

Haydell Lease Agreement



995 Dalton Avenue • Cincinnati, OH 45203
 With Questions call: (800) 559-2755
 FAX TO: (888) 977-8746

For Office Use Only

Rental Number: _____
 Dated: [_____]
 Rental Commencement Date: _____

Customer Information

Customer's Full Legal Name _____

Street Address _____

Location of Equipment _____

Equipment

Initial Term of Rental (Months) _____

On Stream Taxes _____

End of Term: At the end of the Initial Term, Customer shall return the equipment as provided in paragraph 7 of this Rental Agreement.

Amount of Each Rental Payment _____

Total Rental Payment _____

Payment Period:

Monthly

PRORATED RENTS WILL BE DUE FROM THE DATE OF DELIVERY UNTIL THE RENTAL COMMENCEMENT DATE.

Advance Payments

20% security deposit

Security Deposits will be refunded upon expiration of the Rental Agreement provided Customer is not in default of any of the terms and conditions of the Rental Agreement.

Personal Guaranty

THIS PERSONAL GUARANTY CREATES SPECIFIC LEGAL OBLIGATIONS.

In consideration of National City Commercial Capital Company, LLC ("National City") entering into the rental agreement identified above ("Rental Agreement"), the undersigned Personal Guarantor (hereinafter "You") unconditionally and irrevocably guarantees to National City, its successors and assigns, the prompt payment and performance of all obligations of the Customer identified in this Rental Agreement. You agree that this is a guaranty of payment and not of collection, and that National City can proceed directly against you without first proceeding against the Customer or against the equipment covered by the Rental Agreement. You waive all notices and defenses, based upon suretyship or impairment of collateral, including but not limited to release of collateral or failure to perfect a security interest. You agree that National City can renew, extend or otherwise modify the terms of the Rental Agreement and you will be bound by such changes. If the Customer defaults under the Rental Agreement, you will immediately perform all obligations of the Customer under the Rental Agreement including, but not limited to, paying all amounts due under the Rental Agreement. You will pay to National City all expenses INCLUDING ATTORNEYS' FEES incurred in enforcing National City's rights against you or the Customer. This is a continuing guaranty that will not be discharged or affected by your death and will bind your heirs and personal representatives. You waive any rights to seek repayment from the Customer in the event you must pay National City. If more than one guarantor has signed this Personal Guaranty, each of you agree that your liability is joint and several. You authorize National City or any of National City's agents to obtain credit bureau reports regarding your personal credit and to make other credit inquiries that National City determines are necessary.

THIS PERSONAL GUARANTY IS GOVERNED BY THE LAWS OF THE STATE OF OHIO. YOU CONSENT (AND THE CUSTOMER HAS CONSENTED) TO THE EXCLUSIVE JURISDICTION OF ANY COURT LOCATED WITHIN OHIO. YOU EXPRESSLY WAIVE (AS HAS THE CUSTOMER) ANY RIGHT TO A TRIAL BY JURY.

Personal Guarantor #1: [_____]

Personal Guarantor #2: [_____]

Signature (no title)

Signature (no title)

Print Name

Date

Print Name

Date

TERMS & CONDITIONS

1. By signing this Rental Agreement, Customer acknowledges and agrees that: it has read and understands the TERMS AND CONDITIONS OF THIS RENTAL AGREEMENT; this Rental Agreement becomes effective only upon written acceptance by an authorized employee of National City; this is a net rental agreement; it cannot terminate or cancel this Rental Agreement; it has an UNCONDITIONAL OBLIGATION to make all payments due under this Rental Agreement; it cannot withhold, set off or reduce such payments for any reason; it will use the Equipment only for business purposes; the person signing this Rental Agreement has the authority to do so and to grant the POWER OF ATTORNEY set forth in paragraph 11 herein; it entered into this Rental Agreement rather than purchase the Equipment. THIS RENTAL AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF OHIO; AND TO THE EXCLUSIVE JURISDICTION OF ANY COURT LOCATED IN THE STATE OF OHIO. YOU EXPRESSLY WAIVE (AS HAS THE CUSTOMER) ANY RIGHT TO A TRIAL BY JURY.

Customer: |

National City Commercial Capital Company, LLC

Authorized Signature

Authorized Signature

Print Name and Title

Date

Print Name and Title

Date

THIS RENTAL AGREEMENT IS NON-CANCELABLE

2. RENTAL AGREEMENT. Customer agrees to rent from National City the Equipment or if separately scheduled, the Equipment identified on Schedule A attached and made a part of this Rental Agreement.

