

RESOLUTION NO. 7-20  
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER James Singer ON THE  
24th DAY OF January, 2000.

A RESOLUTION AUTHORIZING THE CITY  
MANAGER, ON BEHALF OF THE CITY OF  
CENTERVILLE, TO EXECUTE A CONTRACT WITH  
KEY MUNICIPAL FINANCE.

WHEREAS, The City of Centerville has accepted a bid from E-Z-GO Division of  
Textron, Inc, for the lease-to-own in three years of 80 E-Z-GO 36 volt golf carts for use  
at The Golf Club at Yankee Trace, and

WHEREAS, The City of Centerville reserved the right to utilize local bank  
financing rather than financing through E-Z-GO if in fact it was in the best interest of the  
City, and

WHEREAS, It has been determined that it is in the best interest of the City to  
enter into a Master Tax-Exempt Lease/Purchase Agreement with Key Municipal Finance,  
a Division of Key Corporate Capital, Inc. for the financing of 80 E-Z-GO golf carts.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY  
RESOLVES:

Section 1. That the City Manager be and is hereby authorized to execute an  
Agreement between the City of Centerville and Key Municipal Finance, a Division of  
Key Corporate Capital, Inc. to provide for the financing of 80 golf carts from E-Z-GO  
Division of Textron, Inc., a copy of said Agreement which is marked as Exhibit "A",  
attached hereto and incorporated herein.

Section 2. That this Resolution shall become effective immediately upon  
passage.

PASSED this 24th day of January, 2000.

Sally D. Bialk  
Mayor of the City of Centerville, Ohio

ATTEST:

Marilyn J. Saughel  
Clerk of Council, City of Centerville, Ohio

**CERTIFICATE**

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution Number 7-00, passed by the Council of the City of Centerville, Ohio, on the 24th day of January, 2000.

Marilyn J. Saughel  
Clerk of Council

Approved as to form, consistency  
with the Charter and Constitutional Provisions.

Department of Law  
Robert N. Farquhar  
Municipal Attorney

## EXHIBIT A

**Master Tax-Exempt Lease/Purchase Agreement**

<b>BETWEEN:</b>	Key Municipal Finance, a Division of Key Corporate Capital, Inc. (the "Lessor") 1000 South McCaslin Blvd., Superior, CO 80027
<b>AND:</b>	City of Centerville (the "Lessee") 100 West Spring Valley Road Centerville, OH 45458
<b>DATED:</b>	January 20, 2000

**ARTICLE I**

1.01 **Definitions.** The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Agent" means any agent for the Registered Owners, if any, to which all or a portion of Lessor's right, title and interest in, to and under a Property Schedule and the Property under such Property Schedule may be assigned for the benefit of the Registered Owners of Lease Participation Certificates in such Property Schedule.

"Agreement" means this Master Tax-Exempt Lease/Purchase Agreement, including all exhibits and schedules attached hereto

"Commencement Date" is the date when the term of a Property Schedule and Lessee's obligation to pay rent thereunder commences, which date shall be set forth in the Property Schedule.

"Event of Nonappropriation" is defined in Section 6.06.

"Event of Default" is defined in Section 13.01.

"Lease Participation Certificates" means certificates evidencing a right to receive a share of Rental Payments payable under a Property Schedule and Purchase Price Payments payable under a Property Schedule and any other rights set forth herein with respect to the Property under said Property Schedule.

"Lease Term" means, with respect to a Property Schedule, the Original Term and all Renewal Terms. The Lease Term for each Property Schedule executed hereunder shall be set forth in such Property Schedule, as provided in Section 4.02.

"Lessee" means the entity identified as such in the first paragraph hereof, and its permitted successors and assigns.

"Lessor" means the entity identified as such in the first paragraph hereof, and its successors and assigns

"Original Term" means, with respect to a Property Schedule, the period from the Commencement Date until the end of the budget year of Lessee in effect at the Commencement Date.

"Property" means, collectively, the property lease/purchased pursuant to this Agreement, and with respect to each Property Schedule, the property described in such Property Schedule, and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.01 or Article IX.

"Property Schedule" means a Property Schedule in the form attached hereto for Property Schedule 1. Subsequent Property Schedules pursuant to this Agreement shall be numbered consecutively, beginning with Property Schedule 2.

"Purchase Price" means the amount that Lessee may, in its discretion, pay to Lessor to purchase the Property under a Property Schedule, as provided in Section 11.01 and as set forth in the Property Schedule.

"Registered Owners" means the registered owners of Lease Participation Certificates in a Property Schedule as shown on the registration books maintained by the Agent.

"Renewal Terms" means the renewal terms of a Property Schedule, each having a duration of one year and a term coextensive with Lessee's budget year.

"Rental Payments" means the rental payments payable by Lessee under Article IV of this Agreement and each Property Schedule, as set forth in each Property Schedule.

"Rental Payments Dates" means the rental payments dates for the Rental Payments as set forth in each Property Schedule.

"State" means the state in which Lessee is situated.

"Vendor" means the manufacturer or contractor of the Property as well as the agents or dealers of the manufacturer or contractor from whom Lessor or Lessee purchased or is purchasing all or any portion of the Property.

**ARTICLE II**

2.01 **Property Schedules Separate Financings.** Each Property Schedule executed and delivered under this Agreement shall be treated as a separate financing, distinct from other Property Schedules. Without limiting the foregoing, upon the occurrence of an Event of Default or an Event of Nonappropriation with respect to a Property Schedule, Lessor shall have the rights and remedies specified herein with respect to the Property financed and the Rental Payments payable under such Property Schedule, and except as expressly provided in Section 12.02 below, Lessor shall have no rights or remedies with respect to Property financed or Rental Payments payable under any other Property Schedules unless an Event of Default or Event of Nonappropriation has also occurred under such other Property Schedules.

**ARTICLE III**

3.01 **Covenants of Lessee.** As of the Commencement Date for each Property Schedule executed and delivered hereunder, Lessee shall be deemed to represent, covenant and warrant for the benefit of Lessor, any Agent, and any Registered Owners, as follows:

- Lessee is a public body corporate and politic duly organized and existing under the constitution and laws of the State with full power and authority to enter into this Agreement and the Property Schedule and the transactions contemplated thereby and to perform all of its obligations thereunder
- Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic. To the extent Lessee should merge with another entity under the laws of the State, Lessee agrees that as a condition to such merger it will require that the remaining or resulting entity shall be assigned Lessee's rights and shall assume Lessee's obligations hereunder.
- Lessee has been duly authorized to execute and deliver this Agreement and the Property Schedule by proper action by its governing body, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement and the Property Schedule, and Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the Property Schedule and the acquisition by Lessee of the Property thereunder. On or before the Commencement Date for the Property Schedule, Lessee shall cause to be executed an opinion of counsel in substantially the form attached to the form of the Property Schedule as Exhibit 3.
- During the Lease Term for the Property Schedule, the Property thereunder will perform and will be used by Lessee only for the purpose of performing essential governmental uses and public functions within the permissible scope of Lessee's authority.

- (e) Lessee will provide Lessor with current financial statements, budgets and proof of appropriation for the ensuing budget year and other financial information relating to the ability of Lessee to continue this Agreement and the Property Schedule in such form and containing such information as may be requested by Lessor.
- (f) Lessee will comply with all applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder, from time to time proposed or in effect, in order to maintain the excludability from gross income for federal income tax purposes of the interest component of Rental Payments under the Property Schedule and will not use or permit the use of the Property in such a manner as to cause a Property Schedule to be a "private activity bond" under Section 141(a) of the Code. Lessee covenants and agrees that it will use the proceeds of the Property Schedule as soon as practicable and with all reasonable dispatch for the purpose for which the Property Schedule has been entered into, and that no part of the proceeds of the Property Schedule shall be invested in any securities, obligations or other investments except for the temporary period pending such use nor used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the date of issuance of the Agreement, would have caused any portion of the Property Schedule to be or become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the date of issuance of the Property Schedule.
- (g) The execution, delivery and performance of this Agreement and the Property Schedule and compliance with the provisions hereof and thereof by Lessee does not conflict with or result in a violation or breach or constitute a default under, any resolution, bond, agreement, indenture, mortgage, note, lease or other instrument to which Lessee is a party or by which it is bound by any law or any rule, regulation, order or decree of any court, governmental agency or body having jurisdiction over Lessee or any of its activities or properties resulting in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any property or assets of Lessee or to which it is subject.

#### ARTICLE IV

**4.01 Lease of Property.** On the Commencement Date of each Property Schedule executed hereunder, Lessor will be deemed to demise, lease and let to Lessee, and Lessee will be deemed to rent, lease and hire from Lessor, the Property described in such Property Schedule, in accordance with this Agreement and such Property Schedule, for the Lease Term set forth in such Property Schedule.

**4.02 Lease Term.** The term of each Property Schedule shall commence on the Commencement Date set forth therein and shall terminate upon payment of the final Rental Payment set forth in such Property Schedule and the exercise of the Purchase Option described in Section 11.01, unless terminated sooner pursuant to this Agreement or the Property Schedule.

**4.03 Delivery, Installation and Acceptance of Property.** Lessee shall order the Property, shall cause the Property to be delivered and installed at the locations specified in the applicable Property Schedule and shall pay all taxes, delivery costs and installation costs, if any, in connection therewith. To the extent funds are deposited under an escrow agreement or trust agreement for the acquisition of the Property, such funds shall be disbursed as provided therein. When the Property described in such Property Schedule is delivered, installed and accepted as to Lessee's specifications, Lessee shall immediately accept the Property and evidence said acceptance by executing and delivering to Lessor the Acceptance Certificate substantially in the form attached to the Property Schedule.

#### ARTICLE V

**5.01 Enjoyment of Property.** Lessee shall during the Lease Term peaceably and quietly have, hold and enjoy the Property, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Agreement. No Registered Owner shall interfere with such quiet use and enjoyment during the Lease Term so long as Lessee is not in default under the subject Property Schedule.

**5.02 Location; Inspection.** The Property will be initially located or based at the location specified in the applicable Property Schedule. Lessor shall have the right at all reasonable times during business hours to enter into and upon the property of Lessee for the purpose of inspecting the Property.

