

ACCEPTANCE CERTIFICATE



MACQUARIE

Lessor/Owner:
Macquarie Equipment Capital Inc
1301 Riverplace Blvd, Level 4
Jacksonville, FL 32207

Lessee/Customer: Upshur County

Agreement Number:

This Acceptance Certificate is a part of the above-referenced Agreement between Lessee/Customer/Customer and Lessor/Owner/Owner.

Acceptance

1. Lessee/Customer hereby certifies to Lessor/Owner that all of the Equipment described in the above-referenced Agreement between Lessee/Customer and Lessor/Owner has been received and inspected by Lessee/Customer at the Equipment Location identified in the Agreement, and all such Equipment is fully installed and operational.
2. Lessee/Customer irrevocably accepts of all of the Equipment for all purposes, including under the Agreement and any Supplier contract or other related documents.
3. Lessee/Customer hereby restates and reaffirms each of the representations and covenants given to Lessor/Owner in the Agreement, and further represents that no event or condition has occurred that constitutes a Default under the Agreement, or that with notice or the lapse of time or both would constitute a Default.

Lessee/Customer: Upshur County

3-9-2023

Acceptance Date
Lessee/Customer to fill in if blank

Authorized Signature

Customer Tax ID: 75-6001187

Todd Letteller

County Judge

Authorized Signatory Name

Title

LEASE AGREEMENT



Lessor:
 Macquarie Equipment Capital Inc.
 1301 Riverplace Blvd Level 4
 Jacksonville, FL 32207

Lessee (full legal name and address):
 Upshur County
 POB 730
 Gilmer, TX 75644
Agreement Number:

Phone Number:
 903-680-8111

Equipment

Make/Model/Accessories	Quantity	Serial Number(s)
See Schedule A		

Equipment Location (if different from above): See Schedule A

Payment and Term

Base Term (in months)	Payment Frequency	Purchase Option:	Lease Payment:	Discount Fee:	Payment Information:
60	Monthly	Fair Market Value	\$700		Lease payment <input type="checkbox"/> includes <input checked="" type="checkbox"/> does Not include Maintenance Service (check one) Final address for invoices upshur_auditor2@yahoo.com

Signatures

I, Lessee has reviewed this page and the rest of this Agreement

Upshur County

(Lessee)

Macquarie Equipment Capital Inc. (Lessor)

[Signature]
 Authorized Signature

3-9-2023
 Date

[Signature]
 Authorized Signature

3/16/2023
 Date

Todd Tefeller
 Authorized Signatory Name

County Judge
 Title

Claire Eng
 Authorized Signatory Name

Funding Coordinator
 Title

Terms & Conditions

1. **Term and Payment.** The Term of this Agreement shall commence on a date designated by Lessor (the "Commencement Date") after receipt by Lessor of all required documentation, and the first Lease Payment shall be payable on the Commencement Date or any other date that Lessor designates, and the remaining Lease Payments will be due on the same day of each subsequent month at an address specified by Lessor in writing. Lessee agrees to pay a prorated amount for the period between the date the Equipment is installed and the Commencement Date. This payment for the transition period will be based on the Lease Payment prorated on a 30-day calendar month and shall be paid on the Commencement Date. Lessee's obligations under this Agreement are absolute and unconditional and not subject to abatement, offset, counterclaim, notice, or any defense whatsoever, arising under this Agreement or otherwise, or arising against Lessor or its assigns, Supplier or the manufacturer of the Equipment, or any other person. If Lessee does not pay any Payment or other amount owed within 3 days of the date when due, Lessor may impose late charges of up to the greater of 5% or 10% of the delinquent amount plus, for all Payments or other amounts remaining unpaid for more than one month, 18% per annum (but Lessor may not impose more than the maximum lawful amount of late charges).

