



LEASE AGREEMENT

No. _____

THIS AGREEMENT is made by and between

Tomco₂ Systems
3340 Rosebud Road
Loganville, Georgia 30052
a Georgia corporation
(hereinafter referred to as "Lessor")

and

City of Pembroke Pines
8300 S. Palm Drive
Pembroke Pines, FL 33205

(hereinafter referred to as "Lessee")
Federal ID #

For and in consideration of the mutual promises and mutual benefits herein the parties agree as follows:

1. **RENTAL.** During the term of this Agreement and any renewal thereof and upon the terms and conditions hereinafter stated, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the equipment ("Equipment") for use at Lessee's facility(ies) ("Facilities") at the location(s) and for the monthly rental ("Rental Charge") and other charge(s) set forth below.

Description of Equipment	Facility Where Located	Term Rent	Post Term	
			Rent	Purchase Price
30 ton Liquid Carbon Dioxide Storage Receiver Model 3075CA - USED Model M418 CO ₂ vaporizer - used Model CVH-4 CO ₂ vapor heater - used First Stage Pressure Regulator -used (480 volt, 3 phase) CO ₂ Gas Feed Panel (up to 200 lb/hr) - NEW Stock for manual control of gas feed train	7960 Johnson St. Pembroke Pines, FL 33024	\$3500.00 Per Month	\$3500.00 Per Month	\$160,000.00

2. **TERM.** The term of this Agreement shall commence upon the 23rd day of March, 2018 and shall continue for Three (3) months. This Agreement shall hereafter continue on a month-to-month basis unless (or until) written notice of termination is given by either party to the other at least thirty (30) days prior to the expiration of the initial term (or thirty (30) days prior to the expiration of extension thereof), or unless (or until) Lessee pays the Purchase Price specified herein to Lessor on (or after) the expiration of the initial term for ownership of the Equipment.
3. **INSTALLATION.** By Lessee
4. **MAINTENANCE.** Lessor shall provide normal and reasonable maintenance or repair to the Equipment leased hereunder at its expense. Lessee shall diligently inspect the Equipment on a daily basis and shall immediately report any abnormal or unusual conditions or circumstances to Lessor. Lessee shall not make any repairs or modifications to the Equipment. Lessee shall provide Lessor with access to any equipment to be maintained hereunder twenty-four (24) hours per day, seven (7) days per week. Lessor shall, at its own discretion, make one (1) preventive maintenance call per year at its expense. If Lessor is called upon by Lessee to service any equipment pursuant to this Agreement and, upon Lessor's inspection of such equipment, Lessor determines that maintenance work is not needed, Lessor shall be entitled to receive payment for such service call in accordance with its then current schedule of prices. Lessor shall, at Lessee's request, maintain Lessee storage equipment. In such event, Lessee shall pay Lessor for such maintenance in accordance with Lessor's then current schedule of prices.
5. **PAYMENT OF RENT.** The Rental Charges shall be payable in advance on the first day of each month during the term of this Agreement. Monthly rental for any partial month shall be prorated at the rate of one-thirtieth (1/30th) of the monthly Rental Charge per day. Lessee shall pay all freight and all rigging costs, if any, for installation and removal, and shall reimburse Lessor costs in this regard. Lessor may charge Lessee at installation for the estimated minimum removal costs.
6. **TITLE.** Title to the Equipment shall at all times remain in Lessor. Lessee agrees to take all necessary action to protect Lessor's title to the Equipment and to maintain the Equipment free and clear of any liens and encumbrances. Notwithstanding any manner in which the Equipment may be affixed to the real property of Lessee, the parties agree that the Equipment is not intended to and shall not become a fixture to such real property.