#### ARTICLE VI

**6.01 Rental Payments to Constitute a Current Expense of Lessee.** Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional, statutory or charter limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the faith and credit or taxing power of Lessee. Upon the appropriation of Rental Payments for a fiscal year, the Rental Payments for said fiscal year, and only the Rental Payments for said current fiscal year, shall be a binding obligation of Lessee; provided that such obligation shall not include a pledge of the taxing power of Lessee.

**6.02 Payment of Rental Payments.** Lessee shall promptly pay Rental Payments under each Property Schedule, exclusively from legally available funds, in lawful money of the United States of America, to Lessor in such amounts and on such dates as described in the applicable Property Schedule, at Lessor's address set forth on the first page of this Agreement, unless Lessor instructs Lessee otherwise. Lessee shall pay Lessor a charge on any delinquent Rental Payments under a Property Schedule in an amount sufficient to cover all additional costs and expenses incurred by Lessor and Agent from such delinquent Rental Payment. In addition, Lessee shall pay a late charge of five cents per dollar or the highest amount permitted by applicable law, whichever is lower, on all delinquent Rental Payments.

**6.03 Interest Component.** A portion of each Rental Payment due under each Property Schedule is paid as, and represents payment of, interest, and each Property Schedule hereunder shall set forth the interest component (or method of computation thereof) of each Rental Payment thereunder during the Lease Term.

**6.04 Rental Payments to be Unconditional.** SUBJECT TO SECTION 6.06, THE OBLIGATIONS OF LESSEE TO PAY THE RENTAL PAYMENTS DUE UNDER THE PROPERTY SCHEDULES AND TO PERFORM AND OBSERVE THE OTHER COVENANTS AND AGREEMENTS CONTAINED HEREIN SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE, FOR ANY REASON, INCLUDING WITHOUT LIMITATION, ANY DEFECTS, MALFUNCTIONS, BREAKDOWNS OR INFIRMITIES IN THE PROPERTY OR ANY ACCIDENT, CONDEMNATION OR UNFORESEEN CIRCUMSTANCES. THIS PROVISION SHALL NOT LIMIT LESSEE'S RIGHTS OR ACTIONS AGAINST ANY VENDOR AS PROVIDED IN SECTION 10.02.

**6.05 Continuation of Lease by Lessee.** Lessee intends to continue all Property Schedules entered into pursuant to this Agreement and to pay the Rental Payments thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to make all Rental Payments during the term of all Property Schedules can be obtained. Lessee agrees that its staff will provide during the budgeting process for each budget year to the governing body of Lessee notification of any Rental Payments due under the Property Schedules during the following budget year. Notwithstanding this covenant, if Lessee fails to appropriate the Rental Payments for a Property Schedule pursuant to Section 6.06, such Property Schedule shall terminate. Although Lessee has made this covenant, in the event that it fails to provide such notice, no remedy is provided and Lessee shall not be liable for any damages for its failure to so comply.

**6.06 Non-Appropriation.** If sufficient funds are not appropriated to make Rental Payments required under a Property Schedule, such Property Schedule shall terminate and Lessee shall not be obligated to make Rental Payments under said Property Schedule beyond the then current fiscal year for which funds have been appropriated. Upon the occurrence of such nonappropriation (an "Event of Nonappropriation") Lessee shall, no later than the end of the fiscal year for which Rental Payments have been appropriated, deliver possession of the Property under said Property Schedule to Lessor. If Lessee fails to deliver possession of the Property to Lessor upon termination of said Property Schedule by reason of an Event of Nonappropriation, the termination shall nevertheless be effective but Lessee shall be responsible for the payment of damages in an amount equal to the portion of Rental Payments thereafter coming due that is attributable to the number of days after the termination during which the Lessee fails to deliver possession and for any other loss suffered by Lessor as a result of Lessee's failure to deliver possession as required. In addition, Lessor may, by written instructions to the Agent or to any other escrow agent who is holding proceeds of the Property Schedule, instruct the Agent or such escrow agent to release all such proceeds and any earnings thereon to Lessor, such sums to be credited to Lessee's obligations under the Property Schedule and this Agreement. Lessee shall notify Lessor in writing within seven (7) days after the failure of the Lessee to appropriate funds sufficient for the payment of the Rental Payments, but failure to provide such notice shall not operate to extend the Lease Term or result in any liability to Lessee.

**6.07 Defeasance of Rental Payments.** Lessee may at any time irrevocably deposit in escrow with a defeasance escrow agent for the purpose of paying all of the principal component and interest component accruing under a Property Schedule, a sum of cash and non-callable securities consisting of direct obligations of, or obligations the principal of an interest on which are unconditionally guaranteed by, the United States of America or any agency or instrumentality thereof, in such aggregate amount, bearing

interest at such rates and maturing on such dates as shall be required to provide funds sufficient for this purpose. Upon such defeasance, all right, title and interest of Lessor in the Property under said Property Schedule shall terminate. Lessee shall cause such investment to comply with the requirements of federal tax law so that the exclusion from gross income of the interest component of Rental Payments on said Property Schedule is not adversely affected.

#### ARTICLE VII

**7.01 Title to the Property.** Upon acceptance of the Property by Lessee and unless otherwise required by the laws of the State, title to the Property shall vest in Lessee, subject to Lessor's interests under the applicable Property Schedule and this Agreement.

**7.02 Personal Property.** The Property is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Property or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. If requested by Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Property from any party having an interest in any such real estate or building.

**7.03 Security Interest.** To secure the performance of all of Lessee's obligations under this Agreement, Lessee grants to Lessor, for the benefit of Lessor and its successors and assigns, a security interest constituting a first lien on Lessee's interest in the Property, all additions, attachments, alterations and accessions to the Property, all substitutions and replacements for the Property, and on any proceeds of any of the foregoing. Lessee shall execute any additional documents, including financing statements, affidavits, notices and similar instruments, in form and substance satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain a security interest in the Property in favor of Lessor and its successors and assigns.

**7.04 Substitution.** Lessee may substitute for all or any portion of the Property under a Property Schedule personal property of approximately equal or greater market value and with an equal or greater useful life. In the event of any such substitution, Lessee shall deliver to Lessor a certification that the personal property proposed to be substituted has approximately equal or greater market value and an equal or greater useful life as the portion of the Property being substituted for, together with an opinion of counsel acceptable to Lessor to the effect that the proposed substitution will not adversely affect the exemption of the interest components of Rental Payments under the Property Schedule from federal income taxation. Lessee shall be responsible for all costs and expenses of Lessor, including counsel fees, for any such substitution. Lessee shall cause all financing statements, fixture filings, certificates of title, affidavits, notices and similar instruments, to be made or filed in a timely manner to secure and perfect the security interest of Lessor in the substituted property.

#### ARTICLE VIII

**8.01 Maintenance of Property by Lessee.** Lessee shall keep and maintain the Property in good condition and working order and in compliance with the manufacturer's specifications, shall use, operate and maintain the Property in conformity with all laws and regulations concerning the Property's ownership, possession, use and maintenance, and shall keep the Property free and clear of all liens and claims, other than those created by this Agreement. Lessee shall have sole responsibility to maintain and repair the Property. Should Lessee fail to maintain, preserve and keep the Property in good repair and working order and in accordance with manufacturer's specifications, and if requested by Lessor, Lessee will enter into maintenance contracts for the Property in form approved by Lessor and with approved providers.

**8.02 Liens, Taxes, Other Governmental Charges and Utility Charges.** Lessee shall keep the Property free of all levies, liens and encumbrances, except for the interest of Lessor under this Agreement. The parties to this Agreement contemplate that the Property will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Property will be exempt from all property taxes. The Rental Payments payable by Lessee under this Agreement and the Property Schedules hereunder have been established to reflect the savings resulting from this exemption from taxation. Lessee will take such actions necessary under applicable law to obtain said exemption. Nevertheless, if the use, possession or acquisition of the Property is determined to be subject to taxation or later becomes subject to such taxes, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to the Property. Lessee shall pay all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property. Lessee shall pay such taxes or charges as the same may become due; provided that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the then current fiscal year of the Lease Term for such Property.

**8.03 Insurance.** At its own expense, Lessee shall maintain (a) casualty insurance insuring the Property against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Lessor in an amount equal to at least the outstanding principal component of Rental Payments, and (b) liability insurance that protects Lessor from liability in all events in an amount reasonably acceptable to Lessor, and (c) worker's compensation insurance covering all employees working on, in, near or about the Property, provided that Lessee may self-insure against all such risks. All insurance proceeds from casualty losses shall be payable as hereinafter provided in this Agreement. All such insurance shall be with insurers that are authorized to issue such insurance in the State. All such liability insurance shall name Lessor as an additional insured. All such casualty insurance shall contain a provision making any losses payable to Lessor and Lessee as their respective interests may appear. All such insurance shall contain a provision to the effect that such insurance shall not be canceled or modified without first giving written notice thereof to Lessor and Lessee at least thirty (30) days in advance of such cancellation or modification. Such changes shall not become effective without Lessor's prior written consent. Lessee shall furnish to Lessor, on or before the Commencement Date for each Property Schedule, and thereafter at Lessor's request, certificates evidencing such coverage, or, if Lessee self-insures, a written description of its self-insurance program together with a certification from Lessee's risk manager or insurance agent or consultant to the effect that Lessee's self-insurance program provides adequate coverage against the risks listed above.

**8.04 Advances.** In the event Lessee shall fail to either maintain the insurance required by this Agreement or keep the Property in good repair and working order, Lessor may, but shall be under no obligation to, purchase the required insurance and pay the cost of the premiums thereof or maintain and repair the Property and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the Lease Term for the Property Schedule for which the Property is under and shall be due and payable on the next Rental Payment Date and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the date such amounts are advanced until paid at the rate of 12% per annum or the maximum amount permitted by law, whichever is less.

#### ARTICLE IX

**9.01 Damage or Destruction.** If (a) the Property under a Property Schedule or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or (b) title to, or the temporary use of, the Property under a Property Schedule or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, Lessor and Lessee will cause the Net Proceeds (as hereinafter defined) of any insurance claim, condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Property, unless Lessee shall have exercised its right to defease the Property Schedule as provided herein, or unless Lessee shall have exercised its option to purchase Lessor's interest in the Property if the Property Schedule so provides. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee. For purposes of Section 8.03 and this Article IX, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim, condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys' fees, incurred in the collection thereof.

