

## FORKLIFT PURCHASE AGREEMENT

THIS AGREEMENT (hereinafter “Agreement”) is by and between the City of Columbia, Missouri (hereinafter “City”), a municipal corporation whose address is 701 E. Broadway Columbia, MO 65201 and Planet Machinery Company (hereinafter “Seller”), a company with authority to transact business within the State of Missouri and whose address is 451 E. Wilson Ave, Pontiac, MI 48341, and is entered into on the date of the last signatory below (hereinafter “Effective Date”). City and Seller are each individually referred to herein as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, in June of 2016, City began renting a Forklift from Seller for City’s use at its transload facility and this rental agreement is still in effect;

WHEREAS, both Parties wish for City to purchase the Forklift and to terminate the Equipment Rental Agreement, in accordance with the terms and provisions provided herein;

NOW, THEREFORE, in consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Parties agree as follows:

1. **Definitions.**

(a) “*Forklift*” shall mean a 30,000# Royal Liftmaster Forklift Truck, Model #T300C, Serial #L0863.

(b) “*Equipment Rental Agreement*” shall mean the Forklift rental agreement between City and Seller, dated June 7, 2016, a copy of which is attached hereto as **Exhibit A**.

2. **Payment.** City agrees to pay to seller the amount of Six Thousand Dollars (\$6,000) to purchase Forklift. Seller shall invoice City after Effective Date and City shall make a payment within thirty (30) days of receipt of invoice.

3. **Transfer of Ownership.** The ownership and title for Forklift shall pass to City once Seller has received payment under this Agreement. Seller agrees to transfer, and provide City with all related documents, the title as well as any existing manufacturing warranties, and any other necessary documents reasonably requested by City to evidence the sale of Forklift.

4. **Warranties.** Seller warrants that the Forklift is free of any liens and encumbrances and that the Seller is the legal owner of the Forklift. Seller warrants that Seller has the full right and authority to sell the Forklift.

5. **As Is Condition.** City acknowledges that Forklift is being sold ‘as is’ and Seller expressly disclaims any implied warranties as to fitness for a particular purpose and any implied warranty as to merchantability.



# EQUIPMENT RENTAL AGREEMENT

THIS EQUIPMENT RENTAL AGREEMENT (this "Agreement") dated this 7<sup>th</sup> day of June, 2016

BETWEEN:

Planet Machinery Company of 451 E. Wilson Avenue, Pontiac, MI 48341

(the "Lessor")

- AND -

Columbia Terminal Railroad of 6501 N. Brown Station Road, Columbia, MO 65202

(the "Lessee")

(the Lessor and Lessee are collectively the "Parties")

**IN CONSIDERATION OF** the mutual covenants and promises in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Lessor leases the Equipment to the Lessee, and the Lessee leases the equipment from the Lessor on the following terms:

## Definitions

1. The following definitions are used but not otherwise defined in this agreement:
  - a. "Casualty value" means the market value of the Equipment at the end of the term or when in relation to a total loss, the market value the equipment would have had at the end of the Term but for the Total Loss. The casualty value may be less than but will not be more than the original purchase price of the equipment.
  - b. "Equipment" means 30,000# Royal Liftmaster Forklift Truck, Model #T300C, Serial #L0863 valued at \$119,500 US Dollars.
  - c. "Total loss" means any loss or damage that is not repairable or would cost more to repair than the market value of the Equipment.

## Lease

2. The Lessor agrees to lease the Equipment to the Lessee, and the Lessee agrees to lease the Equipment from the Lessor in Accordance with the terms set out in this agreement.

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**Term**

3. The Lease commences on arrival at your facility and will be for a term of 2 months (the "Term")

**Rent and Deposit**

4. The rent will be paid in the amount of \$6,000.00 for the Term (\$3,000/month) in advance of pick-up.

**Delivery of Equipment**

5. The Lessee will, at the Lessee's own expense and risk, pick up and transport the Equipment from Timco, Incorporated at 401 Rutherford Lane, Columbia, Tennessee, 38401.

**Warranties**

6. The Equipment will be in good working order and good condition upon pick-up  
7. The Equipment is of merchantable quality and is fit for the following purpose:

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**Loss and Damage**

8. To the extent permitted by law, the Lessee will be responsible for risk of loss, theft, damage or destruction to the Equipment from any and every cause.  
9. If the Equipment is lost or damaged, the Lessee will continue paying Rent, will provide the Lessor with prompt written notice of such loss or damage and will, if the Equipment is repairable, put or cause the Equipment to be put in a state of good repair, appearance and condition.  
10. In the event of Total loss of the Equipment, the Lessee will provide the Lessor with prompt written notice of such loss and will pay to the Lessor all unpaid Rent for the Term plus the Casualty Value of the Equipment, at which point ownership of the Equipment passes to the Lessee.

