



EQUIPMENT FINANCE

TERMS AND CONDITIONS  
ADDENDUM

AGREEMENT #  
1681503

Addendum to Agreement # 1681503, dated \_\_\_\_\_, between City of Durham, as Customer and U.S. Bank Equipment Finance, a division of U.S. Bank National Association, as Lessor/Secured Party.

The parties wish to amend the above-referenced Agreement as set forth below:

The following provision(s) shall be added to the terms and conditions of the Agreement:

Add new paragraph 15. CANCELTION DUE TO SUPPLIER NONPERFORMANCE: "In the event that the supplier is unable to provide you with its standard service, supplies or maintenance obligations, per the terms of the Sharp Business Systems Customer Care Maintenance Agreement and the Sharp Business Systems 3-Year Performance Guarantee, you will provide written notice to the supplier and us of such breach by the supplier. Upon receipt of such written notice, the supplier shall be provided a 30-day period to cure such deficiencies. If the supplier is not able to cure such deficiencies within the stated time period, you may cancel this Agreement."

Add new paragraph 16. MISCELLANEOUS:

"(a) Performance of Government Functions - Nothing contained in this Agreement shall be deemed or construed so as to in any way estop, limit, or impair the Customer from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(b) Compliance with Law- In performance under the Agreement, the parties agree that they shall comply with applicable law.

(c) No Third Party Rights Created - This Agreement is intended for the benefit of the Customer and the Owner and not any other person.

(d) Customer Policy - THE CUSTOMER OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS LESSORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(e) EEO Provisions - During the performance of this Agreement the Owner agrees as follows: (1) The Owner shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Owner shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Owner shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Owner shall in all solicitations or advertisement for employees placed by or on behalf of the Owner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Owner shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Owner's noncompliance with these EEO provisions, the Customer may cancel, terminate, or suspend this Agreement, in whole or in part, and the Customer may declare the Owner ineligible for further Customer contracts. (5) Unless exempted by the City Council of the City of Durham, the Owner shall include these EEO provisions in every purchase order for goods to be used in performing this Agreement and in every subcontract related to this Agreement so that these EEO provisions will be binding upon such subcontractors and vendors.

(f) M/WBE. The Owner shall comply with all applicable provisions of Chapter 26 of the Durham City Code (the Minority and Women Business Enterprises ordinance), as amended from time to time. The failure of the Owner to comply with that chapter shall be a material breach of Agreement which may result in the rescission or termination

of this Agreement and/or other appropriate remedies in accordance with the provisions of that chapter, this Agreement, and State law. The final version of all M/WBE documents and information submitted by the Owner and approved by the Customer are a legal and binding part of this Agreement.

(g) Principles of Interpretation and Definitions - In this Agreement, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to agreements shall be deemed to include all amendments to them. The words "include", "including", etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this Agreement. (3) "Contract" and "Agreement", whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this Agreement. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day.

(h) Modifications, Entire Agreement - A modification of this Agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the Customer unless the City Manager or a deputy or assistant City Manager signs it for the Customer. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Agreement."

**REPRESENTATIONS AND WARRANTIES OF CUSTOMER:** Customer hereby represents and warrants to Lessor that: (a) Customer has been duly authorized by the Constitution and laws of the applicable jurisdiction and by a resolution of its governing body (which resolution, if requested by Lessor, is attached hereto), to execute and deliver the Agreement and to carry out its obligations hereunder. (b) All legal requirements have been met, and procedures have been followed, including public bidding, in order to ensure the enforceability of the Agreement. (c) The Equipment will be used by Customer only for essential governmental or proprietary functions of Customer consistent with the scope of Customer's authority and will not be used in a trade or business of any person or entity, by the federal government or for any personal, family or household use. Customer's need for the Equipment is not expected to diminish during the term of the Agreement. (d) Customer has funds available to pay contracted Payments until the end of its current appropriation period, and it intends to request funds to make contracted Payments in each appropriation period, from now until the end of the term of the Agreement. (e) Customer's exact legal name is as set forth on page one of the Agreement. Customer will not change its legal name in any respect without giving thirty (30) days prior written notice to Lessor.

**NON-APPROPRIATION:** If sufficient funds are not appropriated to make contracted Payments under the Agreement, the Agreement shall terminate and Customer shall not be obligated to make contracted Payments under the Agreement beyond the then-current fiscal year for which funds have been appropriated. Upon such an event, Customer shall, no later than the end of the fiscal year for which contracted Payments have been appropriated, deliver possession of the Equipment to Lessor. If Customer fails to deliver possession of the Equipment to Lessor, the termination shall nevertheless be effective but Customer shall be responsible for the payment of damages in an amount equal to the portion of contracted Payments thereafter coming due that is attributable to the number of days after the termination during which the Customer fails to deliver possession and for any other loss suffered by Lessor as a result of Customer's failure to deliver possession as required. Customer shall notify Lessor in writing within seven (7) days after the failure of the Customer to appropriate funds sufficient for the payment of the contracted Payments, but failure to provide such notice shall not operate to extend the Agreement term or result in any liability to Customer.

**\$1.00 PURCHASE OPTION**

Provided the Agreement has not terminated early and no event of default under the Agreement has occurred and is continuing, Customer shall have the following option at the end of the original term:

**BUY:** Purchase the Equipment for \$1.00.

**OR**

**RETURN:** Return the Equipment to a location designated by the Lessor with no further obligation.

Leases with \$1.00 purchase options will not be renewed. The options provided for in this \$1.00 Purchase Option supersede all other options contained in the original Agreement.