**9.02 Insufficiency of Net Proceeds.** If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 9.01, Lessee shall (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds and, if Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Section 6.02, or (b) defease the Property Schedule pursuant to Section 6.07, or (c) exercise its option to purchase Lessor's interest in the Property pursuant to the optional purchase provisions of the Property Schedule, if any. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after such defeasance or purchase may be retained by Lessee.

## ARTICLE X

**10.01 Disclaimer of Warranties.** LESSOR MAKES NO (AND SHALL NOT BE DEEMED TO HAVE MADE ANY) WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN, OPERATION OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE PROPERTY, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE STATE OF TITLE THERETO OR ANY COMPONENT THEREOF, THE ABSENCE OF LATENT OR OTHER DEFECTS (WHETHER OR NOT DISCOVERABLE), AND LESSOR HEREBY DISCLAIMS THE SAME, IT BEING UNDERSTOOD THAT THE PROPERTY IS LEASED TO LESSEE "AS IS" ON THE DATE OF THIS AGREEMENT OR THE DATE OF DELIVERY, WHICHEVER IS LATER, AND ALL SUCH RISKS, IF ANY, ARE TO BE BORNE BY LESSEE. Lessee acknowledges that it has made (or will make) the selection of the Property from the Vendor based on its own judgment and expressly disclaims any reliance upon any statements or representations made by Lessor. Lessee understands and agrees that (a) neither the Vendor nor any sales representative or other agent of Vendor, is (i) an agent of Lessor, or (ii) authorized to make or alter any term or condition of this Agreement, and (b) no such waiver or alteration shall vary the terms of this Agreement unless expressly set forth herein. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, the Property Schedules, or the existence, furnishing, functioning or use of any item, product or service provided for in this Agreement or the Property Schedules.

**10.02 Vendor's Warranties.** Lessor hereby irrevocably assigns to Lessee all rights that Lessor may have to assert from time to time whatever claims and rights (including without limitation warranties) related to the Property against the Vendor. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor of the Property, and not against Lessor, nor shall such matter have any effect whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties of the Vendor of the Property.

**10.03 Use of the Property.** Lessee will not install, use, operate or maintain the Property improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement and the applicable Property Schedule. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Property. In addition, Lessee agrees to comply in all respects with all laws of the jurisdiction in which its operations involving any item of Property may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Property; provided that Lessee may contest in good faith the validity or application of any such law or rule in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Property or its interest or rights under this Agreement. Lessee shall promptly notify Lessor in writing of any pending or threatened investigation, inquiry, claim or action by any governmental authority which could adversely affect this Agreement, any Property Schedule or the Property thereunder.

**10.04 Modifications.** Subject to the provisions of this Section, Lessee shall have the right, at its own expense, to make alterations, additions, modifications or improvements to the Property. All such alterations, additions, modifications and improvements shall thereafter comprise part of the Property and shall be subject to the provisions of this Agreement. Such alterations, additions, modifications and improvements shall not in any way damage the Property, substantially alter its nature or cause it to be used for purposes other than those authorized under the provisions of state and federal law; and the Property, on completion of any alterations, additions, modifications or improvements made pursuant to this Section, shall be of a value which is equal to or greater than the value of the Property immediately prior to the making of such alterations, additions, modifications and improvements. Lessee shall, at its own expense, make such alterations, additions, modifications and improvements to the Property as may be required from time to time by applicable law or by any governmental authority.

## ARTICLE XI

**11.01 Option to Purchase.** Lessee shall have the option to purchase Lessor's entire interest in all of the Property subject to a Property Schedule and to terminate any restrictions herein on the Property under such Property Schedule on the last day of the Lease Term for a Property Schedule, if the Property Schedule is still in effect on such day, upon payment in full of the Rental Payments due thereunder plus payment of One (1) Dollar to Lessor. Lessee shall give written notice to Lessor of its intent to purchase Lessor's interest in the Property at least sixty (60) days prior to the last day of the Lease Term for applicable Property Schedule. Upon exercise of the purchase option as set forth in this Section 11.01 and payment of the purchase price under the applicable Property Schedule, and performance by Lessee of all other terms, conditions and provisions hereof, Lessor shall deliver to Lessee all such documents and instruments as Lessee may reasonably require to evidence the transfer, without warranty by or recourse to Lessor, of all of Lessor's right, title and interest in and to the Property subject to such Property Schedule to Lessee.

**11.02 Option to Prepay.** Lessee shall have the option to prepay the Rental Payments due under a Property Schedule, but only if the Property Schedule so provides, and on the terms set forth in the Property Schedule.

## ARTICLE XII

**12.01 Assignment by Lessor.** Lessor's right, title and interest in, to and under each Property Schedule and the Property under such Property Schedule may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor and, to the extent of their interest, by any Registered Owner, without the necessity of obtaining the consent of Lessee; provided that (i) any assignment, other than an assignment to or by a Registered Owner, shall not be effective until Lessee has received written notice, signed by the assignor, of the name, address and tax identification number of the assignee, and (ii) any assignment to or by a Registered Owner shall not be effective until it is registered on the registration books kept by the Agent. Lessee shall retain all such notices as a register of all assignees (other than Registered Owners) and shall make all payments to the assignee or assignees designated in such register or, in the case of Registered Owners, to the Agent. In the event that Lessor's interest in a Property Schedule and the Property thereunder is assigned to the Agent, Lease Participation Certificates in that Property Schedule may be executed and delivered by the Agent to Registered Owners. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements that may be reasonably requested by Lessor or any assignee to protect its interests in this Agreement and the Property Schedules.

**12.02 Property Schedules Separate Financings.** Assignees of the Lessor's rights in one Property Schedule shall have no rights in any other Property Schedule unless such rights have been separately assigned. Lessor may collectively assign two or more Property Schedules with the same Commencement Date to the Agent for the purpose of causing the execution and delivery of Lease Participation Certificates in the Property Schedules with the same Commencement Date. Such assignment shall occur on such Commencement Date and upon such assignment all Property Schedules so assigned shall be treated as a single financing and a single Property Schedule with respect to rights and remedies upon the occurrence of an Event of Default or an Event of Nonappropriation under this Agreement. Registered Owners rights with respect to the Property Schedules shall be determined as provided in the escrow agreement or trust agreement relating to such Lease Participation Certificates.

**12.03 Assignment and Subleasing by Lessee.** NONE OF LESSEE'S RIGHT, TITLE AND INTEREST IN, TO AND UNDER THIS AGREEMENT AND IN THE PROPERTY MAY BE ASSIGNED, SUBLEASED OR ENCUMBERED BY LESSEE FOR ANY REASON, WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR.

**12.04 Release and Indemnification Covenants.** To the extent permitted by applicable law, Lessee shall indemnify, protect, hold harmless, save and keep harmless Lessor from and against any and all liability, obligation, loss, claim and damage whatsoever, regardless of cause thereof, and all expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest (collectively, "Losses") arising out of or resulting from the entering into this Agreement, any Property Schedules hereunder, the ownership of any item of the Property, the loss of federal tax exemption of the interest on any of the Property Schedules, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Property or any accident in connection with the operation, use, condition, possession, storage or return of any item of the Property resulting in damage to property or injury to or death to any person; provided, however, that Lessee shall not be required to indemnify Lessor for Losses arising out of or resulting from Lessor's own willful or negligent conduct, or for Losses arising out of or resulting from Lessor's preparation of disclosure material relating to Lease Participation Certificates (other than disclosure material provided to Lessor by Lessee). The indemnification arising under this Section shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement, or the applicable Property Schedule, or the termination of the Lease Term for such Property Schedule for any reason.

## ARTICLE XIII

**13.01** Events of Default Defined. Any of the following shall constitute an "Event of Default" under a Property Schedule:

- (a) Failure by Lessee to pay any Rental Payment under the Property Schedule or other payment required to be paid with respect thereto at the time specified therein;
- (b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed with respect to the Property Schedule, other than as referred to in subparagraph (a) above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;
- (c) Any statement, representation or warranty made by Lessee in or pursuant to the Property Schedule or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made;
- (d) Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization or insolvency proceeding; or
- (e) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 consecutive days.

The foregoing provisions of Section 13.01 are subject to the following limitation: if by reason of force majeure Lessee is unable in whole or in part to perform its agreements under this Agreement and the Property Schedule (other than the obligations on the part of Lessee contained in Article VI hereof) Lessee shall not be in default during the continuance of such inability. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Lessee.

**13.02** Remedies on Default. Whenever any Event of Default exists with respect to a Property Schedule, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

- (a) Without terminating the Property Schedule, and by written notice to Lessee, Lessor may declare all Rental Payments and other amounts payable by Lessee thereunder to the end of the then-current budget year of Lessee to be due, including without limitation delinquent Rental Payments under the Property Schedule from prior budget years, and such amounts shall thereafter bear interest at the rate of 12% per annum or the maximum rate permitted by applicable law, whichever is less;
- (b) Lessor may terminate the Property Schedule, may enter the premises where the Property subject to the Property Schedule is located and retake possession of the Property, or require Lessee, at Lessee's expense, to promptly return any or all of the Property to the possession of Lessor at such place within the United States as Lessor shall specify, and Lessor may thereafter dispose of the Property in accordance with Article 9 of the Uniform Commercial Code in effect in the State; provided, however, that any proceeds from the disposition of the property in excess of the sum required to (i) defease the Property Schedule pursuant to Section 6.07, (ii) pay any other amounts then due under the Property Schedule, and (iii) pay Lessor's costs and expenses associated with the disposition of the Property (including attorneys fees), shall be paid to Lessee or such other creditor of Lessee as may be entitled thereto, and further provided that no deficiency shall be allowed against Lessee;
- (c) By written notice to the Agent, if any, Lessor may instruct the Agent to apply all sums held by the Agent in any accounts relating to the Property Schedule under the applicable escrow or trust agreement as provided in the applicable escrow or trust agreement.
- (d) By written notice to any escrow agent (other than the Agent) who is holding proceeds of the Property Schedule, Lessor may instruct such escrow agent to release all such proceeds and any earnings thereon to Lessor, such sums to be credited to payment of Lessee's obligations under the Property Schedule;
- (e) Lessor may take any action, at law or in equity, that is permitted by applicable law and that may appear necessary or desirable to enforce or to protect any of its rights under the Property Schedule and this Agreement.