2. **Definitions.** "Base Term" means the term of this Agreement and commences on the Commencement Date. "Term" means the Base Term and any renewals or extensions of this Agreement. "Payment" means the Lease Payments indicated above plus Taxes and other amounts that become or are scheduled to become due by Lessee hereunder. "FMV" means the retail in-place value of the Equipment to be valued assuming that it is in the location and condition required under this Agreement and that all software and services necessary for its use are readily available in the market as such value is determined by the Lessor. "Supplier" means the entity from whom Lessor acquires the Equipment. "Default" means Lessee fails to make Payment within 3 days of the date when due, or Lessee fails to comply with this Agreement or any related document or other agreement with Lessor or Lessee or any guarantor of this Agreement is or becomes insolvent, dissolves, or assigns its assets for the benefit of its creditors, or becomes the subject of any bankruptcy or reorganization proceeding, or any guarantor of this Agreement dies or fails to comply with its guaranty, or Lessee or any guarantor of this Agreement undergoes a change in ownership or control of any type that in Lessor's judgment results in a deterioration of its creditworthiness.

"Taxes" means all taxes, fees, and assessments of any kind, excluding however taxes "based on Lessor's income".

3. **Warranties and Disclaimers.** Lessor did not manufacture the Equipment. Lessor does not represent the manufacturer or Supplier. Lessee has selected the Equipment and Supplier based upon Lessee's own judgment. Lessor leases the Equipment to Lessee "As-Is, Where-Is, and without warranties of merchantability or fitness for a particular purpose or as to infringement or other warranties" except that Lessor warrants Lessee's quiet enjoyment of the Equipment during the Term so long as no Default occurs. Neither Supplier nor any salesperson, employee or agent of Supplier is Lessor's agent or has any authority to speak for Lessor or to bind Lessor in any way. Lessor assigns to Lessee for the Term, any assignable warranty made by the manufacturer or Supplier that benefits Lessor, and Lessor agrees to enforce for the benefit of Lessee during the Term any such warranties that are not assignable at Lessee's request and expense. If the Lease payment includes the cost of maintenance and/or service provided by a third party, you agree that we are not responsible to provide the maintenance or service and you will make all claims related to maintenance and service to the third party. You agree that any claims related to maintenance or service will not impact your obligation to pay all Lease payments when due and we are merely acting as a conduit for the maintenance and/or service payment to the third party.

4. **Covenants.** Lessee will keep the Equipment at the Equipment Location. Lessee shall use the Equipment only for its business operations, only for the purposes for which it was designed, and only in compliance with all applicable manufacturer operating standards and insurance requirements. Lessee shall comply with all laws and obtain all governmental permissions necessary for it to so comply (or that may be required of Lessor in so complying). Lessee will make no alterations, additions, or replacements to the Equipment. Lessee shall permit Lessor to inspect the Equipment and Lessee's applicable maintenance agreements and records at any reasonable time (subject to Lessee's usual reasonable security procedures). Lessee will keep the Equipment in good working order and useable, reasonably clean and cosmetically good, and in the same condition as when shipped to Lessee, reasonable wear and tear excepted. Lessee is solely responsible for obtaining any software or services that may be applicable to the Equipment or that it may need to use the Equipment, and Lessee shall perform its obligations under this Agreement regardless of the availability, failure, or quality of any software, services, and other non-hardware matters (even if the costs thereof are financed hereunder).

5. Net Agreement; Taxes. This Agreement is a net agreement and Lessee will indemnify Lessor for and, to the extent Lessor so notifies Lessee, pay directly and hold Lessor harmless from, any and all claims, actions, damages, liabilities, losses and costs (including but not limited to reasonable attorneys' fees), except to the extent of Lessor's gross negligence or willful misconduct. As between Lessee and Lessor, unless Lessor otherwise directs in writing, Lessor is exclusively entitled to file for and pay personal property Taxes imposed during the Term on the Equipment (regardless of who owns it) Taxes billed with the Lease Payments are due with the Lease Payment, and any other Taxes are due on demand. At Lessor's option, Lessee will remit, along with the Lease Payments under this Agreement, an amount equal to a percentage of Lessor's reasonable estimate of the personal property Taxes that will be assessable against the Equipment. In addition, at Lessor's option, Lessor may include in the Lease Payment an amount for any Taxes that may be imposed at the inception of this Agreement (such as "up-front" sales or use Taxes), financed at an interest rate reasonably determined by Lessor; and, if it is stated on the first page of this Agreement that the Lease Payment includes sales tax, the sales or use taxes included are only estimates and subject to adjustment by Lessor based on actual Tax amounts, as Lessor may advise Lessee from time to time by invoice or other writing. Lessee will remain obligated for any deficiency, if such amounts are insufficient to fully reimburse Lessor the actual amount of such Taxes, and any surplus will be either credited to Lessee's other obligations to Lessor or returned to Lessee. Lessor may impose a tax administration fee (which it may bill as part of the underlying Tax) of up to 10% of Taxes. If requested, Lessee agrees to file promptly on behalf of Lessor all requested Tax returns and reports concerning the Equipment in form satisfactory to Lessor, with all appropriate governmental agencies and to mail a copy to Lessor concurrently with the filing thereof.