The following provision(s) shall be revised from the terms and conditions of the Agreement:

Paragraph 5. ASSIGNMENT: Sentence 3 "We may sell, assign, or transfer this Agreement without notice." shall be revised to read as "Without the Customer's written consent, the Owner shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this Agreement. Unless the Customer otherwise agrees in writing, the Owner and all assignees shall be subject to all of the Customer's defenses and shall be liable for all of the Owner's duties that arise out of this contract and all of the Customer's claims that arise out of this Agreement. Without granting the Owner the right to assign, it is agreed that the duties of the Owner that arise out of this Agreement shall be binding upon it and its heirs, personal representatives, successors, and assigns."

Paragraph 6. DEFAULT AND REMEDIES: Sentence 11 "Any delay or failure to enforce our rights under this Agreement will not prevent us from enforcing any rights at a later time." shall be revised to read as "Any delay or failure by a party to enforce its rights under this Agreement will not prevent such party from enforcing any rights at a later time."

Paragraph 10. LAW, JURY WAIVER: Sentences 3 and 4 "This Agreement will be governed by and construed in accordance with the laws of the state where the customer is located. You consent to jurisdiction and venue of any state or federal court in such state and waive the defense of inconvenient forum." shall be revised to read as "This Agreement shall be deemed made in Durham County, North Carolina and will be governed by and construed in accordance with the laws of the state of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be in Durham County, North Carolina. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section."

The following provision(s) shall be removed from the terms and conditions of the Agreement:

Paragraph 11. MAINTENANCE AND SUPPLIES: Sentence 3 "Color toner is not included in this Agreement and will be billed separately." is removed.

Paragraph 12. OVERAGES AND COST ADJUSTMENTS: Sentence 2 "At the end of the first 12 months after commencement of this Agreement, and once each successive 12-month period thereafter, we may increase the Payment and the "cost per image" charge that exceeds the number of images originally designated in this Agreement ("Overages") by a maximum of 15% of the existing " cost per image" charge." is removed.

The parties wish to amend the above-referenced Agreement by restating the following:

Any provision in the Agreement stating that you grant us a security interest in the Equipment to secure all amounts owed to us under any agreement is hereby amended and restated as follows: "You grant us a security interest in the Equipment to secure all amounts you owe us under this Agreement, and you authorize us to file a financing statement (UCC-1) or be named on the vehicle title to show our interest."

Any provision in the Agreement stating that you shall indemnify and hold us harmless is hereby amended and restated as follows: "You shall not be required to indemnify or hold us harmless against liabilities arising from the Agreement. However, as between you and us, and to the extent permitted by law, you shall bear the risk of loss for, shall pay directly, and shall defend against any and all claims, liabilities, proceedings, actions, expenses, damages or losses arising under or related to the Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof, except that you shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses, damages or losses that arise directly from events occurring





EQUIPMENT FINANCE

LESSEE'S CERTIFICATE

AGREEMENT # 1681503

Re: Agreement # 1681503, dated , between City of Durham, as Lessee and U.S. Bank Equipment Finance, as Lessor.

The undersigned, being the duly elected, qualified and acting \_\_\_\_\_ of the City of Durham ("Lessee") do hereby certify, as of \_\_\_\_\_, as follows:

1. Lessee did, at a meeting of the governing body of the Lessee held \_\_\_\_\_, 201\_\_ by resolution or ordinance duly enacted, in accordance with all requirements of law, approve and authorize the execution and delivery of the above-referenced Agreement (the "Agreement") by the following named representative of Lessee, to wit:

NAME OF EXECUTING OFFICIAL	TITLE OF EXECUTING OFFICIAL	SIGNATURE OF EXECUTING OFFICIAL
And/ Or		

2. The above-named representative of the Lessee held at the time of such authorization and holds at the present time the office set forth above.

3. The meeting(s) of the governing body of the Lessee at which the Agreement was approved and authorized to be executed was duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, and the enactment approving the Agreement and authorizing the execution thereof has not been altered or rescinded. All meetings of the governing body of Lessee relating to the authorization and delivery of Agreement have been: (a) held within the geographic boundaries of the Lessee; (b) open to the public, allowing all people to attend; (c) conducted in accordance with internal procedures of the governing body; and (d) conducted in accordance with the charter of the Lessee, if any, and the laws of the State.

4. No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default or a Non-appropriation (as such terms are defined in the Agreement) exists at the date hereof with respect to the Agreement.

5. The acquisition of all of the Property under the Agreement has been duly authorized by the governing body of Lessee.

6. Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current budget year to make the Lease Payments scheduled to come due during the current budget year under the Agreement and to meet its other obligations for the current budget year and such funds have not been expended for other purposes.

7. As of the date hereof, no litigation is pending, (or, to my knowledge, threatened) against Lessee in any court (a) seeking to restrain or enjoy in the delivery of the Agreement or of other agreements similar to the Agreement; (b) questioning the authority of Lessee to execute the Agreement, or the validity of the Agreement; (c) questioning the constitutionality of any statute, or the validity of any proceedings, authorizing the execution of the Agreement; or (d) affecting the provisions made for the payment of or security for the Agreement.