**13.03** No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article.

**13.04** Costs and Attorney Fees. Upon the occurrence of an Event of Default by Lessee in the performance of any term of this Agreement, Lessee agrees to pay to Lessor or reimburse Lessor for, in addition to all other amounts due hereunder, all of Lessor's costs of collection, including reasonable attorney fees, whether or not suit or action is filed thereon. Any such costs shall be immediately due and payable upon written notice and demand given to Lessee, shall be secured by this Agreement until paid and shall bear interest at the rate of 12% per annum or the maximum amount permitted by law, whichever is less. In the event suit or action is instituted to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial or on appeal of such suit or action or in any bankruptcy proceeding, in addition to all other sums provided by law.

## ARTICLE XIV

**14.01** Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party), to any assignee (other than a Registered Owner) at its address as it appears on the registration books maintained by Lessee and to any Registered Owner at its address as it appears on the registration books maintained by the Agent.

**14.02** Certification as to Arbitrage. Unless a separate Certificate as to Arbitrage is delivered on the Commencement Date, Lessee shall be deemed to make the following representations and covenants as of the Commencement Date for each Property Schedule:

- (a) The estimated total costs, including taxes, freight, installation, cost of issuance, of the Property under the Property Schedule will not be less than the total principal amount of the Rental Payments.
- (b) The Property under the Property Schedule has been ordered or is expected to be ordered within six months and the Property is expected to be delivered and installed, and the Vendor fully paid, within one year from the Commencement Date. Lessee will pursue the completion of the Property and the expenditure of the net proceeds of the Property Schedule with due diligence.
- (c) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (i) that is reasonably expected to be used to pay the Rental Payments under the Property Schedule, or (ii) that may be used solely to prevent a default in the payment of the Rental Payments under the Property Schedule.
- (d) The Property under the Property Schedule has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Rental Payments under the Property Schedule.

- (e) There are no other obligations of Lessee which (i) are being sold within 15 days of the Commencement Date of the Property Schedule; (ii) are being sold pursuant to the same plan of financing as the Property Schedule; and (iii) are expected to be paid from substantially the same source of funds.
- (f) The officer or official who has executed the Property Schedule on Lessee's behalf is familiar with Lessee's expectations regarding the use and expenditure of the proceeds of the Property Schedule. To the best of Lessee's knowledge, information and belief, the facts and estimates set forth in herein are accurate and the expectations of Lessee set forth herein are reasonable.

**14.03 Further Assurances.** Lessee agrees to execute such other and further documents, including, without limitation, confirmatory financing statements, continuation statements, certificates of title and the like, and to take all such action as may be necessary or appropriate, from time to time, in the reasonable opinion of Lessor, to perfect, confirm, establish, reestablish, continue, or complete the interests of Lessor in this Agreement and the Property Schedules, to consummate the transactions contemplated hereby and thereby, and to carry out the purposes and intentions of this Agreement and the Property Schedules.

**14.04 Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

**14.05 Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**14.06 Waiver of Jury Trials.** Lessee and Lessor hereby irrevocably waive all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or the actions of Lessor or Lessee in the negotiation, administration, performance or enforcement hereof.

**14.07 Amendments, Changes and Modifications.** This Agreement may be amended in writing by Lessor and Lessee to the extent the amendment or modification does not apply to outstanding Property Schedules at the time of such amendment or modification. The consent of the applicable assignee or Agent, if any, shall be required to any amendment or modification before such amendment or modification shall be applicable to any outstanding Property Schedule.

**14.08 Execution in Counterparts.** This Agreement and the Property Schedules hereunder may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**14.09 Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State.

**14.10 Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

<b>Lessor: Key Municipal Finance, a Division of Key Corporate Capital, Inc.</b>
By:
Name:
Title:

<b>Lessee: City of Centerville</b>
By:
Name:
Title:

Attest:
By:
Name:
Title:

Office Use Only:	Customer No.
	Lease No.



# Addendum to Master Tax-Exempt Lease/Purchase Agreement

Ohio Counties, Municipalities and School Districts

THIS ADDENDUM, which is entered into as of January 20, 2000 between Key Municipal Finance, a Division of Key Corporate Capital, Inc. ("Lessor"), and City of Centerville ("Lessee"), is intended to modify and supplement the Master Tax-Exempt Lease/Purchase Agreement between Lessor and Lessee of even date herewith (the "Master Agreement"). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Master Agreement.

- 1) Notwithstanding anything to the contrary set forth in the Master Agreement, title to the Property subject to a Property Schedule shall remain in Lessor during the Lease Term for such Property Schedule, subject to Lessee's rights under the Master Agreement.
- 2) Section 13.04. Costs and Attorney's Fees. First Sentence-delete the words "including reasonable attorney fees, whether or not suit or action is filed thereon".

IN WITNESS WHEREOF, Lessor and Lessee have caused this Addendum to be executed in their names by their duly authorized representatives as of the date first above written.

**LESSOR:**

**LESSEE:**

Key Municipal Finance, a Division of Key Corporate Capital, Inc.      City of Centerville

By: \_\_\_\_\_  
Authorized Officer

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

Title: \_\_\_\_\_

Attest:

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

Title: \_\_\_\_\_

# Property Schedule No. 01

## Master Tax-Exempt Lease/Purchase Agreement

This Property Schedule No. 01 is entered into as of the Commencement Date set forth below, pursuant to that certain Master Tax-Exempt Lease/Purchase Agreement (the "Master Agreement"), dated as of January 20, 2000, between Key Municipal Finance, a Division of Key Corporate Capital, Inc., and City of Centerville.

1. Interpretation. The terms and conditions of the Master Agreement are incorporated herein by reference as if fully set forth herein. Reference is made to the Master Agreement for all representations, covenants and warranties made by Lessee in the execution of this Property Schedule, unless specifically set forth herein. In the event of a conflict between the provisions of the Master Agreement and the provisions of this Property Schedule, the provisions of this Property Schedule shall control. All capitalized terms not otherwise defined herein shall have the meanings provided in the Master Agreement.
2. Commencement Date. The Commencement Date for this Property Schedule is January 31, 2000
3. Property Description and Payment Schedule. The Property subject to this Property Schedule is described in Exhibit 1 hereto. Lessee shall not remove such property from the locations set forth therein without giving prior written notice to Lessor. The Rental Payment Schedule for this Property Schedule is set forth in Exhibit 1.
4. Opinion. The Opinion of Lessee's Counsel is attached as Exhibit 2.
5. Lessee's Certificate. The Lessee's Certificate is attached as Exhibit 3.
6. Proceeds. Lessor shall disburse the proceeds of this Property Schedule in accordance with the instructions attached hereto as Exhibit 4.
7. Acceptance Certificate. The form of Acceptance Certificate is attached as Exhibit 5.
8. Additional Purchase Option Provisions. In addition to the Purchase Option provisions set forth in the Master Agreement, Rental Payments payable under this Property Schedule shall be subject to prepayment as follows: See termination amount in Exhibit 1 (Payment Schedule), subject to per diem adjustment.
9. Bank Qualification and Arbitrage Rebate. Attached as Exhibit 6.
10. Expiration. Lessor, at its sole determination, may choose not to accept this Property Schedule if the fully executed, original Agreement (including this Property Schedule all ancillary documents) are not received by Lessor at its place of business by February 15, 2000.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Property Schedule to be executed in their names by their duly authorized representatives as of the Commencement Date above.

<b>Lessor: Key Municipal Finance, a Division of Key Corporate Capital, Inc.</b>
By:
Name:
Title:

<b>Lessee: City of Centerville</b>
By:
Name:
Title:

Attest:
By
Name:
Title:

Office Use Only:	Customer No.
	Lease No.

## EXHIBIT 1

# Property Description and Payment Schedule

Re: **Property Schedule No. 01** to Master Tax-Exempt Lease/Purchase Agreement between Key Municipal Finance, a Division of Key Corporate Capital, Inc. and City of Centerville.

The Property is as follows: The Property as more fully described in the Exhibit A incorporated herein by reference and attached hereto.

EQUIPMENT LOCATION: 100 West Spring Valley Road, Centerville, OH 45458

USE: Recreation

### Rental Payment Schedule

If the Due Dates are not defined in this Rental Payment Schedule, they shall be defined as the Last day of each Monthly period of this Rental Payment Schedule commencing with the Acceptance Date.

Total Principal Amount 152,820.00

Payment No.	Due Date	Rental Payment	Interest	Termination (Including Payment)
1	29-Feb-2000	4,623.21	716.43	153,380.62
2	29-Mar-2000	4,623.21	698.12	149,337.78
3	29-Apr-2000	4,623.21	679.71	145,275.98
4	29-May-2000	4,623.21	661.23	141,195.15
5	29-Jun-2000	4,623.21	642.65	137,095.18
6	29-Jul-2000	4,623.21	623.99	132,975.99
7	29-Aug-2000	4,623.21	605.24	128,837.48
8	29-Sep-2000	4,623.21	586.41	124,679.58
9	29-Oct-2000	4,623.21	567.48	120,502.19
10	29-Nov-2000	4,623.21	548.47	116,305.21
11	29-Dec-2000	4,623.21	529.37	112,088.55
12	29-Jan-2001	4,623.21	510.17	107,852.13
13	28-Feb-2001	4,623.21	490.89	103,595.85
14	28-Mar-2001	4,623.21	471.52	99,319.61
15	28-Apr-2001	4,623.21	452.06	95,023.32
16	28-May-2001	4,623.21	432.50	90,706.90
17	28-Jun-2001	4,623.21	412.85	86,370.24
18	28-Jul-2001	4,623.21	393.12	82,013.24
19	28-Aug-2001	4,623.21	373.29	77,635.83
20	28-Sep-2001	4,623.21	353.36	73,237.89
21	28-Oct-2001	4,623.21	333.34	68,819.33
22	28-Nov-2001	4,623.21	313.23	64,380.06
23	28-Dec-2001	4,623.21	293.03	59,919.97
24	28-Jan-2002	4,623.21	272.73	55,438.98
25	28-Feb-2002	4,623.21	252.33	50,936.98
26	28-Mar-2002	4,623.21	231.84	46,413.87
27	28-Apr-2002	4,623.21	211.25	41,869.56
28	28-May-2002	4,623.21	190.57	37,303.95

Payment No.	Due Date	Rental Payment	Interest	Termination (Including Payment)
29	28-Jun-2002	4,623.21	169.79	32,716.93
30	28-Jul-2002	4,623.21	148.91	28,108.41
31	28-Aug-2002	4,623.21	127.94	23,478.28
32	28-Sep-2002	4,623.21	106.86	18,826.44
33	28-Oct-2002	4,623.21	85.69	14,152.80
34	28-Nov-2002	4,623.21	64.42	9,457.25
35	28-Dec-2002	4,623.21	43.04	4,739.68
36	28-Jan-2003	4,623.21	21.57	0.00

<b>Lessee: City of Centerville</b>
By:
Name:
Title:

Office Use Only:	Customer No.
	Lease No.