6. End-of-Term Options. Lessee may exercise one and only one of the following end-of-Term options by giving Lessor written notice of the election at least 90 days before the end of the Term and duly performing the elected option by the end of the Term:

(a) Lessee may elect to return not less than all of the Equipment to Lessor so as to be received by Lessor by the last day of the Term; or (b) if a Purchase Option is provided in this Agreement, Lessee may elect to purchase not less than all of the Equipment on the last day of the Term for the specified Purchase Option price whereupon, on the last day of the Term, if such price and all Taxes and other Payments have been paid and no Default has occurred Lessor will sell the Equipment to Lessee; or (c) Lessee may elect any other end-of-Term option that may be stated herein. If Lessee does not give Lessor such a written election notice or if Lessee does not duly perform the elected option, the election notice, if given, will terminate and the Term will automatically renew for successive one-month renewal terms until Lessee gives a written election notice and performs the end-of-Term option it duly elects therein. During any such renewal terms the amount of each Lease Payment will remain the same (or become the average Lease Payment in effect during the previously applicable portion of the Term—whether it be the Base Term or a renewal term—if Lease Payments were not constant for each Payment Period of such portion of the Term), and the other terms of this Agreement will remain the same. If Lessee performs an end-of-Term option elected duly by it before the last day of the Term, Lessee's obligations under this Agreement shall nonetheless continue through the scheduled end of the Term.

7. Risk of Loss. Lessee shall always bear all risk of loss to the Equipment until the Equipment is returned to Lessor hereunder. No such loss shall condition, limit, or affect Lessee's obligation to pay the Lease Payment. In the event of a loss with respect to any Equipment, Lessee shall either (a) place such Equipment in good repair, condition, and working order; (b) replace such Equipment with equipment of the same manufacturer, year, make, model, and accessories in good repair, condition and working order; or (c) pay Lessor all amounts due hereunder plus the FMV of the Equipment. If Lessee elects a repair or replacement under subsections (a) or (b) above and the repair or replacement is for any reason not completed within 30 days of the loss, Lessee shall pay Lessor all amounts due hereunder plus the FMV of the Equipment.

8. Insurance. Lessee shall keep in effect an "all risk" extended coverage property insurance policy covering the Equipment for its full replacement value. Lessee shall also carry a comprehensive general liability insurance policy. Such policies shall be in form, amount, and with insurers reasonably acceptable to Lessor. The property insurance policy shall name Lessor and its assigns as loss payee and the general liability insurance policy shall name Lessor and its assigns as additional insureds. Each policy shall provide: (a) for no less than 30 days prior written notice of cancellation or non-renewal to Lessor; and (b) that such policy shall not be invalidated as against Lessor or its assigns for the violation of any term of the policy by Lessee. Proceeds from any general liability policy shall be made payable first on behalf of the Lessor to the extent of its liability; if any. If Lessee fails to maintain the insurance required hereunder or provide satisfactory proof of the existence and terms of the insurance to Lessor, Lessor may at its sole discretion obtain insurance to protect Lessor and its interest in the Equipment. Lessee agrees to pay Lessor's costs for such insurance, which costs may include a profit and/or administrative expense for the Lessor.