City of Durham
By:
Title:
<b>SIGNER MUST NOT BE THE SAME AS THE EXECUTING OFFICIAL(S) SHOWN ABOVE.</b>

NOTE: A FACSIMILE OF THIS DOCUMENT WITH SIGNATURE SHALL BE CONSIDERED TO BE AN ORIGINAL. CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.



APPLICATION NO.

AGREEMENT NO.

Supplier:

**SBS**Sharp Plaza  
Mahwah, NJ 07430

EQUIPMENT FINANCE

*Cost Per Image Agreement***Send Account Inquiries to: 1310 Madrid Street, Suite 101 • Marshall, MN 56258 • Phone: (800) 328-5371 • Fax: (800) 328-9092****Send Payments to: P.O. Box 790448 • St. Louis, MO 63179-0448**The words **User, Lessee, you** and **your** refer to **Customer**. The words **Owner, Lessor, we, us** and **our** refer to **U.S. Bank Equipment Finance, a division of U.S. Bank National Association ("U.S. Bank Equipment Finance")**.**CUSTOMER INFORMATION**

FULL LEGAL NAME			STREET ADDRESS	
City of Durham			101 City Hall Plaza	
CITY	STATE	ZIP	PHONE	FAX
Durham	NC	27701	919-560-4122	
BILLING NAME (IF DIFFERENT FROM ABOVE)			BILLING STREET ADDRESS	
CITY	STATE	ZIP	E-MAIL	
EQUIPMENT LOCATION (IF DIFFERENT FROM ABOVE)				

**EQUIPMENT WITH CONSOLIDATED MINIMUMS**

MAKE/MODEL/ACCESSORIES	SERIAL NO.	STARTING METER
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

together with all replacements, parts, repairs, additions, and accessions incorporated therein or attached thereto and any and all proceeds of the foregoing, including, without limitation, insurance recoveries.

 See the attached Schedule A See the attached Billing Schedule**TERM AND PAYMENT SCHEDULE**

Term in <u>48</u> Months	The contract payment ("Payment") period is monthly unless otherwise indicated.		<i>*plus applicable taxes</i>
Cost Per Image - Black and White* \$	<u>0.03973</u>	Monthly Minimum No. of Images <u>379500</u>	Overages* \$ <u>0.03973</u>
Cost Per Image - Color* \$	<u>0.05800</u>	Monthly Minimum No. of Images _____	Overages* \$ <u>0.05800</u>
Cost Per Image - Scan* \$	<u>N/A</u>	Monthly Minimum No. of Images _____	Overages* \$ _____
Cost Per Image - Fax* \$	<u>N/A</u>	Monthly Minimum No. of Images _____	Overages* \$ _____

**THIS IS A NONCANCELABLE / IRREVOCABLE AGREEMENT; THIS AGREEMENT CANNOT BE CANCELED OR TERMINATED.****OWNER ACCEPTANCE**

U.S. Bank Equipment Finance

OWNER

SIGNATURE

TITLE

DATED

**CUSTOMER ACCEPTANCE**

By signing below, you certify that you have reviewed and do agree to all terms and conditions of this Agreement on this page and on page 2 attached hereto.

**X**

CUSTOMER (as referenced above)

SIGNATURE

TITLE

DATED

FEDERAL TAX I.D. #

PRINT NAME

**ACCEPTANCE OF DELIVERY**

You certify that all the Equipment listed above has been furnished, that delivery and installation has been fully completed and is satisfactory. Upon you signing below, your promises herein will be irrevocable and unconditional in all respects. You understand that we have purchased the Equipment from the supplier, and you may contact the supplier for a full description of any warranty rights under the supply contract, which we hereby assign to you for the term of this Agreement (or until you default). Your approval as indicated below of our purchase of the Equipment from the supplier is a condition precedent to the effectiveness of this Agreement.