## **EXHIBIT A**

<b><u>Quantity</u></b>	<b><u>Description</u></b>
80	New Model Year (2000) TXT Electric Golf Cars equipped with tops. Tinted one piece windshields for (30) cars. Chrome sport wheel covers. Sweater Basket. Scuff Plates. Number decals on driver's & passenger's side (1 - 80). Custom club logo placed on front of each car & sand bottles for divot repair.

## EXHIBIT 2

# Lessee's Counsel's Opinion

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

[Address to Lessor and Lessee]

RE: Property Schedule No. 01 to Master Tax-Exempt Lease/Purchase Agreement between Key Municipal Finance, a Division of Key Corporate Capital, Inc. and City of Centerville.

Ladies and Gentlemen:

We have acted as special counsel to City of Centerville ("Lessee"), in connection with the Master Tax-Exempt Lease/Purchase Agreement, dated as of January 20, 2000 (the "Master Agreement"), between City of Centerville, as lessee, and Key Municipal Finance, a Division of Key Corporate Capital, Inc. as lessor ("Lessor"), and the execution of Property Schedule No 01 (the "Property Schedule") pursuant to the Master Agreement. We have examined the law and such certified proceedings and other papers as we deem necessary to render this opinion.

All capitalized terms not otherwise defined herein shall have the meanings provided in the Master Agreement and Property Schedule.

As to questions of fact material to our opinion, we have relied upon the representations of Lessee in the Master Agreement and the Property Schedule and in the certified proceedings and other certifications of public officials furnished to us without undertaking to verify the same by independent investigation.

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 Master Agreement and the Property Schedule and to perform its obligations thereunder.
3. The execution, delivery and performance of the Master Agreement and the Property Schedule by Lessee has been duly authorized by all necessary action on the part of Lessee.
4. All proceedings of Lessee and its governing body relating to the authorization and approval of the Master Agreement and the Property Schedule, 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.
5. Lessee has acquired or has arranged for the acquisition of the Property subject to the Property Schedule, and has entered into the Master Agreement and the Property Schedule, in compliance with all applicable public bidding laws.
6. Lessee has obtained all consents and approvals of other governmental authorities or agencies which may be required for the execution, delivery and performance by Lessee of the Master Agreement and the Property Schedule.
7. The Master Agreement and the Property Schedule have 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.
8. 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

Master Agreement or the Property Schedule or of other agreements similar to the Master Agreement; (b) questioning the authority of Lessee to execute the Master Agreement or the Property Schedule, or the validity of the Master Agreement or the Property Schedule, or the payment of principal of or interest on, the Property Schedule; (c) questioning the constitutionality of any statute, or the validity of any proceedings, authorizing the execution of the Master Agreement and the Property Schedule; or (d) affecting the provisions made for the payment of or security for the Master Agreement and the Property Schedule.

9. The Lessee is a political subdivision within the meaning of Section 103 of the Internal Revenue Code of 1986, as amended, and the related regulations and rulings thereunder, and the portion of payments identified as the interest component of the rents (as set forth in the payment schedule attached to the Property Schedule) will not be includable in Federal gross income of the recipient under the statutes, regulations, court decisions and rulings existing on the date hereof and consequently will be exempt from Federal income taxes.

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 Property Schedule.

Very truly yours,

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

Dated: \_\_\_\_\_

EXHIBIT 3

**Lessee's Certificate**

Re: **Property Schedule No. 01 to Master Tax-Exempt Lease/Purchase Agreement between Key Municipal Finance, a Division of Key Corporate Capital, Inc. and City of Centerville.**

The undersigned, being the duly elected, qualified and acting \_\_\_\_\_ of the City of Centerville ("Lessee") do hereby certify, as of January 31, 2000, as follows:

1. Lessee did, at a meeting of the governing body of the Lessee held 01/24/2000 by resolution or ordinance duly enacted, in accordance with all requirements of law, approve and authorize the execution and delivery of the above-referenced Property Schedule (the "Property Schedule") and the Master Tax-Exempt Lease/Purchase Agreement (the "Master Agreement") by the following named representative of Lessee, to wit:

NAME OF EXECUTING OFFICIAL	TITLE OF EXECUTING OFFICIAL	SIGNATURE OF EXECUTING OFFICIAL

(Please list any additional persons authorized to sign transaction documents.)

NAME OF EXECUTING OFFICIAL	TITLE OF EXECUTING OFFICIAL	SIGNATURE OF EXECUTING OFFICIAL

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 Master Agreement and the Property Schedule were 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 Master Agreement and the Property Schedule 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 Master Agreement and the Property Schedule 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 an Event of Nonappropriation (as such terms is defined in the Master Agreement) exists at the date hereof with respect to this Property Schedule or any other Property Schedules under the Master Agreement.

5. The acquisition of all of the Property under the Property Schedule 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 Rental Payments scheduled to come due during the current budget year under the Property Schedule and to meet its other obligations for the current budget year and such funds have not been expended for other purposes.



7. The Lessee is currently maintaining the insurance required by the Master Agreement on the Property under the Property Schedule.

8. The use of the Property subject to the Property Schedule is essential to the proper, efficient and economic functioning of Lessee or to the services that Lessee provides; and Lessee has immediate need for and expects to make immediate use of substantially all of the Property, which need is not temporary or expected to diminish in the foreseeable future.

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

IN WITNESS WHEREOF, I hereunto set my hand the day and year first above written.

City of Centerville

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

Office Use Only:	Customer No.
	Lease No.

EXHIBIT 4

**Payment of Proceeds Instructions**

Key Municipal Finance, a Division of Key Corporate Capital, Inc.  
1000 South McCaslin Blvd.  
Superior, CO 80027

Re: Property Schedule No. 01 (the "Property Schedule") to Master Tax-Exempt Lease/Purchase Agreement between Key Municipal Finance, a Division of Key Corporate Capital, Inc. ("Lessor") and City of Centerville ("Lessee").

Ladies and Gentlemen:

The undersigned, an Authorized Representative of the Lessee hereby requests and authorizes Lessor to disburse the net proceeds of the Property Schedule as follows:

Name of Payee: \_\_\_\_\_

By check \_\_\_\_\_

By wire transfer \_\_\_\_\_

If by check, Payee's address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If by wire transfer, instructions as follows:

Pay to (name of bank): \_\_\_\_\_

For Account of: \_\_\_\_\_

Account No.: \_\_\_\_\_

ABA No.: \_\_\_\_\_

City of Centerville

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Office Use Only:	Customer No.
	Lease No.

EXHIBIT 5

**Acceptance Certificate**

Key Municipal Finance, a Division of Key Corporate Capital, Inc.  
1000 South McCaslin Blvd.  
Superior, CO 80027

Re: **Property Schedule No. 01** to Master Tax-Exempt Lease/Purchase Agreement between Key Municipal Finance, a Division of Key Corporate Capital, Inc. and City of Centerville

Ladies and Gentlemen:

In accordance with the above-referenced Master Tax-Exempt Lease/Purchase Agreement (the "Master Agreement"), the undersigned ("Lessee") hereby certifies and represents to, and agrees with, Key Municipal Finance, a Division of Key Corporate Capital, Inc. ("Lessor"), as follows:

- (1) The Property, as such terms are defined in the above-referenced Property Schedule, has been acquired, made, delivered, installed and accepted on the date indicated below.
- (2) Lessee has conducted such inspection and/or testing of the Property as it deems necessary and appropriate and hereby acknowledges that it accepts the Property for all purposes.
- (3) No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default or an Event of Nonappropriation (as such terms are defined in the Master Agreement) exists at the date hereof.
- (4) Attached is a completed Exhibit 1 containing all serial numbers or other applicable information.

Date: \_\_\_\_\_

City of Centerville  
as Lessee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attachment (Exhibit 1)

Office Use Only:	Customer No.
	Lease No.

<<ATTACHED EXHIBIT 1 -- PROPERTY DESCRIPTION>>

EXHIBIT 6

**Bank Qualification And Arbitrage Rebate**

Key Municipal Finance, a Division of Key Corporate Capital, Inc.  
1000 South McCaslin Blvd.  
Superior, CO 80027

Re: **Property Schedule No. 01** to Master Tax-Exempt Lease/Purchase Agreement between Key Municipal Finance, a Division of Key Corporate Capital, Inc. and City of Centerville

Qualified Tax-Exempt Obligation

Lessee hereby designates this Property Schedule as a "qualified tax-exempt obligation" as defined in Section 265(b)(3)(B) of the Code. Lessee reasonably anticipates issuing tax-exempt obligations (excluding private activity bonds other than qualified 501(c)(3) bonds and including all tax-exempt obligations of subordinate entities of the Lessee) during the calendar year in which the Commencement Date of this Property Schedule falls, in an amount not exceeding \$10,000,000.

Arbitrage Rebate.

