues to the earlier of the agreed upon date specified or termination of this lease as provided herein.
- 3. Rental Payments.** The rent for the Leased Property is payable in one (1) installment. A one-day rental for the Leased Property shall mean 8 hours (of metered use) within a 24-hour period. If Leased Property is operated more than 8 hours within a 24-hour period, additional fees shall be prorated based on the additional hours multiplied by the daily rate. A Security Deposit described in Section 16 below shall be made prior to rental. Rental payments are due at Lessor's offices or to such person and at such place as Lessor may designate.
- 4. Lessee's Use of the Leased Property.** Lessee shall use and operate the Leased Property in a careful and proper manner and shall comply with all operating instructions, laws, ordinances and regulations which relate to the possession, use or maintenance of the Leased Property. Upon Lessor's demand, Lessee shall affix labels, plates or other markings supplied by Lessor, stating the Leased Property is owned by Lessor.
- 5. Lessee's Inspection of the Leased Property.** Lessee shall inspect the Leased Property immediately upon receiving it. Unless Lessee gives prompt written notice specifying a defect or objection to the Leased Property, it shall be conclusively presumed that the Leased Property was received in good condition and working order and Lessee is satisfied and has accepted the Leased Property.
- 6. Lessor's Right to Inspect the Leased Property.** Lessor shall have the right during normal business hours to enter into and upon the premises where the Leased Property is located for the purpose of inspecting or observing its use.
- 7. Alterations Prohibited.** Lessee shall not make any alterations, additions or improvements to the Leased Property without the prior written consent of the Lessor. All additions and improvements made to the Leased Property shall belong to and become the property of the Lessor upon the expiration of the lease.
- 8. Lessee's Obligation to Repair.** Lessee, at its own cost and expense, shall keep the Leased Property in good repair, condition and working order and shall furnish any and all parts, mechanisms and devices required to keep the Leased Property in good working order.
- 9. Risk of Loss.** Lessee hereby assumes and agrees to bear the entire risk of loss and damage to the Leased Property from any cause whatsoever. No loss or damage to the Leased Property shall lessen any of Lessee's obligations under this lease. In the event of any loss or damage, the Lessee shall, at Lessor's sole option: (i) place the Leased Property in good condition and working order; or (ii) replace the Leased Property with like property in good condition and working order; or (iii) if the Leased Property is stolen, destroyed or damaged beyond repair, pay the Lessor in the amount of the full replacement value.
- 10. Surrender of Leased Property.** Upon the expiration of this lease, the Lessee shall return the Leased Property in good repair, condition and working order, ordinary wear and tear excepted, in the following manner: (a) By delivering the Leased Property at Lessee's cost and expense to such place as Lessor shall specify; or (b) By loading the Leased Property at Lessee's cost and expense on board such carrier as Lessor shall specify and shipping it to the place designated by Lessor.
- 11. Insurance.** Lessee shall keep the Leased Property insured against all risks of loss or damage from every cause whatsoever for not less than the full replacement value thereof as determined by Lessor and shall carry public liability and property damage insurance covering the Leased Property. All of the aforesaid insurance shall be in form and amount and with companies approved by Lessor, and shall be in the joint names of Lessor and Lessee. Lessee shall pay the premiums therefor and deliver copies of the policies, to Lessor. The proceeds of insurance claims, at the option of Lessor, shall be applied: (a) toward the replacement or repair of the Leased Property, or (b) toward payment of the obligations of Lessee hereunder. Lessee hereby appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of, and execute and endorse all documents, checks or drafts for, loss or damage under any said insurance policy.
- 12. Liens, Fees and Taxes.** Lessee shall keep the Leased Property free and clear of all levies, liens and encumbrances and shall pay all license fees, registration fees, assessments, charges and taxes (municipal, state, and federal) which may now or hereafter be imposed upon the ownership, leasing, renting, sale, possession or use of the Leased Property, excluding, however, all taxes on or measured by Lessor's income.
- 13. Lessor Payments.** In the event of Lessee's failure to procure or maintain insurance as aforesaid, or to pay said fees, assessments, charges and taxes, Lessor shall have the right, but not the duty, to obtain such insurance, or pay such fees, assessments, charges and taxes and collect such amounts from Lessee with interest as provided in Section 22.
- 14. WARRANTIES. LESSOR MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE LEASED PROPERTY, ITS OPERABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.**
- 15. Indemnity.** Lessee shall indemnify Lessor against, and hold Lessor harmless from, any and all claims, actions, suits, proceedings,

costs, expenses, damages and liabilities, including reasonable attorney's fees, arising out of, connected with, or resulting from the Leased Property, including without limitation the manufacture, selection, delivery, possession, use, operation or return of the Leased Property.

16. Security Deposit. As security for its performance of all provisions of this lease, Lessee has deposited with Lessor the amount listed on first page of contract. Lessor shall have the right, but not the duty, to apply the security deposit to the curing of any Lessee default under this lease. Upon demand, Lessee shall restore the security deposit to the full amount set forth herein. Upon expiration of the lease, Lessor will return to Lessee any remaining balance of the security deposit.