**X**

- 1. AGREEMENT:** For business purposes only, you agree to rent from us the goods (the "Equipment") and/or to finance certain licensed software and services ("Financed Items", which are included in the word "Equipment" unless separately stated), all as described on page 1 of this Agreement, as it may be supplemented from time to time. You agree to all of the terms and conditions contained in this Agreement and any supplement, which (with the acceptance certification) is the entire agreement regarding the Equipment ("Agreement") and which supersedes any purchase order or invoice. You authorize us to correct or insert missing Equipment identification information and to make corrections to your proper legal name and address. This Agreement becomes valid upon execution by us. This Agreement will renew for 12-month term(s) unless you send us written notice between 90 and 150 days (before the end of any term) that you do not want it renewed, in which case you shall return the Equipment (according to the conditions herein). 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.
- 2. RENT, TAXES AND FEES:** You will pay the monthly Payment (as adjusted) when due, plus any applicable sales, use and property taxes. The base Payment will be adjusted proportionately upward or downward: (1) by up to 10% to accommodate changes in the actual Equipment cost; (2) if the shipping charges or taxes differ from the estimate given to you; and (3) to comply with the tax laws of the state in which the Equipment is located. If we pay any taxes, insurance or other expenses that you owe hereunder, you agree to reimburse us when we request and to pay us a processing fee for each expense or charge we pay on your behalf. We may charge you for any filing or titling fees required by the Uniform Commercial Code (UCC) or other laws, which fees vary state-to-state. By the date the first Payment is due, you agree to pay us an origination fee, as shown on our invoice or addendum, to cover us for all closing costs. 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. If for any reason your check is returned for nonpayment, you will pay us a bad check charge of \$30 or, if less, the maximum charge allowed by law. We may make a profit on any fees, estimated tax payments and other charges paid under this Agreement.
- 3. MAINTENANCE AND LOCATION OF EQUIPMENT; SECURITY INTEREST:** At your expense, you agree to keep the Equipment: (1) in good repair, condition and working order, in compliance with applicable manufacturers' and regulatory standards; (2) free and clear of all liens and claims; and (3) only at your address shown on page 1, and you agree not to move it unless we agree. As long as you have given us the written notice as required in paragraph 1 prior to the expiration or termination of this Agreement's term, you will return all but not less than all of the Equipment and all related manuals and use and maintenance records to a location we specify, at your expense, in retail re-saleable condition, full working order and complete repair. You are solely responsible for removing any data that may reside in the Equipment you return, including but not limited to hard drives, disk drives or any other form of memory. You grant us a security interest in the Equipment to secure all amounts you owe us under any agreement with us, and you authorize us to file a financing statement (UCC-1). You will not change your state of organization, headquarters or residence without providing prior written notice to us so that we may amend or file a new UCC-1. You will notify us within 30 days if your state of organization revokes or terminates your existence.
- 4. COLLATERAL PROTECTION; INSURANCE; INDEMNITY; LOSS OR DAMAGE:** You agree to keep the Equipment fully insured against risk and loss, with us as lender's loss payee, in an amount not less than the original cost until this Agreement is terminated. You also agree to obtain a general public liability insurance policy with such coverage and from such insurance carrier as shall be satisfactory to us and to include us as an additional insured on the policy. Your insurance policy(s) will provide for 10 days advance written notice to us of any modification or cancellation. You agree to provide us certificates or other evidence of insurance acceptable to us. If you fail to comply with this requirement within 30 days after the start of this Agreement, you agree to pay a monthly property damage surcharge ("PDS") of up to .0035 of the Equipment cost as a result of our credit risk and administrative and other costs, under the PDS program that is further described on a letter from us to you. We may make a profit on this program. Under this program, AS LONG AS YOU ARE NOT IN DEFAULT AT THE TIME OF A LOSS (excluding losses from intentional acts), the remaining balance owed on the subject Equipment will be forgiven. NOTHING IN THIS PARAGRAPH WILL RELIEVE YOU OF RESPONSIBILITY FOR LIABILITY INSURANCE ON THE EQUIPMENT. We are not responsible for, and you agree to hold us harmless and reimburse us for and to defend on our behalf against, any claim for any loss, expense, liability or injury caused by or in any way related to delivery, installation, possession, ownership, use, condition, inspection, removal, return or storage of the Equipment. You are responsible for the risk of loss or for any destruction of or damage to the Equipment. You agree to promptly notify us in writing of any loss or damage. If the Equipment is destroyed and you do not have the PDS program, you will pay to us the unpaid balance of this Agreement, including any future rent to the end of the term plus the anticipated residual value of the Equipment (both discounted at 3%). Any proceeds of insurance will be paid to us and credited, at our option, against any loss or damage. You authorize us to sign on your behalf and appoint us as your attorney-in-fact to endorse in your name any insurance drafts or checks issued due to loss or damage to the Equipment. All indemnities will survive the expiration or termination of this Agreement.
- 5. ASSIGNMENT: YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT, without our prior written consent.** Without our prior written consent, you shall not reorganize or merge with any other entity or transfer all or a substantial part of your ownership interests or assets. We may sell, assign, or transfer this Agreement without notice. 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 new Owner will not be subject to any claims, defenses, or offsets that you may have against us. You shall cooperate with us in executing any documentation reasonably required by us or our assignee to effectuate any such assignment. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.