Pursuant to Treasury Regulations Section 1.148-7(d), the gross proceeds of this Property Schedule will be expended for the governmental purposes for which this Property Schedule was entered into, as follows: at least 15% within six months after the Commencement Date, at least 60% within 12 months after the Commencement Date, and 100% within 18 months after the Commencement Date. If Lessee is unable to comply with Section 1.148-7(d) of the Treasury Regulations, Lessee shall compute rebatable arbitrage on this Agreement and pay rebatable arbitrage to the United States at least once every five years, and within 60 days after payment of the final Rental Payment due under this Agreement.

<b>Lessee: City of Centerville</b>
By:
Name:
Title:

Office Use Only:	Customer No.
	Lease No.

STATE OF OHIO

UNIFORM COMMERCIAL CODE — FINANCING STATEMENT — UCC-1

REORDER FROM  
Registers, Inc.  
514 PIERCE ST.  
P.O. BOX 219  
ANDOVER, MN. 55303  
(612) 421-1712

15959

INSTRUCTIONS

1. Form UCC2 is designed to avoid double typing when filing with more than one office.
2. PLEASE TYPE this form. Fold only along perforation for mailing.
3. Send all 3 copies with interleaved carbon paper to the filing office. Enclose filing fee.
4. If the space provided for any item(s) on the form is inadequate the item(s) should be continued on additional sheets, preferably 8 1/2" x 11". Only one copy of such additional sheets need be presented to the filing officer with a set of three copies of the financing statement. Long schedules of collateral, indentures, etc., may be on any size paper that is convenient for the secured party.
5. If collateral is crops, growing or to be grown, or timber to be cut, or minerals or the like, including oil and gas, or accounts resulting from the sale of minerals at the wellhead or minehead to which the security interest attaches upon extraction, or goods which are or are to become fixtures, the financing statement must recite that it covers that type of collateral and that it is to be filed for record in the real estate records and must contain a legal description of the real estate and, if the Debtor does not have an interest of record in the real estate, the name of the record owner or record lessee (see section 1309.39(E) of the Revised Code).
6. When a copy of the security agreement is used as a financing statement, it is requested that it be accompanied by a completed, but unsigned, set of these forms, without extra fee.
7. At the time of original filing, filing officer will return third copy as an acknowledgement. At a later date, secured party may date and sign the termination legend and use third copy as a Termination Statement.

This FINANCING STATEMENT is presented to a filing officer for filing pursuant to the Uniform Commercial Code.

<b>1 Debtor(s) (Last Name First) and Address(es)</b> City of Centerville 100 W Spring Valley Road Centerville, Ohio 45458	<b>2 Secured Party(ies) and Address(es)</b> Key Municipal Finance, a Division of Key Corporate Capital, Inc. 1000 S McCaslin Blvd. Superior, CO 80027	<b>3 For Filing Officer</b> (Date, Time, Number, and Filing Office)
<b>4 This financing statement covers the following types (or items) of property:</b>  See Schedule 1, consisting of 2 pages, attached hereto and incorporated herein by this reference.  Montgomery County		<b>5. Assignee(s) of Secured Party and Address(es)</b>

Check  if covered:  Products of Collateral are also covered No. of additional sheets presented:

Filed with \_\_\_\_\_ (USE WHICHEVER SIGNATURE LINE IS APPLICABLE)

City of Centerville \_\_\_\_\_ Key Municipal Finance, a Division of Key Corporate Capital, Inc. \_\_\_\_\_

By: \_\_\_\_\_ Signature(s) of Debtor(s) By: \_\_\_\_\_ Signature(s) of Secured Party(ies)

FILING OFFICER COPY—ALPHABETICAL  
STANDARD FORM —  
UNIFORM COMMERCIAL CODE — UCC-1

*This form of financing statement is approved by the Secretary of State*

Revised, Eff. 1/1/

**Schedule 1**

SECURED PARTY: Key Municipal Finance, a Division of Key Corporate Capital, Inc.

DEBTOR: City of Centerville

This financing statement covers all of Debtor's right, title and interest in and to the following described equipment leased to Debtor under Property Schedule No. 01 dated January 31, 2000 to that certain Master Tax-Exempt Lease Purchase Agreement dated as of January 20, 2000, in each case between Debtor, as lessee, and Secured Party, as lessor, together with all accessions, substitutions and replacements thereto and therefor, and proceeds (cash and non-cash), including, without limitation, insurance proceeds, thereof (but without power of sale):

All equipment described on Exhibit A attached hereto and made a part hereof.

Debtor has no right to dispose of the equipment.

## EXHIBIT A

<u>Quantity</u>	<u>Description</u>
80	New Model Year (2000) TXT Electric Golf Cars equipped with tops. Tinted one piece windshields for (30) cars. Chrome sport wheel covers. Sweater Basket. Scuff Plates. Number decals on driver's & passenger's side (1 – 80). Custom club logo placed on front of each car & sand bottles for divot repair



STATE OF OHIO

UNIFORM COMMERCIAL CODE — FINANCING STATEMENT — UCC-1

REORDER FROM  
Register, Inc.  
514 PIERCE ST.  
P.O. BOX 218  
ANOVA, MN, 55303  
(612) 421-1713

INSTRUCTIONS

15958

1. Form UCC2 is designed to avoid double typing when filing with more than one office.
2. PLEASE TYPE this form. Fold only along perforation for mailing.
3. Send all 3 copies with interleaved carbon paper to the filing office. Enclose filing fee.
4. If the space provided for any item(s) on the form is inadequate the item(s) should be continued on additional sheets, preferably 8 1/2" x 11". Only one copy of such additional sheets need be presented to the filing officer with a set of three copies of the financing statement. Long schedules of collateral, indentures, etc., may be on any size paper that is convenient for the secured party.
5. If collateral is crops, growing or to be grown, or timber to be cut, or minerals or the like, including oil and gas, or accounts resulting from the sale of minerals at the wellhead or minehead to which the security interest attaches upon extraction, or goods which are or are to become fixtures, the financing statement must recite that it covers that type of collateral and that it is to be filed for record in the real estate records and must contain a legal description of the real estate and, if the Debtor does not have an interest of record in the real estate, the name of the record owner or record lessee (see section 1309.39(E) of the Revised Code).
6. When a copy of the security agreement is used as a financing statement, it is requested that it be accompanied by a completed, but unsigned, set of these forms, without extra fee.
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This FINANCING STATEMENT is presented to a filing officer for filing pursuant to the Uniform Commercial Code.

<b>1 Debtor(s) (Last Name First) and Address(es)</b>  City of Centerville 100 W Spring Valley Road Centerville, Ohio 45458	<b>2 Secured Party(ies) and Address(es)</b>  Key Municipal Finance, a Division of Key Corporate Capital, Inc. 1000 S McCaslin Blvd. Superior, CO 80027	<b>3 For Filing Officer</b> (Date, Time, Number, and Filing Office)
<b>4 This financing statement covers the following types (or items) of property:</b>  See Schedule 1, consisting of 2 pages, attached hereto and incorporated herein by this reference.  Ohio		<b>5. Assignee(s) of Secured Party and</b> <b>Address(es)</b>

Check  if covered:       Products of Collateral are also covered      No. of additional sheets presented:

Filed with

(USE WHICHEVER SIGNATURE LINE IS APPLICABLE)

City of Centerville ..... Key Municipal Finance, a Division of Key Corporate  
 Capital, Inc.

By: ..... Signature(s) of Debtor(s)      By: ..... Signature(s) of Secured Party(ies)

FILING OFFICER COPY—ALPHABETICAL  
STANDARD FORM —  
UNIFORM COMMERCIAL CODE — UCC-1

*This form of financing statement is  
approved by the Secretary of State*

Revised, Eff. 1/1/79

Schedule 1

SECURED PARTY: Key Municipal Finance, a Division of Key Corporate Capital, Inc.

DEBTOR: City of Centerville

This financing statement covers all of Debtor's right, title and interest in and to the following described equipment leased to Debtor under Property Schedule No. 01 dated January 31, 2000 to that certain Master Tax-Exempt Lease Purchase Agreement dated as of January 20, 2000, in each case between Debtor, as lessee, and Secured Party, as lessor, together with all accessions, substitutions and replacements thereto and therefor, and proceeds (cash and non-cash), including, without limitation, insurance proceeds, thereof (but without power of sale):

All equipment described on Exhibit A attached hereto and made a part hereof.

Debtor has no right to dispose of the equipment.

## EXHIBIT A

<u>Quantity</u>	<u>Description</u>
80	New Model Year (2000) TXT Electric Golf Cars equipped with tops. Tinted one piece windshields for (30) cars. Chrome sport wheel covers. Sweater Basket. Scuff Plates. Number decals on driver's & passenger's side (1 – 80). Custom club logo placed on front of each car & sand bottles for divot repair

Information Return for Tax-Exempt Governmental Obligations

Control # 7434

Form 8038-G (Rev. May 1999)

Under Internal Revenue Code Section 149 (e)

OMB No. 1545-0720

See separate instructions

Caution: Use Form 8038-GC if the issue price is under \$100,000

Department of the Treasury Internal Revenue Service

Part I Reporting Authority

1 Issuer's name: City of Centerville; 2 Issuer's employer identification: 6001036; 3 Number and street: 100 West Spring Valley Road; 4 Report number: G 2000; 5 City, town, or post office, state, and ZIP code: Centerville, OH 45458; 6 Date of Issue; 7 Name of issue: Master Tax-Exempt Lease/Purchase; 8 CUSIP number: None; 9 Name and title of officer or legal representative whom the IRS may contact: Kelly Fackel; 10 Telephone number of officer or legal representative: 937-428-4713

Part II Type of Issue (check applicable box(es) and enter the issue price) See instructions and attach schedule

11-18 Issue type checkboxes: Education, Health and hospital, Transportation, Public safety, Environment, Housing, Utilities, Other (checked) Describe: Golf Carts; 19 If obligations are TANs or RANs, check box; 20 If obligations are in the form of a lease or installment sale, check

Part III Description of Obligations (Complete for the entire issue for which this form is being filed)

Table with 5 columns: (a) Final Maturity date, (b) Issue Price, (c) Stated redemption price at maturity, (d) Weighted average maturity, (e) Yield. Row 21: N/A, \$152,820, \$ N/A, 3 years, 5.626% %

Part IV Uses of Proceeds of Bonds Issue (including underwriters' discount) N/A

22 Proceeds used for accrued interest; 23 Issue Price of entire issue; 24-28 Proceeds used for bond issuance costs, credit enhancement, reserve, refund; 29 Total; 30 Nonrefunding proceeds of the issue

Part V Description of Refunded Bonds (Complete this part only for refunding bonds.) N/A

31 Enter the remaining weighted average maturity of the bonds to be currently refunded; 32 Enter the remaining weighted average maturity of the bonds to be advanced refunded; 33 Enter the last date on which the refunded bonds will be called; 34 Enter the dates(s) the refunded bonds were issued

Part VI Miscellaneous N/A

35 Enter the amount of the state volume cap allocated to the issue under section 141 (b)(5); 36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract; 37 Pooled financings; 38 If the issuer has designated the issue under section 265 (b)(3)(B)(i)(iii); 39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate; 40 If the issuer has identified a hedge

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct and complete.

