

TOSHIBA

Leading Innovation >>>

FMV LEASE AGREEMENT

TOSHIBA

FINANCIAL SERVICES

The words **Customer**, you and your refer to the customer. The words **Lessor**, we, us, and our refer to Toshiba Financial Services. The Toshiba Equipment is covered by the terms of the Toshiba Quality Commitment, a copy of which may be obtained from your Vendor. We own the Equipment (excluding software) and you have the right to use it under the terms of this Lease.

APPLICATION NUMBER	AGREEMENT NUMBER
1650356	

CUSTOMER CONTACT INFORMATION

Legal Company Name: **Plano, City Of**

Contact Person:

Bill-To Phone:

Bill-To Fax:

Billing Address: **111 E Main St**

City, State, Zip: **Plano, IL 60545-1523**

Equipment Location: **As Stated Above**
(if different from above)

VENDOR

Contact Name: **Kopy Kat Copier, Inc.**

Dealer Location: **1550 N. Farnsworth Avenue Aurora, IL 60505**

ITEM DESCRIPTION

MODEL NO.

SERIAL NO.

1 Toshiba e-STUDIO2018A Copier

See attached form (Schedule "A") for Additional Equipment

LEASE TERM & PAYMENT SCHEDULE

Number of Payments: **48** of **\$105.45** (plus applicable taxes)

Security Deposit: Received

Documentation Fee: **\$75.00** (included in First Invoice)

Lease payment period is monthly unless otherwise indicated. End-of-Lease Options:

You will have the following options at the end of your original term, provided the Lease has not terminated early and no event of default under the Lease has occurred and is continuing.

1. Purchase the Equipment at Fair Market Value - 2. Renew the lease per section 16
3. Return Equipment

THIS IS A NON-CANCELABLE / IRREVOCABLE AGREEMENT. THIS AGREEMENT CANNOT BE TERMINATED EARLY.

LESSOR ACCEPTANCE

Toshiba Financial Services

Signature: **X**

Title:

Date:

CUSTOMER ACCEPTANCE

You hereby acknowledge and agree that your electronic signature below shall constitute an enforceable and original signature for all purposes. This Lease may be executed in counterparts. The executed counterpart which has Lessor's original signature and/or is in Lessor's possession shall constitute chattel paper as that term is defined in the Uniform Commercial Code ("UCC") and shall constitute the original agreement for all purposes, including, without limitation, (i) any hearing, trial or proceeding with respect to this Lease, and (ii) any determination as to which version of this Lease constitutes the single true original item of chattel paper under the UCC. If Customer signs and transmits this Lease to Lessor by facsimile or electronic transmission, the transmitted copy, upon execution by Lessor, shall be binding upon the parties. Customer agrees that the facsimile or other electronic transmission of this Lease manually signed by Lessor, when attached to the facsimile or electronic copy signed by Customer, shall constitute the original agreement for all purposes, including, without limitation, those outlined above in this Section. Without limiting and subject to the foregoing, the parties further agree that, for purposes of executing this Lease, (a) a document signed and transmitted by facsimile or other electronic transmission shall be treated as an original document, (b) the signature of any party on such document shall be considered as an original signature, (c) the document transmitted shall have the same effect as a counterpart thereof containing original signatures, and (d) at the request of Lessor, Customer, who executed this Lease and transmitted its signature by facsimile, or other electronic transmission shall provide the counterpart of this Lease containing Customer's original manual signature to Lessor. No party may raise as a defense to the enforcement of this Lease that a facsimile or other electronic transmission was used to transmit any signature of a party to this Lease.

Name:

Signature: **X**

Title:

Date:

PERSONAL GUARANTY

To induce us to enter into this Lease and any supplement, the undersigned jointly and severally unconditionally guarantees to us the prompt payment when due of all Customer's obligations to us under the Lease and any supplement. We will not be required to proceed against the Customer or the Equipment or enforce any other remedy before proceeding against the undersigned. The undersigned agrees to pay all reasonable attorney's fees and other expenses incurred by us by reason of default by Customer or the undersigned. The undersigned waives notice of acceptance hereof and of all other notices or demands of any kind to which the undersigned may be entitled. The undersigned consents to any extensions or modifications granted to us and the release and/or compromise of any obligations of Customer or any other obligors and guarantors without in any way releasing the undersigned from his or her obligations hereunder. The obligations of the undersigned shall continue even if the Customer becomes insolvent or bankrupt or is discharged from bankruptcy, and the undersigned agrees not to seek to be repaid by Customer in the event the undersigned must pay us. This is a continuing Guaranty and shall not be discharged or affected by death of the undersigned, shall bind the heirs, administrators, representatives, successors and assigns of undersigned, and may be enforced by or for the benefit of any assignee or successor of us. The undersigned and we waive insofar as permitted by law any trial by jury for any action between the parties. You hereby acknowledge and agree that your electronic signature below shall constitute an enforceable and original signature for all purposes.