- 6. DEFAULT AND REMEDIES:** You will be in default if: (a) you do not pay any Payment or other sum due to us or any other person when due or if you break any of your promises in this Agreement or any other agreement with us or any of our affiliates or any material agreement with any other lender, (b) you make or have made any false statement or misrepresentation to us, (c) you or any guarantor dies, dissolves or terminates existence, (d) there has been a material adverse change in your or any guarantor's financial, business or operating condition, or (e) any guarantor defaults under any guaranty for this Agreement. If any part of a Payment is more than 5 days late, you agree to pay a late charge of 10% of the Payment which is late or if less, the maximum charge allowed by law. If you are ever in default, at our option, we can terminate this Agreement and require that you pay the unpaid balance of this Agreement, including any future Payments to the end of the term plus the anticipated residual value of the Equipment (both discounted at 3%). We may recover default interest on any unpaid amount at the rate of 12% per year. Concurrently and cumulatively, we may also use any or all of the remedies available to us under Articles 2A and 9 of the UCC and any other law, including requiring that you: (1) return the Equipment to us to a location we specify; and (2) immediately stop using any Financed Items. In addition, we will have the right, immediately and without notice or other action, to set-off against any of your liabilities to us any money, including depository account balances, owed by us to you, whether or not due. In the event of any dispute or enforcement of rights under this Agreement or any related agreement, you agree to pay our reasonable attorney's fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, including any collection agency fee. If we have to take possession of the Equipment, you agree to pay the costs of repossession, moving, storage, repair and sale. The net proceeds of the sale of any Equipment will be credited against what you owe us under this Agreement. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES FOR ANY DEFAULT, ACT OR OMISSION BY ANYONE. Any delay or failure to enforce our rights under this Agreement will not prevent us from enforcing any rights at a later time. You agree that your rights and remedies are governed exclusively by this Agreement. You waive all rights under Article 2A (508-522) of the UCC. If interest is charged or collected in excess of the maximum lawful rate, we will not be subject to any penalties.
- 7. INSPECTIONS AND REPORTS:** We will have the right, at any reasonable time, to inspect the Equipment and any documents relating to its use, maintenance and repair. Within 30 days after our request, you will deliver all requested information (including tax returns) which we deem reasonably necessary to determine your current financial condition and faithful performance of the terms hereof. This may include: (i) compiled, reviewed or audited annual financial statements (including, without limitation, a balance sheet, a statement of income, a statement of cash flow, a statement of changes in equity and notes to financial statements) within 120 days after your fiscal year end, and (ii) management-prepared interim financial statements within 45 days after the requested reporting period(s). Annual statements shall set forth the corresponding figures for the prior fiscal year in comparative form, all in reasonable detail without any qualification or exception deemed material by us. Unless otherwise accepted by us, each financial statement submitted to us shall be prepared in accordance with generally accepted accounting principles consistently applied and shall fairly and accurately present your financial condition and results of operations for the period to which it pertains.
- 8. FAXED OR SCANNED DOCUMENTS, MISC.:** You agree to submit the original duly-signed documents to us via overnight courier the same day of the facsimile or scanned transmission of the documents. Any faxed or scanned copy may be considered the original, and you waive the right to challenge in court the authenticity or binding effect of any faxed or scanned copy or signature thereon. You agree to execute any further documents that we may request to carry out the intents and purposes of this Agreement. All notices shall be mailed or delivered by facsimile transmission or overnight courier to the respective parties at the addresses shown on this Agreement or such other address as a party may provide in writing from time to time. By providing any telephone number, now or in the future, for a cell phone or other wireless device, you are expressly consenting to receiving communications, regardless of their purpose, at that number, including, but not limited to, prerecorded or artificial voice message calls, text messages, and calls made by an automatic dialing system from us and our affiliates and agents. These calls and messages may incur access fees from your provider.
- 9. WARRANTY DISCLAIMERS:** YOU AGREE THAT YOU HAVE SELECTED THE SUPPLIER AND EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND YOU DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. WE DO NOT TAKE RESPONSIBILITY FOR THE INSTALLATION OR PERFORMANCE OF THE EQUIPMENT. THE SUPPLIER IS NOT AN AGENT OF OURS AND WE ARE NOT AN AGENT OF THE SUPPLIER, AND NOTHING THE SUPPLIER STATES OR DOES CAN AFFECT YOUR OBLIGATION UNDER THIS AGREEMENT. YOU WILL CONTINUE TO MAKE ALL PAYMENTS UNDER THIS AGREEMENT REGARDLESS OF ANY CLAIM OR COMPLAINT AGAINST ANY SUPPLIER, LICENSOR OR MANUFACTURER, AND ANY FAILURE OF A SERVICE PROVIDER TO PROVIDE SERVICES WILL NOT EXCUSE YOUR OBLIGATIONS TO US UNDER THIS AGREEMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, OF, AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, CONDITION, QUALITY, ADEQUACY, TITLE, DATA ACCURACY, SYSTEM INTEGRATION, FUNCTION, DEFECTS, OR ANY OTHER ISSUE IN REGARDS TO THE EQUIPMENT, ANY ASSOCIATED SOFTWARE AND ANY FINANCED ITEMS.
- 10. LAW, JURY WAIVER:** Agreements, promises and commitments made by Owner, concerning loans and other credit extensions must be in writing, express consideration and be signed by Owner to be enforceable. This Agreement may be modified only by written agreement and not by course of performance. This Agreement will be governed by and construed in accordance with Minnesota law. You consent to jurisdiction and venue of any state or federal court in Minnesota and waive the defense of inconvenient forum. For any action arising out of or relating to this Agreement or the Equipment, **YOU AND WE WAIVE ALL RIGHTS TO A TRIAL BY JURY.**
- 11. MAINTENANCE AND SUPPLIES:** The charges established by this Agreement include payment for the use of the Equipment, accessories, maintenance by supplier during normal business hours, inspection, adjustment, parts replacement, drums, cleaning material required for proper operation and black toner and developer. Paper and staples must be separately purchased by you. Color toner is not included in this Agreement and will be billed separately. If necessary, the service and supply portion of this Agreement may be assigned by us. We may charge you a supply freight fee to cover our costs of shipping supplies to you.
- 12. OVERAGES AND COST ADJUSTMENTS:** You agree to comply with our billing procedures including, but not limited to, providing us with periodic meter readings on the Equipment. At the end of the first 12 months after commencement of this Agreement, and once each successive 12-month period thereafter, we may increase the Payment and the "cost per image" charge that exceeds the number of images originally designated in this Agreement ("Overages") by a maximum of 15% of the existing "cost per image" charge.
- 13. UPGRADE AND DOWNGRADE PROVISION:** AFTER COMMENCEMENT OF THE AGREEMENT AND UPON YOUR WRITTEN REQUEST, AT OUR SOLE DISCRETION, WE MAY REVIEW YOUR IMAGE VOLUME AND PROPOSE OPTIONS FOR UPGRADING OR DOWNGRADING THE EQUIPMENT TO ACCOMMODATE YOUR BUSINESS NEEDS.
- 14. TRANSITION BILLING:** In order to facilitate an orderly transition, including installation and training, and to provide a uniform billing cycle, the start date of this Agreement (the "Effective Date") will be a date after the certification of acceptance of the Equipment, as shown on the first invoice. The payment for this transition period will be based on the base minimum usage payment, prorated on a 30-day calendar month, and will be added to your first monthly Payment.