Please Sign Here

Signature of Issuer's authorized representative, Date, Type or print name and title

**LESSEE INVOICE INSTRUCTIONS**

City of Centerville

**BILL TO ADDRESS:**

**BILLING CONTACT:**

First, M.I. and Last Name:

Title:

Phone Number:

Fax Number:

**PURCHASE ORDER NUMBER:**

Invoices require purchase order numbers: YES \_\_\_\_\_ NO \_\_\_\_\_

Purchase Order Number:

**FEDERAL TAX ID NUMBER:**

**EQUIPMENT LOCATION (If different from Billing Address):**

**ADDITIONAL INFORMATION NEEDED ON INVOICE:**

## ESCROW AGREEMENT

This Escrow Agreement (the "Escrow Agreement"), dated as of January 31, 2000 and entered into among Key Municipal Finance, a Division of Key Corporate Capital, Inc. ("Lessor"), City of Centerville ("Lessee") and KeyBank National Association (the "Escrow Agent").

### RECITALS:

- A. Lessor and Lessee are parties to a Master Tax-Exempt Lease/ Purchase Agreement, dated as of January 20, 2000 and Schedule No. 01 thereunder, dated as of January 31, 2000 (the "Purchase Agreement"), whereunder Lessee is acquiring from Lessor certain personal property more particularly described therein (the "Property").
- B. Lessor and Lessee intend to cause or have caused certain funds to be deposited with Escrow Agent to pay for costs of the Property, and Escrow Agent has agreed to disburse said funds in accordance with the terms and conditions of this Agreement.
- C. Each of the parties has authority to enter into this Agreement and has taken all actions necessary to authorize the execution of this Agreement by the officers whose signatures are hereto.

NOW, THEREFORE, the parties agree as follows:

1. Appointment of Escrow Agent. Lessor, Lessee and Escrow Agent agree that Escrow Agent shall act as sole Escrow Agent under the Purchase Agreement and this Escrow Agreement, in accordance with the terms and conditions set forth in this Escrow Agreement. The Escrow Agent, in its capacity as escrow agent hereunder, shall not be deemed to be a party to the Purchase Agreement, and this Escrow Agreement shall be deemed to constitute the entire agreement regarding the Acquisition Fund (as hereinafter defined) among Lessor, Lessee and Escrow Agent.
2. Acquisition Fund. There is hereby established in the custody of Escrow Agent a special trust fund designated as the "City of Centerville Acquisition Fund" (the "Acquisition Fund") to be held and administered by Escrow Agent in trust for Lessee in accordance with this Escrow Agreement, subject to Lessor's rights under Section 5 hereof. It is anticipated that the funds in the Acquisition Fund and earnings thereon shall be sufficient to pay the cost of acquisition of the Property. In the event such sums are insufficient, Lessee shall be responsible for the timely payment of any deficiency.

The moneys and investments held by Escrow Agent under this Agreement are irrevocably held in trust for the benefit of Lessee and Lessor, and such moneys, together with any income or interest earned thereon, shall be expended only as provided in this Agreement, and shall not be subject to levy or attachment or lien by or for the benefit of any creditor of Lessee (other than Lessor) or Lessor. Lessor, Lessee and Escrow Agent intend that the Acquisition Fund constitute an escrow account in which Lessee has no legal or equitable right, title or interest until satisfaction in full of all conditions contained herein and in the Purchase Agreement for the disbursement of funds by Escrow Agent therefrom. However, if the parties' intention that Lessee shall have no legal or equitable right, title or interest until all conditions for disbursement are satisfied in full is not respected in any legal proceeding, the parties hereto intend that Lessor have a security interest in such account, and such security interest is hereby granted to Lessor by Lessee, to secure payment of all sums due to Lessor under the Purchase Agreement. For such purpose, Escrow Agent hereby agrees to act as agent for Lessor in connection with the perfection of such security interest and agrees to note, or cause to be noted, on all books and records relating to such accounts, Lessor's interest therein.

2.A. Deposit in Acquisition Fund. There shall be deposited in the Acquisition Fund the sum of \$152,820. Escrow Agent shall maintain accounting records sufficient to permit calculation of the income on investments and interest earned on deposit of amounts held in the Acquisition Fund, and such income and interest shall become part of the Acquisition Fund and may be expended as provided herein

2.B. Disbursements from Acquisition Fund. Escrow Agent shall make payments from the Acquisition Fund to pay costs of the Property upon receipt of requisitions from Lessee, signed by an authorized individual substantially in the form attached hereto as Exhibit A, which is incorporated by reference herein. In the event Escrow Agent is directed or requested by Lessee to hold or deposit any retained funds or to accept a retainage bond (in lieu of funds) as may be required by law or the terms of the acquisition contract to which Lessee is a party, Escrow Agent shall act in accordance with Lessee's

instructions, and such retained funds (or performance bond) and any interest thereon shall be paid as provided in instructions to Escrow Agent from Lessee. The final requisition shall include the final acceptance certificate required in the Purchase Agreement, which shall be executed by the Lessee and delivered to the Escrow Agent. Where requisitions involve titled motor vehicles, the final requisition shall also include:

- (i) Manufacturers Certificate of Origin.
- (ii) Motor vehicle paperwork appropriate to state of registration, noting Key Corporate Capital Inc. as lien holder.
- (iii) Insurance certificate naming Key Municipal Finance, a Division of Key Corporate Capital, Inc., its successors and assigns as sole loss payee and additional insured for the specified equipment.

2.C. The Escrow Agreement shall expire eighteen (18) months from the date of such Escrow Agreement. It can, however, be extended by mutual consent of the Lessee and Lessor in writing to the Escrow Agent either in advance of the expiration or retroactively. Any money remaining in the Acquisition Fund at the time of expiration will be applied to the next owing lease payment. If there are amounts remaining after the next owing lease payment has been paid, the remaining amount will prepay the lease being applied to principal. Lessee will have been deemed to have accepted all equipment paid for from the Acquisition Fund at the time of expiration.

### 3. Termination of Escrow.

(a) Acquisition of Property. Upon the final acceptance of the Property by Lessee, as evidenced by execution by Lessee of a final acceptance certification pursuant to the Purchase Agreement and delivered to Escrow Agent, and the payment of all costs related thereto (i) any retainage shall be disbursed as directed by Lessee, and (ii) any amounts remaining in the Acquisition Fund (including the earnings from investments thereof) shall be transferred to Lessee and be applied toward reimbursement of Lessee for funds advanced for the Property. To the extent that additional moneys in excess of those needed to reimburse Lessee for the acquisition of the Property exist in the Acquisition Fund, such amounts shall be paid to Lessee. Upon disbursement of all sums in the Acquisition Fund, this Escrow Agreement shall terminate, provided that the indemnifications by Lessee shall survive the termination of this Escrow Agreement.

(b) Event of Default. Upon receipt of written notice from Lessor of an event of default by Lessee under the Purchase Agreement or an event of nonappropriation, if provided for under the Purchase Agreement, Escrow Agent shall disburse the funds in the Acquisition Fund to Lessor for application in accordance with the Purchase Agreement. Upon such payments from the Acquisition Fund, this Escrow Agreement shall terminate, provided that the indemnifications by Lessee shall survive the termination of this Escrow Agreement.

4. Investment of Acquisition Fund. Monies held by Escrow Agent hereunder shall be invested and reinvested by Escrow Agent upon written instructions from Lessee in an investment which is a permitted investment for Lessee under the laws of the state in which Lessee is organized. Escrow Agent shall have no responsibility for advising Lessee or Lessor as to the permissibility of any investment of monies in the Acquisition Fund. If Escrow Agent does not receive a written direction from Lessee as to the investment or reinvestment of monies in the Acquisition Fund, Escrow Agent may hold such monies uninvested until such direction is received. Escrow Agent shall have no responsibility for any losses suffered from any investment of monies on deposit in the Acquisition Fund authorized by Lessee.

5. Amendment and Modification. This Escrow Agreement may not be amended, modified, altered, supplemented or waived except by a written instrument executed by Lessor, Lessee and Escrow Agent.

### 6. Regarding the Escrow Agent.

(a) Duties of Escrow Agent. Escrow Agent undertakes to perform only such duties as are specifically set forth in this Escrow Agreement. Escrow Agent shall be under no implied obligation or subject to any implied liability hereunder. Escrow Agent shall incur no liability whatsoever except for its gross negligence or willful misconduct so long as it is acting in good faith. Escrow Agent shall not be required to take notice of any of the provisions of the Purchase Agreement or any document or instrument executed in connection therewith, except as expressly set forth in this Escrow Agreement. The permissive right of the Escrow Agent to do things enumerated in this Escrow Agreement shall not be construed as a duty.

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(b) **Escrow Agent Reliance.** Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions hereof has been duly authorized to do so. Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner and execution, or validity of any instrument deposited with it, nor as to the identity, authority or right of any person executing the same; and its duties hereunder shall be limited to those specifically provided herein.

(c) **Counsel and Fees.** If Escrow Agent believes it to be reasonably necessary to consult with counsel concerning any of its duties in connection herewith, or in case the Escrow Agent becomes involved in litigation on account of acting hereunder, then, in either case, its cost, expenses and reasonable attorneys fees shall be paid by Lessee. Escrow Agent's right to receive its attorneys fees and expenses shall survive the termination of this Escrow Agreement.