3/22/2018

7. **MODIFICATION/ RELOCATION.** Lessee shall not make any modifications, changes, or alterations to the Equipment without first obtaining Lessor's written permission, including, without limitation, the removal or alteration of, or addition to, any trademark, trade name, or other label affixed to Equipment by Lessee. Lessee shall not relocate the Equipment without Lessor's approval. The expense of any relocation of Equipment shall be borne by Lessee.
8. **USE AND INDEMNITY.** Lessee agrees to use the Equipment in conjunction only with carbon dioxide and Lessee shall operate the Equipment in compliance with the manufacturer's recommendations and all applicable laws, orders or regulations of any applicable governmental or public authority.
9. **RISK OF LOSS.** Lessee agrees that until the Equipment is returned to Lessor, Lessee assumes all risk of loss or damage to the Equipment unless caused by negligence of Lessor. Lessee agrees to pay Lessor on demand the actual cost of repair for any damage to the Equipment. In the event that the Equipment is damaged beyond repair, Lessee agrees to pay to Lessor on demand the full replacement value of the Equipment at Lessor's then current valuations. Lessee agrees to maintain "all-risk" property insurance on the Equipment at replacement value, which insurance shall be written by a company acceptable to Lessor and authorized to issue such policies in the state where the Equipment is located. Lessor shall be an additional named insured and loss payee and Lessee shall cause its insurer to provide from time to time to Lessor a certificate evidencing coverage, including provisions that written notice shall be given to Lessor thirty (30) days prior to cancellation or material coverage and that such policy grants Lessor a waiver of subrogation against any future claims regarding the Equipment.
10. **RETURN OF EQUIPMENT.** Upon the termination of the lease of Equipment, Lessee shall surrender and return the Equipment to Lessor in good and functioning condition, ordinary wear and tear excepted with 7 days written notice. In the event of legal process, Lessee shall reimburse Lessor for all expenses incurred as a result of the repossession of the Equipment and shall indemnify and hold Lessor harmless from any and all claims, loss, costs and expense, including reasonable attorneys' fees, arising from such repossession.
11. **LATE PAYMENT.** All Rental Charges not timely paid shall bear interest at the rate of one and one-half percent (1.5%) per month or portion thereof (or such lesser amount as maybe the maximum permitted by law) that such amount remains outstanding after the due date. If Lessee fails to timely pay Rental Charges for a period of thirty (30) days, in addition to other available remedies, Lessor may suspend performance and Lessee shall pay any attorneys' fees and/or other costs incurred by Lessor in collecting any amount due hereunder.
12. **WARRANTIES.** Lessor warrants that Lessor shall have good title and right to lease the Equipment to Lessee free of encumbrances to Lessee, and that any Equipment manufactured by it and leased or supplied hereunder shall be free from defects in materials and workmanship at the time of delivery. Lessor hereby assigns to Lessee any manufacturer's warranties for Equipment leased hereunder by Lessee. **LESSOR MAKES NO WARRANTIES FOR EQUIPMENT NOT MANUFACTURED BY LESSOR. LESSOR MAKES NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, AND MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
13. **REMEDIES.** Lessee's sole remedy and measure of recoverable damage for breach of warranty shall be Lessor's replacement or repair, at Lessor's option, of any nonconforming Equipment promptly after Lessor receives proper notice from Lessee, no later than fifteen (15) days after delivery to Lessee of the Equipment, and makes verification of non-conformance.
14. **LIMITATION OF LIABILITY.** Lessee understands and acknowledges that there are hazards associated with the use and storage of carbon dioxide and the Equipment. Lessee shall be responsible for warning, protecting, and educating its employees and other persons exposed to such hazards due to Lessee's storage or use of carbon dioxide or Equipment. Lessee assumes all risk of liability for loss, damage or injury to persons or property of Lessee or others arising out of the delivery, presence or use of carbon dioxide whether used alone or in combination with other substances, or arising out of the delivery, presence or use of the Equipment. Except direct damage from breach of contract, neither party shall be liable to the other for any incidental, consequential, indirect, special or other damages, that are related to this Agreement, or the Equipment, whether in tort (including negligence), contract, or other legal theory. Lessor agrees to indemnify Lessee for damages of Lessor to third parties to the extent caused by Lessor's negligence, gross negligence or willful misconduct in performance of this Agreement. Lessee shall otherwise indemnify and hold harmless Lessor from any claims, proceedings, liability, damages, or losses, including related costs and expenses, sought by third parties arising from or in any way related to performance, conformance or quality of Lessor's Equipment.
15. **EXCUSE OF PERFORMANCE.** Neither party hereto shall be liable to the other for default or delay in performance of any of its obligations hereunder, other than a default in payment, due to causes or events beyond its control, including, without limitation, any act of God, fire, riot, labor problems, legal action, present or future law, governmental order, rule or regulation, accidents to machinery or pipelines, freezing of pipelines, temporary failure of natural gas, electricity or fuel supply, and any other causes whether of the kind herein enumerated or otherwise, not reasonably within the control of the party claiming suspension and which by exercising due diligence such party is unable to prevent or overcome. Once any such contingency has terminated, both parties shall be bound by the obligations set forth herein.
16. **SETOFF, COUNTERCLAIM, TAXES.** All payments to Lessor by Lessee shall be made without setoff or counterclaim. Lessee shall pay or reimburse Lessor for any tax, assessment or other charge including sales, use, excise and property taxes with respect to, or which is ascertained by reference to, or measured by, the ownership, possession, or use of Equipment or services furnished by Lessor hereunder by virtue of any present or future federal, state or other law applicable thereto.
17. **MISCELLANEOUS.** This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns and Lessee shall not assign this Agreement without Lessor's prior written consent. This is a commercial contract. If any provision of this Agreement is held invalid under applicable law, such a provision shall be waived to the extent of such invalidity and the balance of the Agreement shall continue in full force and effect. This Agreement shall be governed and construed in accordance with the laws of the

State of Florida. Headings are inserted in this Agreement for convenience only and shall not affect the terms, conditions or interpretations thereof. All notices or other communications required or desired to be given under this Agreement shall be in writing, and shall be delivered by U.S. mail, certified, postage prepaid, return receipt requested and addressed to the party for whom intended at the address set forth below. Notices shall be deemed given upon deposit in the mail. This Agreement represents the entire agreement between the parties hereto and neither party has relied upon any fact or representation not expressly set forth herein; and this Agreement may not be modified or amended except by written instrument executed by the parties. No term or condition in any purchase order of Lessee issued or purported to be issued with respect to the sale of carbon dioxide or lease of Equipment shall vary.

(Lessee)

By: Charles A. Dodge
Name: Charles Dodge
Date: 4/25/18
Lease # _____

APPROVED AS TO LEGAL FORM

OFFICE OF THE CITY ATTORNEY
DATED: 3-29-18

TOMCO; SYSTEMS

By: Michael A. Dirth
Name: Michael A. Dirth
Date: April 2, 2018
Lease # _____

Sandra Chastain