9. Remedies. Lessor may upon a Default: (i) terminate this Agreement; (ii) declare all amounts due hereunder plus the FMV of the Equipment immediately due, as liquidated damages for Lessor's loss of its bargain and not as a penalty; and (iii) require Lessee to return the Equipment to Lessor or peacefully repossess the Equipment without court order and without liability for entry or damage to property. Lessee agrees to pay all claims, actions, damages, liabilities, losses and costs (including but not limited to reasonable attorneys' fees) incurred by Lessor in enforcing Lessor's rights against Lessee. The

remedies existing in this Agreement are in addition to all other rights or remedies now or hereafter stated under this Agreement or at law or in equity and may be enforced concurrently and from time to time. If Lessee fails to make any payment to a third party or perform any other act required hereunder, Lessor may, but need not, make such payment or perform any other act such as at the expense of Lessee, reimbursable to Lessor on demand, and Lessor's action shall not be deemed a cure or waiver of Lessee's failure.

10. Title; UCC. No payment of Lease Payments shall entitle Lessee to any equity interest in the Equipment, and unless a Purchase Option is provided in this Agreement and duly elected and performed by Lessee, Lessor shall at all times be the Lessor and titleholder of the Equipment. Lessee will keep the Equipment free of all liens and encumbrances other than those created by Lessor or its assigns. If the Uniform Commercial Code—Leases (Article 2A) applies to this Agreement, this Agreement is to be considered a "finance lease" as that term is defined therein. To the extent permitted by applicable law, Lessee waives all rights and remedies conferred upon a lessee under Sections 316-522 of Article 2A.

11. Assignment; Lessor may, without notifying Lessee, and with or without delegating any of Lessor's obligations hereunder, in whole or in part assign this Agreement or transfer the Equipment. The rights of any such assignee shall not be subject to any defense, counterclaim or set off which Lessee may have against Lessor. Lessee may not assign this Agreement or transfer or sublease the Equipment, in whole or in part without written consent of Lessor. Subject to the foregoing, this Agreement binds and benefits the parties' successors and assigns.

12. Equipment Return. If Lessee is required to return the Equipment under this Agreement, Lessee shall, at its expense, promptly upon demand, send the Equipment to any location(s) that Lessor may designate. The Equipment must be properly packed for shipment, freight prepaid and fully insured, and must be received in useable and in good working order, reasonably clean and cosmetically good, in the same condition as when shipped to Lessee, reasonable wear and tear excepted. If the Equipment is not received within 15 days of the date of demand, Lessee agrees to continue paying Lease Payments and all other amounts due hereunder until the Equipment is returned to Lessor. Lessee is solely responsible for removing all data from any digital storage device, hard drive or other electronic medium prior to returning the Equipment or otherwise removing or allowing the removal of the Equipment from Lessee's control for any reason. Lessor shall not be liable for any losses, directly or indirectly arising out of, or by reason of the presence and/or use of any and all proprietary information residing on or with any Equipment returned to Lessor or repossessed by Lessor.