By providing a telephone number for a cellular phone or other wireless service, you are expressly consenting to receiving communication (for NON-Marketing or solicitation purposes) at that number, including, but not limited to, prerecorded or artificial voice message calls, text messages, and calls made by an automatic telephone dialing system from lessor and its affiliates and agents. This express consent applies to each such telephone number that you provide to us now or in the future and permits such calls. The calls and messages may incur fees from your cellular provider.

Print Name of 1st Guarantor

Signature: **X**

Date:

Print Name of 2nd Guarantor

Signature: **X**

Date:

TERMS AND CONDITIONS

- 1. Lease Agreement:** You agree to lease from us the equipment described under "ITEM DESCRIPTION" and on any attached Schedule (hereinafter, with all replacement parts, repairs, additions and accessories, referred to as the "Equipment") and as modified by Supplements to this Lease from time to time signed by you and us. You authorize us to insert or correct missing information on this Lease, including your accurate legal name, serial numbers and any other information describing the Equipment. You authorize us to change the amount of each lease payment by not more than 15% due to changes in the equipment configuration which may occur prior to our acceptance of this Lease or adjustments to reflect applicable sales taxes. We will send you copies of any changes. You agree to provide updated annual and/or quarterly financial statements to us upon request. You authorize us or our agent to obtain credit reports and make credit inquiries regarding you and your financial condition and to provide your information, including payment history, to our assignees or third parties having an economic interest in this Lease or the Equipment.
- 2. Lease Commencement:** This Lease will commence upon your acceptance of the applicable Equipment. When you receive the Equipment, you agree to inspect it and verify your acceptance by telephone, or, at our request, by delivery of written evidence of acceptance satisfactory to us. Upon acceptance, your obligations under the Lease will become absolute and unconditional, and are not subject to cancellation, reduction or setoff for any reason whatsoever. All payments will be made to us in accordance with the applicable Schedule at our address or at such other place as we may designate in writing. You agree to pay an interim rent payment equal to 1/30th of the monthly lease payment, multiplied by the number of days between rent commencement date and the date of the beginning of the first rental period. For any payment that is not received by its due date, you agree to pay a late charge equal to the higher of 10% of the amount due or \$22 (not to exceed the maximum allowed by law) as reasonable collection costs.
- 3. Security Deposit:** The security deposit is non interest bearing and is to secure your performance under this Lease. Any security deposit made may be applied by us to satisfy any amount owed by you, in which event you will promptly restore the security deposit to its full amount as set forth above. If all conditions are fully completed and provided you have not ever been in default of this Lease in the Default section, the security deposit will be refunded to you after the return of the equipment in accordance with the Return of Equipment section.
- 4. WARRANTY DISCLAIMER: WE MAKE NO WARRANTY EXPRESS OR IMPLIED, INCLUDING THAT THE EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR THAT THE EQUIPMENT IS MERCHANTABILITY. YOU AGREE THAT YOU HAVE SELECTED EACH ITEM OF EQUIPMENT/VENDOR BASED UPON YOUR OWN JUDGMENT AND DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. YOU LEASE THE EQUIPMENT "AS IS". NO REPRESENTATION OR WARRANTY OF VENDOR WITH RESPECT TO THE EQUIPMENT WILL BIND US, NOR WILL ANY BREACH THEREOF RELIEVE YOU OF ANY OF YOUR PAYMENT OBLIGATIONS HEREUNDER. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES FOR ANY DEFAULT BY US UNDER THIS LEASE.**
- 5. Statutory Finance Lease:** You agree that this Lease qualifies as a statutory finance lease under Article 2A of the Uniform Commercial Code. TO the extent you are permitted by applicable law, you waive all rights and remedies conferred upon a lessee by Article 2A (sections 508-522) of the Uniform Commercial Code.
- 6. Security Interest.** You authorize us to file a financing statement with respect to the Equipment. If this Lease is deemed to be a secured transaction, you grant us a security interest in the Equipment to secure all your obligations under this Lease.
- 7. Use Maintenance and Repair of Equipment.** YOU WILL USE THE EQUIPMENT ONLY IN THE LAWFUL CONDUCT OF YOUR BUSINESS AND NOT FOR PERSONAL, HOUSEHOLD OR FAMILY PURPOSES. You will not move the Equipment from the equipment location listed on the schedule without our advance written consent. You will give us reasonable access to the Equipment so that we can check the Equipment's existence, condition and proper maintenance. At your cost, you will keep the Equipment in good repair, condition and working order, ordinary wear and tear excepted. You will not make any permanent alterations to the Equipment. You will keep the Equipment free and clear of all liens. You assign to us all of your rights, but none of your obligations, under any purchase agreement for the Equipment. We assign to you all our rights under any Vendor warranties, so long as you are not in default.