## LESSEE'S COUNSEL'S OPINION

[To be provided on letterhead of Lessee's counsel.]

U.S. Bank Equipment Finance(the "Lessor")

City of Durham (the "Lessee")  
101 City Hall Plaza  
Durham, North Carolina 27701

RE: Agreement # 1681503 between City of Durham and U.S. Bank Equipment Finance.

Ladies and Gentlemen:

We have acted as special counsel to City of Durham ("Lessee"), in connection with the Agreement # 1681503, dated as of \_\_\_\_\_, between City of Durham, as Lessee, and U.S. Bank Equipment Finance Lessor, and any amendment or addendum thereto, if any (together, the "Agreement"). We have examined the law and such certified proceedings and other papers as we deem necessary to render this opinion.

Based upon the foregoing, we are of the opinion that, under existing law:

1. Lessee is a public body corporate and politic, duly organized and existing under the laws of the State, and has a substantial amount of one or more of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) the police power.
2. Lessee has all requisite power and authority to enter into the Agreement and to perform its obligations there under.
3. All proceedings of Lessee and its governing body relating to the authorization and approval of the Agreement, the execution thereof and the transactions contemplated thereby have been conducted in accordance with all applicable open meeting laws and all other applicable state and federal laws.
4. The Agreement has been duly executed and delivered by Lessee and constitute legal, valid and binding obligations of Lessee, enforceable against Lessee in accordance with the terms thereof, except insofar as the enforcement thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other laws of equitable principles of general application, or of application to municipalities or political subdivisions such as the Lessee, affecting remedies or creditors' rights generally, and to the exercise of judicial discretion in appropriate cases.
5. As of the date hereof, based on such inquiry and investigation as we have deemed sufficient, no litigation is pending, (or, to our knowledge, threatened) against Lessee in any court (a) seeking to restrain or enjoin the delivery of the Agreement; (b) questioning the authority of Lessee to execute the Agreement, or the validity of the Agreement (c) questioning the constitutionality of any statute, or the validity of any proceedings, authorizing the execution of the Agreement; or (d) affecting the provisions made for the payment of or security for the Agreement.

This opinion may be relied upon by Lessor, its successors and assigns, and any other legal counsel who provides an opinion with respect to the Agreement.

Very truly yours,

By: \_\_\_\_\_

## CITY OF DURHAM MAINTENANCE AGREEMENT TERMS AND CONDITIONS

**1. GENERAL SCOPE OF COVERAGE** This Agreement covers both the labor and the material for adjustments, repair and replacements of parts ("Maintenance") as required by normal use of the equipment identified on the front page of this Agreement ("Equipment"). Maintenance does not cover charges for installation, relocating or de-installation of the Equipment. Service necessary to repair damage to the Equipment caused by misuse, abuse, negligence, attachment of unauthorized components, accessories or parts, use of substandard facsimile (thermal) paper or substandard supplies, other causes beyond the control of SBS or such causes which would void the Equipments' warranty are not covered by this Agreement. Any such repairs identified in the preceding sentence shall be separately billed to customer and may lead to the termination of this Agreement. In addition, SBS may terminate this Agreement if the equipment is modified, damaged, altered or serviced by personnel other than the SBS Authorized Personnel, or if parts, accessories or components not meeting machine specifications are titled to the Equipment. Maintenance shall not cover charges for repairs needed as a result of Customer or third party modifications to software or hardware.

**2. MAINTENANCE VISITS** Maintenance visits will be made during standard weekday business hours at the address shown on the first page of this Agreement. Maintenance visits requested for holidays, weekends or after standard business hours may result in additional charges for travel and labor pursuant to SBS's standard overtime rates in effect at the time of the Maintenance visit. SBS will not connect, disconnect, repair or otherwise service non-Sharp approved attachments, components or accessories. Customer is responsible for disconnecting and reconnecting non-Sharp approved attachments, components or accessories. Maintenance performed during a Maintenance visit includes lubrication and cleaning of the Equipment and the adjustment, repair or replacement of parts described below.

**3. REPAIR AND REPLACEMENT OF PARTS** Except Photoconductors (i.e. copy drums), all parts necessary to the operation of the Equipment requiring replacement due to normal wear and tear, subject to the general scope of coverage, will be furnished free of charge during a service call. Coverage for Photoconductors may also be obtained for an additional fee if selected on the first page of this Agreement.

**4. MAJOR REPAIRS AND UPGRADES** Major repairs resulting from misuse of the product, overall failure of the Equipment resulting from the normal end of life cycle of the Equipment and other repairs requiring more than customary repair and part replacements ("Overhaul") shall not be considered covered Maintenance. Should, in the opinion of SBS, an Overhaul be necessary for the Equipment to be in working condition, SBS will submit to the Customer an estimate of needed repairs and their additional cost. If the Customer does not authorize such Overhaul, SBS may, at its option, discontinue Maintenance of the Equipment under this Agreement. Thereafter, SBS may make service available on a "Per Call" basis based upon SBS's standard rates in effect at the time of service.