13. Miscellaneous. A provision of this Agreement that is or becomes invalid does not affect the remainder of that provision or this Agreement. Amendments to this Agreement must be in writing and signed by the party to be bound. Lessor may, without notice to Lessee, insert into this Agreement an Agreement Number or any missing information and correct obvious errors in this Agreement. Terms of inclusion are without limitation. Time is of the essence. A party's waiver or failure to require strict observance of this Agreement, will not constitute a waiver of any other breach of the same or any other provision of this Agreement or any other agreement between the parties. All notices shall be given in writing by the party sending the notice and shall be effective when received, or, if earlier, on the fifth day after being deposited in the US mail, postage prepaid, or on the next business day after being accepted by a nationally recognized overnight delivery service, addressed to the party receiving the notice at its address shown on the front of this Agreement (or in any other address specified by that party by notice). This Agreement will survive the Term, and any return or sale of the Equipment, and remain in full force and effect, with respect to events or conditions occurring or existing during (or fairly attributable to) the Term or Lessee's possession of the Equipment. The parties intend not to violate any applicable usury laws or to exceed the maximum amount of time price differential or interest, as applicable, permitted to be charged or collected by applicable law, and any such excess payments that would otherwise be charged or collected will instead be applied to Lease Payments or refunded to Lessee. In any proceeding relating to this Agreement, a party may produce a photocopy or scanned copy of a document rather than an original and such copy will have the same force as an original. Lessor may obtain credit reports from or make inquiries to credit bureaus or other sources as it determines appropriate. Lessor may also impose an administrative surcharge of up to \$175 with respect to any on-site inspection of the Equipment it makes hereunder. This Agreement is governed by the internal laws of Florida. Each party submits to the jurisdiction of the United States District Court for the Middle District of Florida or any State of Florida court, sitting in Duval County. To the extent permitted by applicable law, each party expressly waives trial by jury. The terms and conditions contained in this Agreement are the entire agreement between Lessee and Lessor regarding the Equipment and may not be contradicted or modified by any prior, contemporaneous or subsequent representation, promise or statement (oral or written). This Agreement is separate and independent of any other agreement or contract that Lessor or Lessee may have with any person, or the obligations of any person to provide any services, licenses or maintenance in connection with any Equipment or otherwise.

Texas
3-14-2023

SCHEDULE A



Lessor/Owner
 Macquarie Equipment Capital Inc.
 1301 Riverplace Blvd. Level 4
 Jacksonville, FL 32207

Agreement Number:

Lessee/Customer: Upshur County

This Schedule A is a part of the above-referenced Agreement between Lessee/Customer and Lessor/Owner

Equipment

Quantity	Make	Model	Serial Number	Location
		C579R	X574009156	Rock Building 301 West Tyler Gilmer, TX 75644
		C579R	X574009158	107 Third Floor 400 West Tyler Gilmer, TX 75644
	Epson		X521066767	Auditor 3rd Floor 400 West Tyler Gilmer, TX 75644
	Epson	C579R	X574009160	DA-Medical 3rd Floor, 100 West Tyler Gilmer, TX 75644
	Kyocera	40334	VFG7601802	Electronics 3rd Floor 400 West Tyler Gilmer, TX 75644
	Epson	S29R	X574009162	
		S29R	X574009164	Equipment 400 West Tyler Gilmer, TX 75644
	Epson	40334	W211760446	3rd Floor 2nd Floor 400 West Tyler Gilmer, TX 75644
	Epson	40334	W2R7705587	Electronics 3rd Floor 400 West Tyler Gilmer, TX 75644
	Epson/Kyocera	40300	X574009106 / RFG9602900	3rd Floor 400 West Tyler Gilmer, TX 75644
	Brother		U65541D2N853765	Justice Center 105 N. Titus, Gilmer, TX 75644
	Brother	10900	U65541D2N853760	Justice Center 105 N. Titus, Gilmer, TX 75644
	Brother		U65540G2N687817	Justice Center 105 N. Titus, Gilmer, TX 75644
	Brother	10900	U64209A2N796222	Justice Center 105 N. Titus, Gilmer, TX 75644
	Kyocera	40334	W2117604390	DC Office - Nicot 403 N. Titus, Gilmer, TX 75644
	Epson	C579R	X574009115	District Judge Justice Center 405 N. Titus, Gilmer, TX 75644
	Epson		W2R6901115	County Any Office Justice Center 105 N. Titus, Gilmer, TX 75644
	Brother	10900	U65541D2N853767	DC Office 403 N. Titus, Gilmer, TX 75644
	Brother	10900	U65541D2N853456	Justice Center 105 N. Titus, Gilmer, TX 75644

Signatures

Lessee/Customer: Upshur County

Todd Feltner
 Authorized Signature

Date

3-9-2023

Todd Feltner

County Judge

Authorized Signatory Name

Title

Lessor Owner:
 Macquarie Equipment Capital Inc.