- 8. Taxes and Lease Charges:** You agree to pay all taxes, costs and expenses incurred by us as a consequence of the ownership, sale, lease or use of the Equipment, including all sales, use and documentary stamp taxes. Any fee charged under this Lease may include a profit and is subject to applicable taxes.
- 9. Indemnity:** You will indemnify and hold us harmless from any and all liability, damages, losses or injuries including reasonable attorney's fees, arising out of the ownership, use, condition or possession of the Equipment, except to the extent directly caused by our gross negligence or willful misconduct. We reserve the right to control the defense and to select or approve defense counsel. This indemnity will survive the termination of this Lease.
- 10. Risk of Loss; Insurance:** You are responsible for risk of loss or for any destruction of or damage to the Equipment. No such loss or damage shall relieve you from the payment obligations under this Lease. You agree to keep the Equipment full insured against loss until this Lease is paid in full and to have us and our assigns named as loss payee. You also agree to maintain public liability insurance covering both personal injury and property damage and you shall name us and our assigns as additional insured. Upon request, you agree to provide us certificates or evidence of insurance acceptable to us. If you do not provide evidence of acceptable insurance, (a) we have the right but no obligation to obtain insurance covering our interest (and only our interest) in the Equipment for the Lease term, and renewals. Any insurance we obtain will not insure you against third party or liability claims and may be cancelled by us at any time. You will be required to pay us an additional amount each month for the insurance and administrative fee. The cost may be more than the cost of obtaining your own insurance and we may make a profit. You agree to cooperate with us, our insurer and our agent in the placement of coverage and with claims, or (b) we may waive the insurance requirement and charge you a monthly property damage surcharge in the amount of .0035 of the total stream of payments to cover our credit risk, administrative costs and other costs and in which we may make a profit. Once an acceptable certificate or evidence of insurance is submitted, any such fees will be discontinued. If any of the Equipment is lost, stolen or damaged you will at your option and cost, either (a) repair the item or replace the item with a comparable item reasonably acceptable to us, or (b) pay us the sum set forth in the Remedies section.
- 11. Right to Perform:** If you fail to comply with any provision of this Lease, we may, at our option, perform such obligations on your behalf. Upon invoice you will reimburse us for all costs incurred by us to perform such obligations.
- 12. Representations:** You represent and warrant to us that (1) you have the lawful power and authority to enter into the Lease, (2) the individuals signing this Lease have been duly authorized to do so on your behalf, (3) you will provide us such financial information as we may reasonably request from time to time, (4) all financial information provided (or to be provided) is (or will be) accurate and complete in all material respects, (5) you will promptly notify us in writing if you move your principal place of business or there is a change in your name, state of formation, or ownership, and (6) you will take any action we reasonably request to protect our rights in the Equipment. We represent and warrant to you that (1) we have the lawful power and authority to enter into this Lease, and (2) the individuals signing this Lease have been duly authorized to do so on our behalf.
- 13. Default:** You will be in default under this Lease if: (a) we do not receive any payment due under this Lease within ten (10) days after its due date, (b) you fail to meet any of your obligations in this Lease (other than payment obligations) and do not correct such default within 10 days after we sent you written notice of such default, (c) you become insolvent, are liquidated or dissolved, merge, transfer a material portion of your ownership interest or assets, stop doing business, or assign rights or property for the benefit of creditors, (d) a petition is filed by or against you under any bankruptcy or insolvency law, (e) any representation made by you is false or misleading in any material respect, or (f) you default on any other agreement with us or our assigns.
- 14. Remedies:** If you are in default, we may, at our option, do any or all of the following: (a) retain your security deposit, if any, (b) terminate this Lease, (c) require that you pay, as compensation for loss of our bargain and not as a penalty, the sum of (1) all amounts due and payable by you or accrued under this Lease, plus (2) the present value of all remaining payments to become due under this Lease (discounted at 4% or the lowest rate allowed by law), and (3) (i) the amount of any purchase option and, if none is specified, 20% of the original equipment cost, which represents our anticipated residual value in the Equipment or (ii) return the Equipment to a location designated by us and pay to use the excess, if any, of the amount payable under clause 3(f) above over the Fair Market Value of the returned Equipment as determined by us in our reasonable discretion, (d) recover interest on any unpaid balance at the rate of 4% per annum, and (e) exercise any other remedies available to us at law or in equity. You agree to pay our reasonable attorney's fees and actual court costs including any cost of appeal. If we have to take possession of the Equipment, you agree to pay the cost of repossession and we may sell or re-rent the Equipment at terms we determine, at one or more public or private sales, with or without notice to you, and apply the net proceeds (after deducting any related expenses) to your obligations. You may remain liable for any deficiency with any excess being retained by us.
