

EQUIPMENT LEASE AGREEMENT

Agreement Number: 1242490

This document is written in "Plain English". The words YOU and YOUR refer to the Lessee. The words WE, US and OUR refer to the Lessor or the Lessor's assigns. Every attempt has been made to eliminate confusing language and create a simple, easy-to-read and understand document.

DRAFT

LESSEE INFORMATION

FULL LEGAL NAME AND ADDRESS OF LESSEE

Lamb County Texas – Precinct #2

100 6th Drive, RM 809

MAILING ADDRESS

Littlefield

CITY

TX

STATE

79339

ZIP

(806) 296-1100

PHONE

LOCATION OF EQUIPMENT: Lamb County Texas

VENDOR INFORMATION

NAME & ADDRESS OF VENDOR: Warren Caterpillar – Lubbock, Texas

EQUIPMENT DESCRIPTION

One (1) Caterpillar Model 140K ARO Motor Grader, S/N #0JPA04138

LEASE TERMS

Term: Five (5) Annual Lease Payments of \$37,630.90 (plus applicable taxes). Advance Payment Received: \$0.00.

Rental Commencement Date: November 25, 2018

LESSOR ACCEPTANCE

DATE: _____

LESSOR:

M. Tibbit, Inc. dba Tibbit Commercial Leasing

LESSEE ACCEPTANCE

DATE: _____

LESSEE:

Lamb County Texas – Precinct #2

BY: _____

Mike Tibbit

TITLE: President

BY: 

PRINT NAME AND TITLE: Hon. James M. DeLoach / Lamb County Judge

PERSONAL GUARANTY

As additional inducement for us to enter into the Lease, the undersigned ("you"), jointly and severally, unconditionally personally guarantees that the Lessee will make all payments and meet all obligations required under this Lease and any supplements fully and promptly. The undersigned hereby consents to any renewals, extensions, modifications, or amendments of such lease or leases, and agrees that this guaranty may be enforced without suit or action against any of the lessees. The undersigned agrees this guaranty shall be binding upon the estate, heirs and successors of the undersigned, and shall inure to the benefit of the successors and assigns of the lessor. THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS. THE UNDERSIGNED CONSENTS TO THE JURISDICTION AND VENUE IN A STATE OR FEDERAL COURT LOCATED IN LUBBOCK COUNTY, TEXAS. ALL LEGAL ACTION RELATING TO OR ARISING OUT OF THIS GUARANTY SHALL BE COMMENCED IN A STATE OR FEDERAL COURT IN OR FOR LUBBOCK COUNTY, TEXAS.

X _____

Signature

N/A

Printed Name of Guarantor

Date

TERMS AND CONDITIONS (ALL TERMS SET FORTH ON THE REVERSE SIDE HEREOF ARE MADE PART OF THIS LEASE AGREEMENT)


1. **END OF LEASE OPTIONS:** You will have the following options at the end of the original term, provided the lease has not terminated early and no events of default under the lease has occurred and is continuing a) Purchase all, but not less than all, of the equipment for Fair Market Value, b) Renew the lease as provided for in paragraph 2, c) Return all, but not less than all, of the equipment as provided for in paragraph 6 of this lease agreement.

2. **LEASE AGREEMENT:** You agree to rent from us the personal property described under "EQUIPMENT DESCRIPTION" and as modified by supplements to this Master Agreement from time to time signed by you and us (each property and any upgrades, replacements, repairs and additions referred to as "Equipment") for business purposes only. You agree to all of the terms and conditions contained in this Agreement and any supplement which together are a complete statement of our Agreement ("Agreement"). This Agreement may be modified only by written agreement and not by course of performance. The term of this agreement will begin on the date we accept the lease (rent commencement date) and will continue from the first day of the following month for the number of consecutive months shown. The term will be extended automatically for successive 12 month terms unless you send us written notice you do not want it renewed at least thirty (30) days before the end of any term. If any provision of this Agreement is declared unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in that jurisdiction and all others. You agree that this is a "Finance Lease" under Article 2A of the Uniform Commercial Code, and waive any rights or remedies under sections 2A.507-2A.522 and 2A.527 of the Uniform Commercial Code. You acknowledge that you have received a copy of the contract by which we acquired or bought the Equipment from the Supplier. Lessee also authorizes Lessor to insert on any Schedule or Lease and on related supplemental lease documentation information commonly determined after execution by Lessee such as: serial numbers and other Equipment identification data, Equipment locations, and Commencement Dates.