3. NO WARRANTIES. NATIONAL CITY IS LEASING THE EQUIPMENT TO THE CUSTOMER "AS-IS." CUSTOMER ACKNOWLEDGES THAT NATIONAL CITY DOES NOT MANUFACTURE THE EQUIPMENT, NATIONAL CITY DOES NOT REPRESENT THE MANUFACTURER OR THE SUPPLIER, AND CUSTOMER HAS SELECTED THE EQUIPMENT AND SUPPLIER BASED UPON CUSTOMER'S OWN JUDGMENT. NATIONAL CITY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, NOR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. CUSTOMER AGREES THAT REGARDLESS OF CAUSE, NATIONAL CITY IS NOT RESPONSIBLE FOR AND CUSTOMER WILL NOT MAKE ANY CLAIM AGAINST NATIONAL CITY FOR ANY DAMAGES, WHETHER CONSEQUENTIAL, DIRECT, SPECIAL, OR INDIRECT. CUSTOMER AGREES THAT NEITHER SUPPLIER NOR ANY SALESPERSON, EMPLOYEE OR AGENT OF SUPPLIER IS NATIONAL CITY'S AGENT OR HAS ANY AUTHORITY TO SPEAK FOR National City OR TO BIND National City IN ANY WAY. NATIONAL CITY TRANSFERS TO CUSTOMER FOR THE TERM OF THIS RENTAL AGREEMENT ANY WARRANTIES MADE BY THE MANUFACTURER OR SUPPLIER UNDER A SUPPLY CONTRACT.

4. ORDERING EQUIPMENT, DELIVERY AND ACCEPTANCE. If Customer entered into any purchase or supply contract with any supplier, Customer assigns to National City Customer's rights under the supply contract, but none of Customer's obligations, except for the obligation to pay for Equipment if it is accepted by Customer according to the terms of this Rental Agreement. If Customer has not entered into a supply contract, Customer authorizes National City to enter into a supply contract. Customer shall arrange for the delivery of the Equipment to Customer. Customer shall inspect the Equipment immediately upon Customer's receipt of the Equipment to determine if it is in good working condition. The Equipment will be deemed irrevocably accepted by Customer upon the earlier of: (i) the date of delivery of the Equipment to Customer unless Customer notifies National City in writing, within 10 days after equipment delivery, of Customer's non-acceptance or (ii) the delivery to National City of a signed Certificate of Acceptance of rented Equipment if requested by National City ("Acceptance Date").

5. TERMINATION BY NATIONAL CITY. National City shall have the exclusive option to terminate this Rental Agreement if within 90 days after Customer has signed this Rental Agreement, the Equipment has not been delivered to Customer, or Customer has not accepted the Equipment as provided in paragraph 4.

6. TERM AND RENT. The term of this Rental Agreement commences upon the date on which the Equipment is delivered to Customer (whether or not accepted) and ends upon the expiration of the number of months specified on the front of this Rental Agreement under "Initial Term of Rental Agreement" after the Rental Commencement Date. Customer authorizes National City to insert in this Rental Agreement as "Rental Commencement Date" the date when the Equipment is delivered to Customer or any later date selected by National City. The Customer shall pay as rent the Total Rental Payment indicated on the front of this Rental Agreement plus applicable taxes ("Rent"). The first rental payment is due on the Rental Commencement Date, and each remaining periodic rental payment is due on the same day of each payment period thereafter for the initial term of the rental agreement. Additionally, Customer shall, upon demand, pay, as Rent, daily interim rent, on all Equipment subject to this Rental Agreement, for the period from the date of delivery of Equipment (or any part thereof) to and including the day immediately preceding the Rental Commencement Date. The daily rent will be calculated on a 360 day year. No portion of any rental payments shall be deemed to constitute payment for any equity interest in the Equipment. If any payment due under this Rental Agreement is not paid within 5 days of its due date, Customer shall pay National City a late charge not to exceed 10% of each late payment (or such lesser rate as is the maximum rate allowed by applicable law). Customer authorizes National City to insert in this Rental Agreement as "Tax on Rental Payment" and "Total Rental Payment" the appropriate amounts when same are determined by National City.