**5. USE OF SBS SUPPLIES** Customer is not obligated to use SBS approved supplies under this Agreement. If, however, the Customer uses other than SBS approved supplies (other than paper) and such supplies result, in SBS's reasonable judgment, additional Maintenance, then SBS may, at its option, assess a surcharge or terminate this Agreement. If SBS terminates this Agreement, SBS may make service available on a "Per Call" basis based upon SBS's standard rates in effect at the time of service.

**6. SUPPLIES** Supplies selected, if any, on the front of this Agreement ("Supplies"), shall be included under this Agreement. SBS will provide such selected Supplies to the Customer based upon normal yields. Supplies provided are for use with the Equipment covered by this Agreement only and are not for resale or for use with other equipment. If the Customer's usage of the Supplies exceeds the normal yields for the Equipment being serviced, SBS will invoice and the Customer agrees to pay, for the excess supplies at SBS's current retail prices then in effect. SBS reserves the right to charge for supplies and freight. Normal yield is defined as the published industry standard yield for the product model covered under this Agreement.

**7. ELECTRICAL REQUIREMENTS** In order to insure optimum performance of the Equipment, Customer must comply with all Sharp required electrical specifications, including but not limited to use of designated circuit and outlets and required voltage requirements. These power standards are required by UL and/or local safety regulations.

**8. CHARGES** The initial charge for Maintenance under this Agreement is non-refundable and shall be the amount set forth on the first page of this Agreement. The annual maintenance charge with respect to any renewal term will be the charge in effect at the time of term renewal. Customer shall be charged according to the payment cycle indicated on the front page of this Agreement. Customer shall pay all charges within ten (10) days of the date of the SBS invoice. Past due amounts shall accrue interest at a rate of 1.5% per month. If any Equipment which is subject to this Agreement, or any renewal hereof, is moved to a new SBS service territory, SBS shall have the option of charging the Customer an amount equal to the difference in the published maintenance charges between the current SBS service territory and that of the new SBS service territory (on a pro rata basis). If such equipment is moved beyond any SBS service territory, SBS reserves the right to cancel this Agreement, upon written notice to the Customer, or SBS may charge (and Customer hereby agrees to pay) a fair and reasonable upcharge for continued service. In so doing SBS may take into account the distance to Customer's new location and SBS published rates for SBS's "time and materials", "Per Call" service. SBS reserves the right to increase and/or otherwise modify its service rates and services on each anniversary date of this Agreement.

**9. TERM** This Agreement shall become effective upon SBS's receipt from Customer of the initial non-refundable maintenance charge, as set forth on the first page of this Agreement, or for such Customers that are to be billed in arrears, upon the date indicated in the "Start Date" portion of the first page of this Agreement. The term of this Agreement shall be as specified on the face page of this Agreement. This Agreement shall automatically renew for additional one year periods unless either party provides the other sixty (60) days written notice of termination prior to the end of the initial term, or any renewal term hereunder. In the event that Customer reaches or exceeds the allowance, as specified on the first page of this Agreement, prior to the expiration of the initial term, or any renewal term under this Agreement, Customer hereby agrees to pay SBS the SBS excess meter rate then in effect and same shall apply to all of Customer's excess meter amounts, through the end of the term of this Agreement. For this Agreement's (not CPC leases) either party shall have the right during any renewal term, or during any second or third term of a multi-term agreement (if applicable) to terminate this Agreement upon sixty (60) days prior written notice to the other.

**10. EVENT OF DEFAULT AND TERMINATION** The Customer's failure to pay any amount due under this Agreement, or breach of any other obligation herein shall constitute an Event of Default. Upon an Event of Default, SBS may, in its discretion take any one or more of the following actions: (i) cease performing all Maintenance or any other services under this Agreement; (ii) furnish Maintenance or service upon a prepaid, "Per Call" basis; and/or (iii) terminate this Agreement. Customer shall be obligated to pay any amounts due and owing to SBS within (10) ten days of the expiration or termination of this Agreement. Customer, upon payment of all such amounts due, shall thereafter have no further liability or obligation to SBS whatsoever for any further fees or expenses arising hereunder. In the event SBS terminates this Agreement because of the breach of Customer, SBS shall be entitled to payment for work in progress plus reimbursement for out-of-pocket expenses.

**11. Indemnification.** (a) To the maximum extent allowed by law, the each Party shall defend, indemnify, and save harmless the other Party from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Party or its subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a", the acting Party shall at its sole expense defend the other Party with legal counsel reasonably acceptable to the other Party. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Party" means either the City or SBS and its officers, directors, officials, independent contractors, agents, and employees. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of an indemnified Party that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) Limitations of the a Party's Obligation. Subsection "a" above shall not require the one Party to indemnify or hold harmless the other Party against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of the other Party."

**12. ENTIRE AGREEMENT** This constitutes the entire Agreement between the parties relating to the subject matter hereof. Any modification to this Agreement must be in writing and signed by both parties.