3. **RENT:** Rent will be payable in installments, each in the amount of the basic lease payment shown plus any applicable sales tax, use tax, plus 1/12th of the amount estimated by us to be personal property tax on the equipment for each year of this Agreement. You will pay the security deposit on the date you sign this Agreement. Subsequent installments will be payable on the first day of each rental payment period shown beginning after the first rental payment period. We will have the right to apply all sums, received from you, to any amounts due and owed to us under the terms of this Agreement. In the event this Agreement is not fully completed, the Security deposit will be retained by us to compensate us for our documentation, processing and other expenses. Your obligation to pay the rent and other obligations hereunder shall be absolute and unconditional and not subject to any abatement, set off, defense or counterclaim for any reason whatsoever. You agree that your promises and covenants under this lease are irrevocable and independent upon your acceptance of the Equipment.
4. **OWNERSHIP OF EQUIPMENT:** We are the owner of the Equipment and have sole title to the Equipment.
5. **WARRANTIES:** WE MAKE NO WARRANTY THAT THE EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR THAT THE EQUIPMENT IS MERCHANTABILITY. YOU AGREE THAT YOU HAVE SELECTED THE SUPPLIER AND EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIVES MADE BY US OR ANY SUPPLIER. WE DO NOT TAKE RESPONSIBILITY FOR THE INSTALLATION OR PERFORMANCE OF THE EQUIPMENT. THE SUPPLIER IS NOT AN AGENT OF OURS AND NOTHING THE SUPPLIER STATES CAN AFFECT YOUR OBLIGATION UNDER THIS AGREEMENT.
6. **LOCATION OF EQUIPMENT:** You will keep and use the Equipment only at your address shown above and you agree not to move it unless we agree to it. At the end of the Agreement's term, you will return the Equipment to a location we specify at your expense, in retail resalable condition, full working order, and in complete repair.
7. **LOSS OR DAMAGE:** You are responsible for the risk of loss or destruction of or damage to the equipment. No such loss or damage relieves you from the payment obligations under this Agreement. You will use the Equipment with due care and for the purpose of which it is intended. You will maintain the Equipment in good repair, condition and working order, and will furnish, at your expense, all parts and services needed. All furnished parts will immediately become our property and part of the Equipment of this lease. You agree to promptly notify us in writing of any loss or damage and you will pay to us the present value of the total of all unpaid lease payments for the full lease term plus the estimated fair market value of the Equipment at the end of the originally scheduled term, all discounted at six percent (6%) per year. Any proceeds of insurance will be paid to us and applied, at our option, against any loss or damage.
8. **COLLATERAL PROTECTION AND INSURANCE:** You agree to keep the Equipment fully insured against loss with us as loss payee in an amount not less than the replacement cost until this Agreement is terminated. You also agree to obtain a general public liability insurance policy from someone who is acceptable to us and include us as an additional insured on the policy. You shall provide us with certificate evidencing insurance of these policy or policies. Each policy must include a clause requiring the insurer to give us written notice of any alteration or cancellation of the policy. We are under no duty to ascertain the existence of or examine any such policy or to advise you in the event any such policy does not comply with these requirements. If you fail to provide an appropriate property damage coverage certificate, we may enroll you in our property damage insurance program and bill you a property damage surcharge as a result of our increased administrative costs and credit risks. As long as you remain current, in the event of a loss (excluding losses resulting from acts of God), the replacement value of the equipment will be applied against any loss or damage as per paragraph 7. NOTHING IN THIS PARAGRAPH WILL RELIEVE YOU OF YOUR RESPONSIBILITY FOR LIABILITY COVERAGE ON THE EQUIPMENT.
9. **INDEMNITY:** We are not responsible for any loss or injuries caused by the installation of or use of the Equipment. You agree to hold us harmless and reimburse us for loss and to defend us against any claim for losses or injury caused by the Equipment.
10. **TAXES AND FEES:** You agree to pay, when due, all taxes (including personal property tax, fines and penalties) relating to this Agreement or the Equipment. If we pay any of the above for you, you agree to reimburse us and to pay us a charge for our handling or collecting of any taxes on your behalf. You also agree to pay us any filing fees prescribed by the Uniform Commercial Code or other law or, at our option, a non-filing protection fee. You further agree to pay us the specified documentation fee on the date the first lease payment is due to cover the expense of originating the Agreement.