7. EQUIPMENT LOCATION; USE AND REPAIR; RETURN. Customer will keep and use the Equipment only at the Equipment Location shown on the front of this Rental Agreement. Customer may not move the Equipment without National City's prior written consent. At Customer's own cost and expense, Customer will keep the Equipment eligible for any manufacturer's certification, in compliance with all applicable laws and in good condition, except for ordinary wear and tear. Customer will not make any alterations, additions or replacement to the Equipment without National City's prior written consent. All alterations, additions and replacements will become part of the Equipment and National City's property at no cost or expense to National City. National City may inspect the Equipment at any reasonable time. Customer will maintain in force a standard maintenance contract with the manufacturer of the Equipment or another party acceptable to National City. Upon the expiration of the Rental Agreement term, Customer will immediately prepare the Equipment for pick-up by the Vendor. Customer shall insure the Equipment for its full replacement value during shipping.

8. TAXES. Customer shall promptly reimburse National City for, or shall pay directly if so requested by National City, as additional Rent, all taxes, charges and fees which may now or hereafter be imposed or levied by any governmental body or agency upon or in connection with the purchase, ownership, rental, possession, use, location or relocation of the Equipment, or otherwise in connection with the transactions contemplated by the Rental Agreement, excluding, however, all taxes on or measured by the net income of National City. Customer agrees to reimburse National City for all personal property taxes immediately upon receipt of National City's invoice including without limitation such taxes assessed or arising during the term of this Rental Agreement but remitted by National City after the termination of this Rental Agreement. At National City's option, Customer agrees to remit, along with Customer's rental payments under this Rental Agreement, an amount equal to a percentage of National City's reasonable estimate of the personal property taxes that will be assessable against the Equipment. Any such amounts remitted to National City will be credited by National City against Customer's obligations under this paragraph. Customer will remain obligated in the event that such amounts are insufficient to fully reimburse National City the actual amount of such taxes and any surplus will be either credited to Customer's other obligations to National City or returned to Customer. If requested, Customer agrees to file promptly on behalf of National City all requested tax returns and reports concerning the Equipment in form satisfactory to National City, with all appropriate governmental agencies and mail a copy to National City concurrently with the filing thereof. Customer further agrees to keep or cause to be kept and made available to National City any and all necessary records relevant to the use of the Equipment and aforesaid taxes, assessments and other governmental charges.

9. LOSS OR DAMAGE. Customer shall bear all risk of loss associated with an item of Equipment, including the theft, destruction, or damage. No such loss shall relieve Customer from any of its obligations under this Rental Agreement. In the event of any loss with respect to particular Equipment, Customer shall either: (a) place such Equipment in good repair, condition and working order, (b) replace such Equipment with like equipment (of the same year, make, model and accessories) in good repair, condition and working order, or (c) pay to the National City the Stipulated Loss Value of such Equipment.

10. INSURANCE. Customer shall keep in effect an "All Risk" extended coverage property insurance policy covering the Equipment for its full replacement value. Customer shall also carry a comprehensive general liability insurance policy or other similar form of third party liability coverage. Such policies shall be in form, amount and with insurers acceptable to National City. The property insurance policy shall name National City and its assigns as Loss Payee and the general liability insurance policy shall name National City and its assigns as an Additional Insured. Each policy shall provide: (a) for no less than thirty (30) days prior written notice of cancellation or non-renewal to National City, and (b) that such policy shall not be invalidated as against National City or its assigns for the violation of any term of the policy by Customer. Customer appoints National City as Customer's attorney-in-fact to request required insurance coverage, make claims, receive payments and execute and endorse all documents, checks, drafts or other instruments necessary or advisable to secure payments due under any policy contemplated hereby. The foregoing shall not relieve Customer from its obligations to procure the insurance policies required herein, to make timely insurance claims and to otherwise cooperate with insurance carriers and National City in seeking insurance coverage and recoveries in connection with the Equipment. Proceeds from any general liability policy shall be made payable first on behalf of the National City to the extent of its liability, if any. All policies of insurance carried by Customer, whether primary or excess, shall be primary as to any policies maintained by National City. Without limiting the foregoing, Customer specifically agrees that if National City obtains insurance on Customer's behalf, Customer will be required to pay a monthly insurance charge. The insurance charge will include reimbursement for premiums advanced to the insurer, finance charges (which will typically be at a rate higher than the rate used to determine Customer's Equipment rental amount), billing and tracking fees, administrative expenses and other related fees. National City shall receive a portion of the insurance charges, which may include a profit from such finance charges, billing, tracking, administrative and other charges.