### Ownership, Right to Lease and Quiet Enjoyment

11. The Equipment is the property of the Lessor and will remain the property of the Lessor
12. The Lessee will not encumber the Equipment or allow the Equipment to be encumbered or pledge the Equipment as security in any manner.
13. The Lessor warrants that the Lessor has the right to lease the Equipment according to the terms in this Agreement.
14. The Lessor warrants that as long as no Event of Default has occurred, the Lessor will not disturb the Lessee's quiet and peaceful possession of the Equipment or the Lessee's unrestricted use of the Equipment for the purpose for which the Equipment was designed.

### Surrender

15. At the end of the Term or upon earlier termination of the Agreement, the Lessee will return the Equipment at the Lessee's cost, expense and risk to the Lessor by delivering Equipment to Timco, Incorporated at 401 Rutherford Lane, Columbia, Tennessee, 38401. If the Lessee fails to return the Equipment to the Lessor at the end of the Term or any earlier termination of the Agreement, the Lessee will pay to the Lessor the Casualty Value of the Equipment plus 10% of the Casualty Value, at which point ownership of the Equipment will pass to the Lessee.

### Insurance

16. The Lessee will, during the whole Term and for as long as the Lessee has possession of the Equipment, take out, maintain and pay for insurance against loss of and damage to the Equipment for the full replacement value of the Equipment and will name the Lessor as the loss payee.
17. The Lessee will, during the whole of the Term and for as long as the Lessee has possession of the Equipment, take out, and maintain and pay for comprehensive general liability insurance against claims for bodily injury, including death, and property damage or loss arising out of the use of the Equipment. The insurance policy will have limits of at least \$1,000,000.00.
18. The insurance will be in the joint name of the Lessor and the Lessee so that both the Lessor and the Lessee will be protected from liability and will provide primary and non-contributing coverage for the Lessor. The insurance policy will have a provision that it will not be modified or cancelled unless the insurer provides the Lessor with Thirty (30) days written notice stating when such modification or cancellations will be effective.

19. Upon written demand by the Lessor, the Lessee will provide the Lessor with an original policy or certificate of evidencing such insurance.
20. The Lessee appoints the Lessor as the Lessee's attorney-in-fact ("Attorney") with the power to maintain the above insurance and to secure payments arising out of any insurance policy required by this Agreement. The Attorney has the power to do all acts that are necessary or desirable to secure such payments.
21. If the Lessee fails to maintain and pay for such insurance, the Lessor may, but is not obligated to, obtain such insurance but if the Lessor does obtain such insurance, the Lessee will pay to the Lessor the cost of such insurance upon notification from the Lessor of the amount.

#### **Indemnity**

22. The Lessee will indemnify and hold harmless the Lessor against any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorney's fees and costs, arising out of or related to the Lessee's use of the Equipment.

#### **Default**

23. The occurrence of any or more of the following events will constitute an event of default ("Event of Default") under this Agreement:
  - a. The Lessee fails to pay any amount provided for in the Agreement when such amount is due or otherwise breaches the Lessee's obligations under this Agreement
  - b. The Lessee becomes insolvent or makes an assignment of rights or property for the benefit of creditors or files for or has bankruptcy proceedings instituted against it under the Federal bankruptcy law of the United States or other competent jurisdiction.
  - c. A writ of attachment or execution is levied on the Equipment and is not released or satisfied within 10 days.

#### **Remedies**

24. On the occurrence of an Event of Default, the Lessor will be entitled to pursue any one or more of the following remedies (the "Remedies")
  - a. Declare the entire amount of the Rent for the Term immediately due and payable without notice or demand to the Lessee.
  - b. Commence the legal proceedings to recover the Rent and other obligations accrued before and after the Event of Default

- c. Take possession of the Equipment, without demand or notice, wherever same may be located, without any court order or other process of the law. The Lessee waives any and all damage occasioned by taking such possession.
- d. Terminate this Agreement immediately upon written notice to the Lessee.
- e. Pursue any other remedy available in law or equity.