17. Default. If Lessee fails to pay any rent or other amount provided herein within ten (10) days of when due, or if Lessee fails to observe or perform any other provision of this lease, Lessor shall have the right to any one or more of the following remedies: (a) To declare the entire amount of rent hereunder immediately due and payable and/or apply and retain the entirety of the security deposit toward the defaulted payment, without notice or demand to Lessee; (b) To sue for and recover all rents, and other payments, then accrued or thereafter accruing, with respect to any Leased Property; (c) To take possession of any Leased Property, without demand or notice, wherever same may be located, without any court order or other process of law. Lessee hereby waives any and all damages occasioned by such taking of possession. Any such taking of possession shall not constitute a termination of this lease unless Lessor expressly so notifies Lessee in writing; (d) To terminate this lease; and (e) To pursue any other remedy at law or in equity. Notwithstanding any such repossession, or any other action that Lessor may take, Lessee shall be and remain liable for the full performance of all its obligations under this lease. All such remedies are cumulative, and may be exercised concurrently or separately.

18. Lessor Expenses. Lessee shall pay all costs and expenses, including reasonable attorney's fees, incurred by Lessor in exercising any of its rights or remedies hereunder or in enforcing any of the terms and conditions hereof.

19. PROHIBITION OF ASSIGNMENT. WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR, LESSEE SHALL NOT: (A) ASSIGN, TRANSFER, PLEDGE OR HYPOTHECATE THIS LEASE, ANY LEASED PROPERTY, OR ANY INTEREST THEREIN, OR (B) SUBLET OR LEND ANY LEASED PROPERTY, OR PERMIT ANY LEASED PROPERTY TO BE USED BY ANYONE OTHER THAN LESSEE OR LESSEE'S EMPLOYEES. CONSENT TO ANY OF THE FOREGOING PROHIBITED ACTS APPLIES ONLY IN THE GIVEN INSTANCE AND IS NOT A CONSENT TO ANY SUBSEQUENT LIKE ACT BY LESSEE. Subject to the foregoing, this lease inures to the benefit of, and is binding upon the heirs, legatees, personal representatives, successors and assigns of the parties hereto.

20. Lessor Assignment. All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred, or otherwise disposed of, either in whole or in part, without notice to Lessee. No breach or default by Lessor or its assigns hereunder, shall excuse performance by Lessee of any provision hereof.

21. Ownership. The Leased Property is the sole and exclusive property of Lessor and the Lessee shall have no right, title, or interest therein or thereto except as expressly set forth in this lease.

22. Interest. Should Lessee fail to pay any part of the rent or other sum required hereunder within ten (10) days of the due date, Lessee shall pay Lessor interest on such delinquent payment from the expiration of those ten (10) days until paid at the rate of Twelve percent (12%) per annum.

23. Offsets. Lessee hereby agrees to pay the rent and other amounts hereunder without any offsets.

24. No-Waiver. No covenant or condition of this lease can be waived except by the written consent of the Lessor. Forbearance by Lessor shall not constitute a waiver of any covenant or condition to be performed by Lessee.

25. Entire Agreement. This lease, including the list of Leased Property and rates attached hereto, constitutes the entire agreement between Lessor and Lessee and it shall not be amended or altered except by a written agreement signed by the parties hereto.

26. Notices. Service of all notices under this agreement shall be sufficient if mailed or emailed to a party at its address set forth herein, or to such address as a party may provide in writing from time to time. Any such notice mailed or emailed to such address shall be effective upon written confirmation of delivery.

27. Damage Waiver. Under the terms of the Damage Waiver offered by Park City Equipment Rental, trlcl company agrees to waive certain damage claims, as more fully described below, against the customer. For the "base level" payment by the customer of 14% of gross rental fees, Diamond will waive up to \$2,000 of damage to rental equipment. Additional levels of Damage Waiver may be purchased at the rate of \$25.00 for \$1,000 in Damage Waiver. Customer will be responsible for damages in excess of the Damage Waiver amount. If Damage Waiver is purchased, Park City Equipment Rental also agrees to waive the subrogation of claims by Park City Equipment Rental's insurance carrier up to the amount of Damage Waiver purchased by customer.

Damage Waiver applies to accidental damage to the equipment rented under this contract that occurs during the course of the equipment's use by the customer. The only exceptions to this waiver are:

1. Any loss or damage due to theft, vandalism, misuse or abuse.
2. Any loss or damage resulting from the customer's failure to properly service or lubricate the equipment.

Under the terms of Park City Equipment Rental's Damage Waiver, "misuse" and "abuse" are terms that apply to the use of equipment outside the scope of its intended use and in a manner that a reasonable person should know would cause damage to the equipment.

28. Maintenance Care and Inspection. Customer is responsible for lubrication and normal service of equipment and is responsible for all damages direct or indirect due to lack of lubrication. Further Park City Equipment Rental shall have the right at any time to enter the premises where the equipment is being used or is thought to be located without becoming liable for trespass or fraud and shall be given free access thereto for the purpose of inspection or service of such equipment.