11. **ASSIGNMENT:** YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT. We may sell, assign, or transfer this Agreement. You agree that if we sell, assign, or transfer this Agreement, the new owner will have the same rights and benefits that we have now and will not have to perform any of our obligations. You agree that the rights of the new owner will not be subject to any claims, defenses, or set offs that you may have against us.
12. **DEFAULT AND REMEDIES:** If you do not pay any lease payment or other sum due to us or any other party when due, or if you break any of your promises in the Agreement or any other Agreement with us, you will be in default. If any part of a payment is late, you agree to pay a late charge of 10% of the payment which is late. In the event you fail to pay the rentals payable under this lease as required, become insolvent or bankrupt, are the subject of a bankruptcy or receivership, or transfer most of your assets, we may, without any notice of acceleration or intent to accelerate, accelerate the remaining rental balance as immediately due and owing, terminate your right to possession of the Equipment, require that you surrender the Equipment to us, and recover and dispose of the Equipment. We may recover interest on the unpaid balance at the rate of 18% per annum. We may also use any of the remedies available to us under Article 2A of the Uniform Commercial Code as enacted in our or assignee's principal place of business or any other law. If we refer this Agreement to an attorney for collection, you agree to pay our reasonable attorney's fees and actual court costs. If we have to take possession of the Equipment, you agree to pay the cost of repossession. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES FOR ANY DEFAULT BY US UNDER THIS AGREEMENT. You agree that any delay or failure to enforce our rights under this Agreement does not prevent us from enforcing any rights at a later time.
13. **UCC FILINGS AND FINANCIAL STATEMENT:** You authorize us to record a UCC-1 financing statement or similar instrument, and appoint us your attorney-in-fact to execute and deliver such instrument, in order to show our interest in the Equipment. It is further agreed that your rights and remedies are governed exclusively by this Agreement and you waive any and all other rights and remedies.
14. **Security Deposit:** The security deposit is to secure your performance under this Agreement. Any security deposit made may be applied by us to satisfy any amount owed by you, in which event you will promptly restore the security deposit to its full amount as set forth above. If all conditions herein are fully complied with and provided you have not ever been in default of this Agreement per paragraph 12, the security deposit will be refunded to you after the return of the Equipment in accordance with paragraph 6.
15. **FURTHER ASSURANCES:** Upon Lessor's request, Lessee, promptly and at its expense, shall execute and/or deliver such documents, instruments and/or assurances, and shall take such further action, as Lessor deems prudent in order to establish and/or protect the rights, interests and remedies of Lessor, and for the confirmation, assignment and/or perfection of this Lease and any Schedule hereto and for the assurance of performance of Lessee's obligations hereunder, such as (but not limited to) financial statements and other credit information as reasonably requested by Lessor. Lessee agrees to be bound by the faxed or Photostat copy of this agreement with appropriate signatures on the document. Lessee waives the right to challenge in court the authenticity of a faxed or Photostat copy of this agreement and the faxed or Photostat copy shall be considered the original and shall be the binding agreement for the purposes of any enforcement action under paragraph 12.
16. **CHOICE OF LAW: JURISDICTION, VENUE, LIMITATIONS AND NON-JURY TRIAL.** THE LEASE AND ALL RELATED DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS. YOU CONSENT TO THE JURISDICTION AND VENUE IN A STATE OR FEDERAL COURT LOCATED IN LUBBOCK COUNTY, TEXAS. ANY LEGAL ACTION BY YOU RELATING TO OR ARISING OUT OF THIS LEASE SHALL BE COMMENCED IN A STATE OR FEDERAL COURT IN AND FOR LUBBOCK COUNTY, TEXAS. The foregoing forum selection provision shall not prohibit us from pursuing legal recourse in any other court where jurisdiction may be proper. ANY SUIT OR CLAIM BY YOU AGAINST US MUST BE BROUGHT THE EARLIER OF TWO (2) YEARS FROM THE DATE OF THE ACT OR OCCURRENCE UPON WHICH THE SAME IS BASED OR TWO YEARS FROM THE END DATE OF THE LEASE.