Claire Eng
 Authorized Signature

Date

3/16/2023

Claire Eng

Funding Coordinator

Authorized Signatory Name

Title

NON APPROPRIATION RIDER

This Non-Appropriation Rider to the Lease Agreement Number 120880 dated as of 3/9, 2023 (the "Lease"), is by and between Macquarie Equipment Capital Inc. as lessor and _____ as lessee. Capitalized terms used herein without definition shall be defined as provided in the Lease.

Notwithstanding anything contained in the Lease to the contrary,

1. Lessee presently intends to continue the Lease for its entire term and to pay all rentals relating thereto and shall do all things lawfully within its power to obtain and maintain funds from which the rentals and all other payments owing thereunder may be made. To the extent permitted by law, the person or entity in charge of preparing Lessee's budget will include in the budget request for each fiscal year during the term of the Lease the rentals to become due in such fiscal year, and will use all reasonable and lawful means available to secure the appropriation of money for such fiscal year sufficient to pay all rentals coming due therein. The parties acknowledge that appropriation for rentals is a governmental function which Lessee cannot contractually commit itself in advance to perform and the Lease does not constitute such a commitment. However, Lessee reasonably believes that moneys in an amount sufficient to make all rentals can and will lawfully be appropriated and made available to permit Lessee's continued utilization of the Equipment in the performance of its essential functions during the term of the Lease.

2. If Lessee's governing body fails to appropriate sufficient moneys in any fiscal year for rentals or other payments due under the Lease and if other funds are not available for such payments, then a "Non-Appropriation" shall be deemed to have occurred. If a Non-Appropriation occurs, then: (i) Lessee shall give Lessor immediate notice of such Non-Appropriation and provide written evidence of such failure by Lessee's governing body at least sixty (60) days prior to the end of the then current fiscal year or if Non-Appropriation has not occurred by that date, immediately upon such Non-Appropriation; (ii) no later than the last day of the fiscal year for which appropriations were made for the rentals due under the Lease (the "Return Date"), Lessee shall return to Lessor all, but not less than all, of the Equipment covered by the Lease, at Lessee's sole expense, in accordance with the terms hereof; and (iii) the Lease shall terminate on the Return Date without penalty or expense to Lessee and Lessee shall not be obligated to pay the rentals beyond such fiscal year, provided, that Lessee shall pay all rentals and other payments due under the Lease for which moneys shall have been appropriated or are otherwise available, provided further, that Lessee shall pay month-to-month rent at the rate set forth in the Lease for each month or part thereof that Lessee fails to return the Equipment as required herein.

3. The Lease shall be deemed executory only to the extent of monies appropriated and available for the purpose of the Lease, and no liability on account thereof shall be incurred by the Lessee beyond the amount of such monies. The Lease is not a general obligation of the Lessee. Neither the full faith and credit nor the taxing power of the Lessee are pledged to the payment of any amount due or to become due under the Lease. It is understood that neither the Lease nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or make monies available for the purpose of the Lease.

4. Lessee's obligation with respect to rent that becomes due upon exercise of Lessor's remedies with respect to an event of Default shall be limited to such amount permitted under applicable law.

5. The Lease and this Rider shall be governed by the laws of the state in which Lessee is located. Any provisions of the Lease or this Rider found to be prohibited by law shall be ineffective to the extent of

such prohibition without invalidating the remainder of the Lease or this Rider.

6. This Rider may be executed in several counterparts and all of which shall constitute but one and the same instrument.

7. This Rider shall be binding upon and inure to the benefit of the Lessee and Lessor and their respective successors and assigns.

8. Except as modified herein the Lease remains in full force and effect.

IN WITNESS WHEREOF, each of the parties hereto has caused this Rider to be executed as of the day of March, 2023 120880 QH

LESSEE

BY 

Title County Judge

LESSOR

By Claire Eng

Title Funding Coordinator

kristin culberson

From: Linda Sikes <upshur.auditor2@yahoo.com>
Sent: Monday, March 20, 2023 9:49 AM
To: Kristin Culberson
Subject: Executed Copier Lease Agreement
Attachments: Countersigned Docs.pdf

Here is the fully executed contract for court record.

Thanks,

Linda Sikes
Assistant County Auditor
Upshur County, Texas
903-680-8111
903-843-4818 fax