- 15. Purchase Option:** At the end of the Term provided you are not in default, and upon 30 days prior written notice from you, you will either (a) return all the Equipment, or (b) purchase all the Equipment as is, without any warranty to condition, value or title for the Fair Market Value of the Equipment as determined by us in our reasonable discretion plus applicable sales and other taxes.
- 16. Automatic Renewal:** This Lease will automatically renew on a month-to-month basis after the Term unless cancelled by either party upon 30 days prior written notice, and you shall pay us the same lease payments and lease charges as applied during the Term (and be subject to the terms and conditions of this Lease) until the Equipment is returned to us or you pay us the applicable purchase price (and taxes).
- 17. Return of Equipment:** If (a) a default occurs, or (b) you do not purchase the Equipment at the end of the Term pursuant to a stated purchase option, you will immediately return the equipment to any location(s) we may designate in the continental United States. The Equipment must be returned in "Average Saleable Condition" and properly packed for shipment in accordance with our recommendations or specifications, freight prepaid and insured. "Average Saleable Condition" means that all of the Equipment is immediately available for use by a third party, other than you, without the need for any repair or refurbishment. All Equipment must be free of markings. You will pay us for any missing or defective parts or accessories.
- 18. Assignment:** We may, without your consent, assign or transfer any Equipment or this Lease, or any rights arising under this Lease, and in such event our assignee or transferee will have the rights, power, privileges and remedies of Lessor hereunder, but none of the obligations. Upon such assignment you agree not to assert, as against our assignee, any defense, setoff, recoupment, claim or counterclaim that you may have against us. You will not assign, transfer or sublease this Lease or any rights thereunder or any Equipment subject to this Lease without our prior written consent.
- 19. Personal Property Tax (PPT):** You agree at our discretion to (a) reimburse us annually for all personal property and similar taxes associated with the ownership, possession or use of the Equipment or (b) remit to us each billing period our estimate of the prorated equivalent of such taxes. You agree to pay us an administrative fee for the processing of such taxes.
- 20. Tax Indemnity:** You agree to indemnify us for the loss of any income tax benefit caused by your acts or omissions inconsistent with our entitlement to certain tax benefits as owner of the Equipment.
- 21. Governing Law:** BOTH PARTIES AGREE TO WAIVE ALL RIGHTS TO A JURY TRIAL. This Lease and any supplement shall be deemed fully executed and performed in the state of Lessor or its Assignee's principal place of business and shall be governed by and construed in accordance with its laws. If the Lessor or its Assignee shall bring any judicial proceeding in relation to any matter arising under this Lease, you irrevocably agree that any such matter may be adjudged or determined in any court or courts in the state of the Lessor or its Assignee's principal place of business, or in any court or courts of your state of residence, or in any other court having jurisdiction over you or your assets, all at the sole election of the Lessor or its Assignee. You hereby irrevocably submit generally and unconditionally to the jurisdiction of any such court so elected by Lessor or its Assignee in relation to such matters.
- 22. Miscellaneous:** This Lease contains the entire agreement between you and us and may not be modified except as provided therein or in writing signed by you and us. We will not accept payment in cash. If you so request, and we permit the early termination of this Lease, you agree to pay a fee for such privilege. Notices must be in writing and will be deemed given five days after mailing to your or our mailing address. If a court finds any provision of this Lease to be unenforceable, all other terms of this Lease will remain in effect and enforceable. You agree that any delay or failure to enforce our rights under this Lease does not prevent us from enforcing any rights at a later time. In no event will we charge or collect any amounts in excess of those allowed by applicable law. Time is of the essence. You agree that a facsimile copy of this Lease with facsimile signatures may be treated as an original and will be admissible as evidence of this Lease. You hereby acknowledge and confirm that you have not received any tax, financial, accounting or legal advice from us, the manufacturer or supplier of the Equipment. It is the Customer's sole and exclusive responsibility to ensure that all data from all disk drives or magnetic media are erased of any Customer data and information.