**13. SUCCESSORS AND ASSIGNS; TERMINATION** Neither party may assign this Agreement or any of its rights or obligations hereunder, without the prior written approval of the other party, which will not be unreasonably withheld, except that either party may assign its obligations and rights to a wholly owned subsidiary, parent corporation, or entity under the same ownership, operation or control.

**14. SEVERABILITY** If any provision in this Agreement is held invalid or unenforceable by a body of competent jurisdiction, such provision will be construed, limited or, if necessary, severed to the extent necessary to eliminate such invalidity or unenforceability. The Parties agree to negotiate in good faith a valid, enforceable substitute provision that most nearly affects the Parties' original intent in entering into this Agreement or to provide an equitable adjustment in the event no such provision can be added. The other provisions of this Agreement shall remain in full force and effect.

**15. COUNTERPARTS AND FACSIMILE SIGNATURES** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of which together shall constitute one Agreement binding on all parties hereto, notwithstanding, that all the parties have not signed the same counterpart. A faxed signature of this Agreement bearing authorized signatures may be treated as an original.

**16. WAIVER OF JURY TRIAL** ALL PARTIES HERETO IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY

**17. JURISDICTION** All parties consent to the exclusive jurisdiction of the Federal Courts located in Essex County, New Jersey and the State Courts located in Bergen County, New Jersey in any proceeding arising out of or relating to this Agreement.

**18. LIMITATION OF LIABILITY** To the extent permitted by Law, in no event shall SBS be liable to Customer for any special, incidental, consequential, or indirect damages, loss of business profits, business interruption, loss of business information arising out of the inability to use the Equipment. The Customer acknowledges that the Maintenance provided by SBS is for the mechanical maintenance of the Equipment only, and that this Agreement does not cover any software, networking or any other connectivity or functionality maintenance, services or support.

**19. FORCE MAJEURE** SBS shall not be liable to Customer for any failure or delay caused by events beyond SBS's control, including, without limitation, Customer's failure to furnish necessary information; sabotage; failure or delays in transportation or communication; boycotts; embargoes; failures or substitutions of equipment; labor disputes; accidents; shortages of labor, fuel, raw materials, machinery, or equipment; technical failures; fire; storm; flood; earthquake; explosion; acts of the public enemy; war; insurrection; riot; public disorder; epidemic; quarantine restrictions; acts of God; acts of any government or any quasi-governmental authority, instrumentality or agency.

**20. NO WARRANTY** SBS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TECHNICAL COMPATIBILITY, FITNESS FOR USE, OR FITNESS FOR A PARTICULAR PURPOSE.

**21. INSURANCE** If the Customer is leasing the equipment, the Customer shall obtain and maintain, at its own expense, insurance relating to claims for injury and/or property damage (including commercial general liability insurance) based on its use of the equipment, goods and machinery.

**Customer Care Maintenance Agreement**

Customer Bill To	
Customer Name	City of Durham
Mailing Address	101 City Hall Plaza
City	Durham
State	NC
Zip	27701
Billing Contact	
Phone	
Fax	
E-Mail	

Equipment Covered	
Model	Serial Number / ID Number
Model	Serial Number / ID Number
Model	Serial Number / ID Number
Model	Serial Number / ID Number
Model	Serial Number / ID Number
Cancel Equip ID	Cancel Equip ID

Customer Location	
Customer Location/Department Name	
Location Address	
Physical Location Description	
City	State
Zip	
Key Contact	
Phone	Fax
E-Mail	
Meter Contact	
Phone	Fax
E-Mail	

Agreement Entitlement			
Parts Yes	Labor Yes	Drums Yes	B Toner Yes
			C Toner Yes
			Fuser Oil Yes
			Staples Yes
			Developer Yes
			Start Date
Cancel Equip ID	Cancel Equip ID	Cancel Equip ID	Cancel Equip ID

Detail of Charges	
Base Charge per Freq	<input checked="" type="checkbox"/> Check if maintenance charges are part of lease payment
Base Charge Frequency	Meter Frequency
Monthly	Monthly
Meter Allowance 1 per Frequency	Aggregate
B/W 379500	Yes
Meter Allowance 2 per Frequency	Consolidate
Color 0	Yes
Meter Allowance 3 per Frequency	MPS
	No
Excess Charge 1	Term (Months)
0.03973	12
Excess Charge 2	
0.05800	
Excess Charge 3	Master Contract Number

Authorizations	
Comments	
Authorizing Contract Number	
Purchase Order Number	
<p>I have read and understand our obligations under the terms and conditions stated herein, and on the reverse side thereof as the only agreement pertaining to the equipment herein. No other agreements apply unless expressly noted on the face of this agreement or in the contracts specified above. understand all meter counts are based on 8.5 x 11 (minimum single sided images unless otherwise noted).</p> <p>Customer has declined maintenance coverage at this time. The customer understands obtaining maintenance coverage later may incur charges in addition to the normal maintenance charges and has been informed as to the current time and material billing rates.</p>	
<input checked="" type="checkbox"/>	Print Name
<input type="checkbox"/>	Customer Signature
	Date

**THIS AGREEMENT SHALL NOT BE EFFECTIVE UNLESS SIGNED BY THE CUSTOMER AND SBS CONTRACT MANAGEMENT.**

Maintenance Agreement contracts are non-refundable, non-transferable, and non-cancelable. Where applicable, price does not include tax. Sharp Business Systems is a division of Sharp Electronics Corporation.

Sharp Authorization

Date

SBS Agreement Number