#### **Assignment**

- 25. THE LESSEE WILL NOT ASSIGN THIS AGREEMENT, THE LESSEE'S INTEREST IN THIS AGREEMENT OR THE LESSEE'S INTEREST IN THE EQUIPMENT WITHOUT PRIOR WRITTEN CONSENT OF THE LESSOR.
- 26. If the Lessee assigns this Agreement, the Lessee's interest in this Agreement or the Lessee's interest in the Equipment without the prior written consent of the Lessor, the Lessor will have recourse to the Remedies and will be entitled to all damages caused by the transfer to the extent that the damages could not reasonable be prevented by the Lessor.

#### **Renewal**

- 27. The Lessee may renew this Agreement for an additional Term if the Lessee has given the Lessor 5 days written notice of the Lessee's intention to renew and if the Lessee is not in default of any of the terms under this Agreement. Other than as agreed upon in writing between the Parties, the renewal will be the same terms as this Agreement , except for this renewal clause.

#### **Additional Documents**

- 28. Upon written demand by the Lessor, the Lessee will execute and deliver to the Lessor documents required by the Lessor to protect the Lessor's interest in the Equipment including, but not limited to, the documents necessary to file a UCC financing statement.

#### **Additional Clauses**

- 29.     \$6,000     paid in advance of pick-up of equipment.

#### **Entire Agreement**

- 30. This Agreement will constitute the entire Agreement between the Parties. Any prior understanding or representation of any kind preceding the date of this Agreement will not be binding on either Party except to the extent incorporated in this Agreement.



### Address for notice

31. Service of all notices under this Agreement will be delivered personally or sent by registered mail or courier to the following addresses:

Lessor: Planet Machinery Company, 451 E. Wilson Avenue, Pontiac, MI 48341

Lessee: Columbia Terminal Railroad, 6501 N. Brown Station Road, Columbia, MO 65202

### Payment

32. All dollar amounts in this agreement refer to U.S. dollars, and all payments required to be paid under this Agreement will be paid in U.S. dollars unless the Parties agree otherwise.

### Interpretation

33. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

### Governing law

34. It is the intention of the Parties to this Agreement that this Agreement and performance under this Agreement, and all suits and special proceedings under this Agreement, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the state of MI. (the "State"), without regard to the jurisdiction in which any action or special proceedings may be instituted.

### Severability

35. If there is a conflict between any provision of this Agreement and the applicable legislation of the State of MI (the "Act"), the Act will prevail and such provisions of the Lease will be amended or deleted as necessary in order to comply with the Act. Further, any provisions that are required by the Act are incorporated into this Agreement.
36. If there is a conflict between any provision of this Agreement and any form of Agreement prescribed by the Act, that prescribed form will prevail and such provisions of the Agreement will be amended or deleted as necessary in order to comply with that prescribed form. Further, any provisions that are required by that prescribed form are incorporated into this Agreement.



37. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, those provisions to the extent enforceable and all other provisions will nevertheless continue to be valid and enforceable as though the invalid or unenforceable parts had not been included in this Agreement and the remaining provisions had been executed by both Parties subsequent to the expungement of the invalid provision.

**General Terms**

38. This Agreement may be executed in counterparts. Facsimile signatures are binding and are considered to be original signatures.


39. This Agreement will extend to and be binding upon and inure to the benefits of the respective heirs, executors, administrators, successors and assigns, as the case may be, of each Party to this Agreement

40. Neither party will be liable in damages or have the right to terminate this Agreement for any delay or default in performance if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions, wars, insurrections, natural disasters, such as earthquakes, hurricanes, or floods and/or any other cause beyond the reasonable control of the Party whose performance is affected.

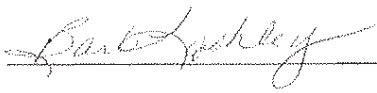
**Notice to Lessee**

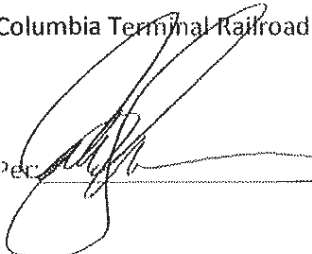
41. **NOTICE TO THE LESSEE:** This is a lease. You are not buying the Equipment. Do not sign this Lease before you read it. You are entitled to a completed copy of this Agreement when you sign it.

IN WITNESS WHEREOF the parties to this Agreement have executed this Lease Agreement on this \_\_\_\_\_ day  
Of 6/7, 2016.

  
\_\_\_\_\_  
(Witness)

Planet Machinery Company  
Per:  (c/s)

  
\_\_\_\_\_  
(Witness)

Columbia Terminal Railroad  
Per:  (c/s)