11. TITLE. National City is the owner of and will hold title to the Equipment. Customer will keep the Equipment free of all liens and encumbrances. If this transaction is deemed to be a lease intended for security, Customer grants National City a purchase money security interest in the Equipment (including any replacements, substitutions, additions, attachments and proceeds).

12. DEFAULT. Each of the following is a "Default" under this Rental Agreement: (i) Customer fails to pay any Rental Payment or any other payment within 5 days of its due date; (ii) Customer does not perform any of Customer's other obligations under this Rental Agreement or in any other agreement with National City; (iii) Customer or guarantor becomes insolvent, dissolves, or assigns its assets for the benefit of creditors, or enters any bankruptcy or reorganization proceeding; (iv) any guarantor of this Rental Agreement dies, does not perform its obligations under the guaranty or (v) Customer undergoes a change in ownership or control of any type, that in the National City's judgment, results in a deterioration of Customer's creditworthiness.

13. REMEDIES. If a Default occurs, National City may do one or more of the following: (i) National City may cancel or terminate this Rental Agreement or any other agreement that National City has entered into with Customer; (ii) National City may require Customer to immediately pay National City, as compensation for loss of National City's bargain and not as a penalty, a sum equal to the Stipulated Loss Value; (iii) National City may require Customer to deliver the Equipment to National City as set forth in paragraph 7; (iv) National City or its agent may peacefully repossess the Equipment, without court order, (v) National City may exercise any other right or remedy available at law or in equity. Customer agrees to pay all of National City's costs of enforcing National City's rights against Customer. Customer will not make any claims against National City for damages or trespass or any other reason. If National City takes possession of the Equipment, National City may sell or otherwise dispose of it with or without notice, at a public or private sale, and apply the net proceeds (after deducting all costs related to the sale or disposition of the Equipment) to the amounts that Customer owes National City. Customer agrees that if notice of sale is required by law to be given, 10 days notice shall constitute reasonable notice. Customer will remain responsible for any amounts that are due after National City has applied such net proceeds.

14. PERFORMANCE OF CUSTOMER'S OBLIGATIONS BY NATIONAL CITY. If Customer fails to make any payment or perform any act or obligation required hereunder, National City may, but need not, make such payment or perform such act or obligation at the expense of Customer. Any such expense incurred by National City shall constitute additional Rent due hereunder and shall be payable by Customer to National City upon demand. Such action by National City shall not be deemed a cure or waiver of any default by Customer.

15. ARTICLE 2A. Customer agrees that if Article 2A of the Uniform Commercial Code applies to this Rental Agreement, this Rental Agreement will be considered a "finance lease" as that term is defined in Article 2A. By signing this Rental Agreement, Customer agrees that either (a) Customer has reviewed, approved, and received, a copy of the Supply Contract or (b) that National City has informed Customer of the identity of the Supplier, that Customer may have rights under the Supply Contract, and that Customer may contact the Supplier for a description of those rights. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER WAIVES ANY AND ALL RIGHTS AND REMEDIES CONFERRED UPON A CUSTOMER BY ARTICLE 2A.

16. ASSIGNMENT. CUSTOMER MAY NOT ASSIGN, SELL, TRANSFER OR SUBRENT THE EQUIPMENT OR CUSTOMER'S INTEREST IN THIS RENTAL AGREEMENT. National City may, without notifying Customer, sell, assign, or transfer this Rental Agreement or its rights in the Equipment. Customer agrees that the new owner will have the same rights and benefits that National City has now under this Rental Agreement but not National City's obligations. The rights of the new owner will not be subject to any claim, defense or set-off that Customer may have against National City.

17. INDEMNITY. Customer assumes the risk of liability arising from possession, operation, or use of the Equipment. Customer shall indemnify, defend and hold harmless the National City from any and all claims, costs, taxes, expenses, damages, and liabilities arising from or pertaining to the use, possession, or operation of the Equipment.

18. CREDIT INFORMATION. Customer authorizes National City and its agents to obtain credit bureau reports and make other credit inquiries that National City determines necessary. Upon Customer's written request, National City will inform Customer whether National City has requested a consumer credit report and the name and address outstanding. Customer shall at National City's request, deliver to National City, Customer's future quarterly and annual reports of financial condition, which reports Customer represents and warrants shall be prepared in accordance with generally accepted Accounting Principles.