(d) **No Obligation to Take Legal Action.** Escrow Agent shall not be under any obligation to take any legal action in connection with this Escrow Agreement or for its enforcement, or to appear, prosecute or defend any action or legal proceeding which, in its opinion, would or might involve it in any costs, expense, loss or liability, or to otherwise expend or risk its own funds or incur any financial liability in the performance of this Escrow Agreement, unless and as often required by it, it shall be furnished with security and indemnity satisfactory against all such costs, expenses, losses or liabilities. If any controversy arises between the parties hereto or with any third person, the Escrow Agent shall not be required to resolve the same or to take any action to do so (other than to use its best efforts to give notice of such controversy to Lessor and Lessee) but may, at its discretion, institute such interpleader or other proceedings as it deems proper.

(e) **Monthly Statement.** Escrow Agent shall issue a monthly accounting statement showing receipts to and disbursements from the Acquisition Fund. Such statement shall be mailed to Lessor and Lessee.

(f) **Resignation and Termination.** Escrow Agent may, upon providing thirty days written notice, resign its position as Escrow Agent and terminate its liabilities and obligations hereunder. In the event Escrow Agent is not notified within thirty days of a successor Escrow Agent, Escrow Agent shall be entitled to transfer all funds to a court of competent jurisdiction with a request to have a successor appointed, at the expense of Lessee. Upon filing such action and delivering such assets, Escrow Agent's obligations and responsibilities shall cease. Lessor and Lessee may jointly terminate Escrow Agent and appoint a successor Escrow Agent by providing 15 days written notice to Escrow Agent.

7. **Indemnification.** To the extent permitted by law, Lessee hereby assumes liability for, and hereby agrees (whether or not any of the transactions contemplated hereby are consummated) to indemnify, protect, save and keep harmless the Escrow Agent and its respective successors, assigns, agents, employees and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by or asserted against, Escrow Agent at any time (whether or not also indemnified against the same by Lessee or any other person under any other agreement or instrument, but without double indemnity) in any way relating to or arising out of the execution, delivery and performance of this Escrow Agreement, the establishment hereunder of the Acquisition Fund, the acceptance of the funds and securities deposited therein, the purchase of any securities to be purchased pursuant thereto, the retention of such securities or the proceeds thereof, and any payment, transfer or other application of moneys or securities by Escrow Agent in accordance with the provisions of this Escrow Agreement; provided, however, that Lessee shall not be required to indemnify, protect, save or keep harmless Escrow Agent against Escrow Agent's own gross negligence or willful misconduct or gross negligence or willful misconduct of Escrow Agent's respective successors, assigns, agents and employees or the material breach by Escrow Agent of the terms of this Escrow Agreement. The indemnities contained in this Section shall survive the termination of this Agreement.

8. **Notices.** Any notices permitted or required under this Escrow Agreement shall in writing and shall be deemed given upon the date of personal delivery or 48 hours after deposit in the United States mail, certified or registered, postage fully prepaid, return receipt requested, addressed to the addresses set forth on the signature page of this Escrow Agreement. The party to whom notices or copies of notices are to be sent shall have the right at any time and from time to time to change its address for notice or person to receive notice by giving notice in the manner specified in this paragraph.



9. **Escrow Agent's Fee.** Escrow Agent shall be paid by Lessee for services hereunder no fee for setting up the escrow. In the event that Escrow Agent is made a party to litigation with respect to the Acquisition Fund, or brings an action in interpleader, or Escrow Agent is required to render any service not provided for in this Escrow Agreement, or there is any assignment of interests in this escrow or any modification hereof, Escrow Agent shall be entitled to reasonable compensation for such extraordinary services and reimbursement by Lessee for all fees, costs, liability and expenses, including attorney fees.

10. **Counterparts.** This Escrow Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. This Escrow Agreement is to be executed by the parties hereto in sufficient numbers so that an Escrow Agreement bearing each party's original signature can be held by the Escrow Agent.

11. **Waiver.** Any waiver by any party of any breach of any term or condition of this Escrow Agreement shall not operate as a waiver of any other breach of such term or condition or any other term or condition, nor shall any failure to enforce such provision hereof operate as a waiver of such provision or of any other provision hereof, nor constitute nor be deemed a waiver or release of any other party for anything arising out of, connected with, or based on this Escrow Agreement.

12. **Exhibits.** All exhibits, schedules and lists attached to this Escrow Agreement or delivered pursuant to this Escrow Agreement shall be deemed a part of this Escrow Agreement and incorporated herein, where applicable, as if fully set forth herein.

13. **Applicable Law.** This Escrow Agreement shall be governed by the laws of the state in which Lessee is located.

14. **Successors and Assigns.** This Escrow Agreement shall be binding on and shall inure to the benefit of the parties and their respective successors and assigns. Any corporation or association into which the Escrow Agent may merge, or to which Escrow Agent may sell or transfer its banking business, shall automatically be and become successor Escrow Agent hereunder and vested with all powers as was its predecessor without the execution or filing of any instruments or further act, deed or conveyance on the part of the parties hereto.

15. Severability. In the event any provision of this Escrow Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

IN WITNESS WHEREOF, Lessor, Lessee and Escrow Agent have caused this Escrow Agreement to be executed by their duly authorized representatives, all as of the date first above written.

Key Municipal Finance, a Division of Key Corporate Capital, Inc.

City of Centerville

By \_\_\_\_\_  
Authorized Officer  
Title \_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_

Address: 1000 South McCaslin Blvd.  
Superior, CO 80027

Address: 100 West Spring Valley Road  
Centerville, OH 45458

KEYBANK NATIONAL ASSOCIATION

By \_\_\_\_\_  
Authorized Officer

Address: 60 State Street  
Albany, NY 12201



[Please type on your letterhead]

EXHIBIT A

FORM OF REQUISITION  
COSTS OF PROPERTY

KeyBank National Association  
60 State Street  
Albany, NY 12201

Amount Requested: \$ \_\_\_\_\_

Total Disbursements to Date: \$ \_\_\_\_\_

Requisition No.: \_\_\_\_\_

1. The undersigned, an officer or official of Lessee, hereby requests and authorizes KeyBank National Association, as Escrow Agent under the Escrow Agreement dated as of January 31, 2000, among City of Centerville(the "Lessee"), Key Municipal Finance, a Division of Key Corporate Capital, Inc. (the "Lessor") and Escrow Agent, to pay to or upon the order of the Lessee the amount specified above for the payment or reimbursement of costs of Property described in Schedule 1 attached.

2. The Lessee hereby certifies that:

(a) each obligation mentioned in Schedule 1 has been properly incurred, is a proper charge against the Acquisition Fund and has not been the basis of any previous disbursement;

(b) no part of the disbursement requested hereby will be used to pay for materials not yet incorporated into the Property or for services not yet performed in connection therewith;

(c) as of the date of this Requisition no "Event of Default," as that term is defined in the Purchase Agreement between Lessor and Lessee has occurred and is continuing and no event which with notice or lapse of time, or both, has occurred and is continuing which would constitute such Event of Default; and

(d) the Property acquired with this disbursement is functionally complete and operationally independent and is hereby accepted. If this is the final requisition, the final acceptance certification required in the Purchase Agreement is attached hereto.

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3. All capitalized terms herein shall have the meanings assigned to them in the Escrow Agreement

City of Centerville

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved by Lessor, or in the event Lessor's right, title and interest in the Purchase Agreement has been assigned, by the current assignee of Lessor's right, title and interest in the Purchase Agreement:

Key Municipal Finance, a Division of Key Corporate Capital, Inc.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

[Lessee to attach final acceptance certification if final disbursement request.]

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SCHEDULE 1

DISBURSEMENT SCHEDULE

To Requisition No. \_\_\_\_\_ for the Acquisition Fund:

1. Amount: \$ \_\_\_\_\_

Payee: \_\_\_\_\_

By check \_\_\_\_\_ By wire transfer \_\_\_\_\_

If by check, Payee's address: \_\_\_\_\_  
\_\_\_\_\_

If by wire transfer, instructions as follows:

Pay to (name of bank): \_\_\_\_\_  
For Account of: \_\_\_\_\_  
Account No: \_\_\_\_\_  
ABA No: \_\_\_\_\_

2. Amount: \$ \_\_\_\_\_

Payee: \_\_\_\_\_

By check \_\_\_\_\_ By wire transfer \_\_\_\_\_

If by check, Payee's address: \_\_\_\_\_  
\_\_\_\_\_

If by wire transfer, instructions as follows:

Pay to (name of bank): \_\_\_\_\_  
For Account of: \_\_\_\_\_  
Account No.: \_\_\_\_\_  
No.: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

[Attach Schedule of Amounts with payment procedure to pay the Vendor]

EXHIBIT A-2

FINAL PAYMENT REQUEST FORM

KeyBank National Association, Escrow Agent under an Escrow Agreement dated as of January 31, 2000, by and between the said Escrow Agent, City of Centerville ("Lessee") and Key Municipal Finance, a Division of Key Corporate Capital, Inc., is hereby requested to pay, from the Acquisition Fund held under said Escrow Agreement, to \_\_\_\_\_, (Vendor) the sum of \$ \_\_\_\_\_ in payment of Final Payment for the Work Costs as set forth in the Escrow Agreement. A capitalized term not defined herein shall have the meaning set forth in the Escrow Agreement.

\_\_\_\_\_, hereby certifies that: (1) the acquisition and installation of the Work under the Vendor Contract is now complete; (2) attached hereto is the Schedule of Amounts setting forth the Work received for this payment, with invoices; and (3) the amount requested for payment is now due and owing.

Attached hereto is a Final Acceptance Certificate signed by the Lessee.

Dated: \_\_\_\_\_, 19\_\_.

Vendor: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved:  
City of Centerville

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved by Lessor, or in the event Lessor's right, title and interest in the Purchase Agreement has been assigned, by the current assignee of Lessor's right, title and interest in the Purchase Agreement:

Key Municipal Finance, a Division of Key Corporate  
Capital, Inc.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

[Vendor to attach Schedule of Amounts with payment procedure to pay Vendor . Lessee to attach final acceptance certification required in the Purchase Agreement.]