\$1.00 PURCHASE OPTION

TOSHIBA

FINANCIAL SERVICES

ADDENDUM To Contract No. 1650356 between Toshiba Financial Services, Owner
And Plano, City Of, Customer
(Full Legal Name of Customer)

Provided the lease has not terminated early, Customer shall have the following options at the end of the original term.

BUY: Purchase the equipment for \$1.00.

OR

RETURN: Return the equipment per the lease agreement.

NOTE: SIGNATURE MUST BE SAME AS ON THE LEASE AGREEMENT.

OWNER ACCEPTANCE			
Toshiba Financial Services	SIGNATURE:	TITLE:	DATE:
CUSTOMER ACCEPTANCE			
Plano, City Of	SIGNATURE: X	TITLE:	DATE:

NON-APPROPRIATION ADDENDUM

This is an addendum ("Addendum") to and part of that certain agreement between Toshiba Financial Services ("we", "us", "our") and Plano, City Of ("Governmental Entity", "you", "your"), which agreement is identified in our records as agreement number 1650356 ("Agreement"). All capitalized terms used in this Addendum which are not defined herein shall have the meanings given to such terms in the Agreement.

APPLICABLE TO GOVERNMENTAL ENTITIES ONLY

You hereby represent and warrant to us that as of the date of the Agreement: (a) the individual who executed the Agreement had full power and authority to execute the Agreement on your behalf; (b) all required procedures necessary to make the Agreement a legal and binding obligation against you have been followed; (c) the Equipment will be operated and controlled by you and will be used for essential government purposes for the entire term of the Agreement; (d) that all payments due and payable for the current fiscal year are within the current budget and are within an available, unexhausted, and unencumbered appropriation; (e) you intend to pay all amounts payable under the terms of the Agreement when due, if funds are legally available to do so; (f) your obligations to remit amounts under the Agreement constitute a current expense and not a debt under applicable state law; (g) no provision of the Agreement constitutes a pledge of your tax or general revenues; and (h) you will comply with any applicable information reporting requirements of the tax code, which may include 8038-G or 8038-GC Information Returns. If funds are not appropriated to pay amounts due under the Agreement for any future fiscal period, you shall have the right to return the Equipment and terminate the Agreement on the last day of the fiscal period for which funds were available, without penalty or additional expense to you (other than the expense of returning the Equipment to the location designated by us), provided that at least thirty (30) days prior to the start of the fiscal period for which funds were not appropriated, your Chief Executive Officer (or Legal Counsel) delivers to us a certificate (or opinion) certifying that (a) you are a state or a fully constituted political subdivision or agency of the state in which you are located; (b) funds have not been appropriated for the applicable fiscal period to pay amounts due under the Agreement; (c) such non-appropriation did not result from any act or failure to act by you; and (d) you have exhausted all funds legally available for the payment of amounts due under the Agreement. You agree that this paragraph shall only apply if, and to the extent that, state law precludes you from entering into the Agreement if the Agreement constitutes a multi-year unconditional payment obligation.

The undersigned, as a representative of the Governmental Entity, agrees that this Addendum is made a part of the Agreement.

GOVERNMENTAL ENTITY'S AUTHORIZED SIGNATURE

(As Stated Above)	X		
	SIGNATURE	PRINT NAME & TITLE	DATE

OUR SIGNATURE

Toshiba Financial Services			
	SIGNATURE	PRINT NAME & TITLE	DATE