DELIVERY AND ACCEPTANCE OF EQUIPMENT

Lessee's obligations and liabilities under Lease Agreement #1242490 dated December 1, 2017 are absolute and unconditional under all circumstances and regardless of any failure of operation or loss of possession of any item of Equipment or the cessation or interruption of lessee's business for any reason whatsoever.

 *(lessee initial)* **The Equipment leased under this lease was delivered to lessee with all installation necessary for the proper use of the Equipment completed at a location agreed to by lessee and the Equipment was inspected by lessee and found to be in satisfactory condition in all respects and delivery was unconditionally accepted by lessee.**

 (lessee initial) **The Equipment leased under this lease has not yet been delivered to or accepted by lessee and, upon delivery, lessee agrees to execute such delivery and acceptance certificate as lessor or lessor's assigns requires.**

TIBBIT COMMERCIAL LEASING

December 1, 2018

Hon. James M. DeLoach
Lamb County Texas
100 6th Drive, RM 809
Littlefield, TX 79339

Dear Judge DeLoach:

On behalf of Lamb County Texas you are entering into Equipment Lease Agreement #1242490 with us, hereinafter called "Lease."

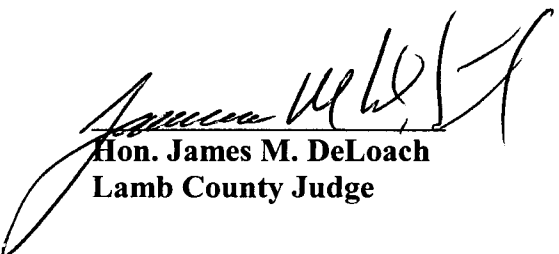
We hereby give you an option, which option is PERSONAL TO YOU and IS NOT assignable to purchase all, but not less than all of the equipment that is the subject of such Lease, "as is – where is," and without any warranty of any kind, expressed or implied by Tibbit Commercial Leasing or its assigns as to the equipment's merchantability, fitness for any particular purpose or otherwise for \$1.00 together with any and all applicable taxes as of the date of purchase.

Your right to exercise this option is conditioned upon your having performed ALL of the terms and conditions of said lease, and all other agreements between us and you at the time and in the manner required therein.

Tibbit Commercial Leasing

Lamb County Texas

Mike Tibbit
President



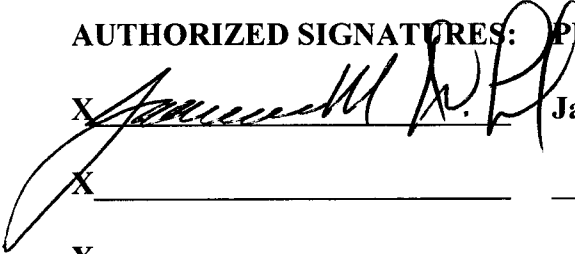
Hon. James M. DeLoach
Lamb County Judge

**LEASE RESOLUTION
AND INCUMBENCY CERTIFICATE**

The undersigned hereby certifies that he/she is County Judge of Lamb County Texas and that the following resolution was passed in accordance with the organizational documents and operating procedures of said entity and that said resolution has not since been revoked or amended:

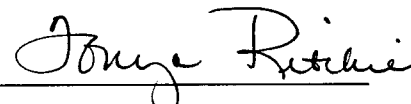
Resolved that the Hon. James M. DeLoach, County Judge, is duly authorized to execute lease documents in favor of M. Tibbit, Inc. dba Tibbit Commercial Leasing (Lessor) under one or more lease contracts and upon such terms and conditions as the representative(s) hereinafter authorizes, and in their discretion, may deem necessary and advisable.

Resolved that the Authorized Signature(s) below are/is a sample of signatures of the authorized representative(s) as witnessed by the duly elected or appointed officials of City of Ballinger Texas.

AUTHORIZED SIGNATURES:	PRINTED NAME:	TITLE:
X 	James M. DeLoach	County Judge
X _____	_____	_____
X _____	_____	_____

The Lessor is hereby authorized to act upon these resolutions until written notice of their revocation is delivered to the Lessor.

I, Tonya Ritchie (name), County Clerk of Lamb County Texas, organized under the laws of the state of TEXAS, do hereby certify that the forgoing is a full, true and correct copy of resolutions of duly authorized officials of Lamb County Texas. In witness whereof, I have hereunto set my hand, and affixed the seal, this 4th day of December, 2017.

X 
Name: Tonya Ritchie
Title County Clerk