19. FURTHER ASSURANCES. Customer agrees to promptly, at Customer's expense, deliver such other reasonable documents and assurances, and take such further action as National City may request, in order to effectively carry out the intent and purpose of this Rental Agreement.

20. REPRESENTATIONS AND WARRANTIES. Customer represents and warrants to National City that: (i) the making of this Rental Agreement by Customer is duly authorized on the part of Customer and upon execution thereof by Customer and National City they shall constitute valid obligations binding upon, and enforceable against, Customer; (ii) neither the making of this Rental Agreement nor the due performance thereof by Customer, including the commitment and payment of the Rent, shall result in any breach of, or constitute a default under, or violation of, Customer's certificate of incorporation, by-laws, or any agreement to which Customer is a party or by which Customer is bound; (iii) Customer is in good standing in its state of incorporation and in any jurisdiction where the Equipment is located, and is entitled to own property and to carry on business therein; and (iv) all financial information provided by Customer to National City is true, accurate and provides a good representation of Customer's financial condition. If requested, Customer shall provide National City a Certified Copy of its Corporate Resolutions and or a Certificate of Incumbency in the form provided by National City or such other form that National City deems acceptable.

21. MISCELLANEOUS. Customer agrees that the terms and conditions contained in this Rental Agreement make up the entire agreement between Customer and National City regarding the Rental of Equipment. The declaration of invalidity of any provision of this Rental Agreement and/or Guaranty shall not affect any part of the remainder of the provisions of this Rental Agreement and Guaranty. Any change in any of the terms and conditions of this Rental Agreement must be in writing and signed by National City. Customer agrees however, that National City is authorized, without notice to Customer, to insert the Rental Agreement Number, and to supply missing information or to correct obvious errors in this Rental Agreement. Customer authorizes National City to adjust the Amount of Each Rental Payment by not more than 15% if either (i) the final Total Cash Price (which is all amounts National City has paid in connection with the purchase, delivery and installation of the Equipment, including any upgrade and buyout amounts) differs from the estimated Total Cash Price, or (ii) comparable U.S. Treasury Note yields increase between the date Customer signs this Rental Agreement and the Acceptance Date. National City shall not be obligated to purchase the Equipment if the actual Total Cash Price varies more than 15% from the Total Cash Price listed above. If National City delays or fails to enforce any of National City rights under this Rental Agreement, National City will still be entitled to enforce those rights at a later time. All notices shall be given in writing by the party sending the notice and shall be effective when deposited in the U.S. Mail or a nationally recognized overnight delivery service, addressed to the party receiving the notice at its address shown on the front of this Rental Agreement (or to any other address specified by that party in writing) with postage prepaid. All of National City's right and remedies, including but not limited to those set forth in Sections 8, 18 and 21 herein, shall survive and remain in full force and effect and be enforceable after the expiration or termination of the Rental Agreement for any reason. It is the express intent of the parties 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 payment will be applied to Rent in inverse order to maturity, and any remaining excess will be refunded to Customer. If more than one Customer has signed this Rental Agreement each of the Customers agree that Customer's liability is joint and several. CUSTOMER FURTHER AGREES TO PAY NATIONAL CITY AN ORIGINATION FEE ON THE DATE THE FIRST RENTAL PAYMENT IS DUE TO COVER THE EXPENSES OF ORIGINATING THIS RENTAL AGREEMENT.

Customer has reviewed this page and certifies that each of the provisions set forth is clear and legible.

Customer initials **X** _____

CERTIFICATE OF ACCEPTANCE

In compliance with the terms, conditions and provisions of the Rental Agreement
_____ dated _____

("Rental Agreement") by and between the undersigned ("Customer") and National City Commercial Capital Company, LLC,
Customer hereby:

- a) certifies and warrants that all Equipment described in the Rental Agreement (the "Equipment") is delivered, inspected and fully installed, and operational as of the Acceptance Date as indicated below;
- b) accepts all the Equipment for all purposes under the Rental Agreement and all attendant documents as of this _____ day of _____ (month), 200____ ("Acceptance Date"); and
- c) restates and reaffirms, as of such Acceptance Date, each of the representations, warranties and covenants heretofore given to National City Commercial Capital Company, LLC in the Rental Agreement.

X

Signature

Title

National City Commercial Capital Company, LLC is hereby authorized to insert serial numbers on the Rental Agreement.