

## Broker Agreement

This Agreement sets forth the agreement between Evans National Leasing, Inc (hereinafter "Evans") and \_\_\_\_\_ (hereinafter "Broker" or "Assignor") with respect to any transactions submitted to Evans by Broker, Broker may from time to time assign to Evans, and Evans may from time to time accept from Broker, one or, more lease or Equipment finance transactions (individually a "Transaction") subject to the terms and conditions and the Assignment between Broker and Evans with respect thereto ("Assignment") and the following terms and conditions:

1. **No Obligation.** Each Transaction that is assigned to Evans pursuant to this agreement will include as assignment of (a) all rights and remedies, but no obligations, of Broker, under (i) the Lease Schedule (which shall incorporate by reference the Master Lease) or the Lease relating to such Transaction (the "Lease") or Equipment Finance Agreement and (ii) each guarantee executed by any corporation, governmental authority, individual, limited liability company, partnership or, other, entity (a "Person") in connection with such Transaction and all other documents relating to such Transaction (the Lease, Equipment Finance Agreement, any such guaranty and all such other, documents are collectively "Documents") and (b) all right, title, and interest of Broker, but no obligation of Assignor (other than payment of purchase price) with respect to the Equipment that is covered by the Lease or Equipment Finance Agreement (the "Equipment"). No provision of this Agreement will obligate Broker to assign to Evans, or Evans to accept from Broker, any Transaction. The assignment or acceptance of any Transaction will be subject to the discretion of Broker and Evans and will be evidenced solely by the execution of an Assignment with respect to such Transaction.

2. **Payment.** Evans will pay to Broker with respect to each Transaction as a commission an amount agreed upon by Evans and Broker. In the event that the lessee or Borrower under such Transaction (each lessee under a Transaction being hereafter referred to as a "Lessee" and each Borrower under a transaction hereinafter referred to as "Borrower") defaults one or more of the first three payments billed or to be received directly by Evans under such Transaction, and Evans begins its customer collections or charge off process with respect to such Transaction, Broker shall immediately upon demand refund to Evans any such commission.

3. **Representations and Warranties.** Broker represents and warrants to Evans with respect for each Transaction as follows:

- (a) The Documents will have been duly executed by an authorized representative of each party thereto.
- (b) None of the Documents will have been modified in any respect or terminated.
- (c) Each of the Documents will be enforceable in accordance to its terms.
- (d) Upon Assignment of such Transaction to Evans, all right, title and interest, in the Equipment and the Documents will be in the name of Evans and not subject to any lien, interest or other claim of any Person.
- (e) All names, addresses, amounts, equipment description and other information contained in the Documents, or any financial statements or other documents delivered to Evans in connection with such Transaction will be true and correct and not misleading in any respect.
- (f) All rental and other, payments and obligations becoming due under the Lease or Equipment Finance Agreement upon or

prior to the execution of the Assignment will have been paid or otherwise performed by Lessee or Borrower.

(g) All rent and other amounts to be paid and all other obligations to be performed by Lessee or Borrower pursuant to such Transaction will not be subject to abatement, dispute, set-off, counterclaim or reduction.

(h) No Transaction will have been "rebrokered" or "split" (as those terms are generally understood in the leasing industry), unless Broker has identified it as being rebrokered or split, as applicable. Without limiting the generality of the immediate preceding sentence, the term "rebrokered" includes each Transaction in which any numeration will be paid by Broker to a person other than an employee of Broker and the term "split" includes each Transaction in which any portion of the purchase price (or any other amount) payable with respect to the Equipment comes from a source other than Lessee, Borrower or Evans.

(i) Such Transaction will comply with all applicable law.

(j) There will have been no fraud on the part of any party to such Transaction.

(k) All financing statements will be filed and all other action will be taken to perfect Broker's right, title and interest in the Equipment and no such right, title or interest will be adversely affected by the filing of a petition in bankruptcy by Lessee or Borrower or any other, event.

4. **Indemnification.** Broker shall defend, indemnify and hold harmless Evans from and against all claims, suits, causes of actions, loss, damages, cost and expenses (including, but not limited to fees and disbursements of counsel to Evans) incurred by Evans as a result of or otherwise relating to any warranty or, representation made in this Agreement by Broker being untrue or misleading in any respect or the failure of Broker to perform any obligation pursuant to this Agreement or any Transaction. Without limiting the generality of the immediately preceding sentence, if any such representation or warranty is not true or misleading in any respect, Broker must immediately pay to Evans, with respect to the Transaction affected thereby, an amount equal to the then-existing value of the remaining payments under the Lease, plus an amount equal to the residual value of the Equipment at the end of the Lease, plus any costs and expenses incurred by Evans, plus any applicable taxes.

5. **Brokers Obligation.** All obligations of Broker arising in connection with a Transaction, whether pursuant to any of the Documents or otherwise, must be performed by Broker as of the date of the Assignment executed in connection with such Transaction. After the date of such Assignment, Broker must perform all of its remaining obligations arising in connection with such Transaction Evans does not assume responsibility for any obligations of Broker, arising in connection with such Transaction.

6. **Limited Recourse.** Except as set forth in this Agreement, Broker shall not be liable to Evans for any failure of Lessee or Borrower to pay any amount or perform any obligation under a Transaction, including, but not limited to, the payment of rent/payments). No provision of this Agreement shall be construed as an assumption by Broker, of any obligation of Lessee or Borrower pursuant to any Lease or Equipment Finance Agreement.

7. **Audit.** Upon reasonable notice to Broker, Evans may audit the books and records of Broker relating to any Transaction.

8. **No Action.** Without first obtaining the written consent of Evans, Broker will not accept payments becoming due under any Transaction, repossess or consent to the return of any Equipment, modify or terminate any of the Documents, or take any other action that may adversely affect any right, title or interest of Evans in such Transaction Broker shall deliver to Evans all checks, drafts, money orders and other payments received in connection with any Transaction immediately after, he receipt of such payments and in the same form as received, except for any appropriate endorsement to Evans. Broker grants to Evans a power, of attorney, coupled with an interest, to endorse in Broker's name any checks, drafts, money orders or other payments received on an account of any Transaction.

9. **Due Diligence.** No due diligence, investigation or other action by Evans or knowledge of Evans will waive any right if remedy of Evans with respect to any untrue or misleading warranty or, representation made by Broker in this Agreement it otherwise.

10. **Consent To Jurisdiction.** Broker consents in each action and other legal proceeding commenced by Evans and arising out of or, otherwise relating to this Agreement, the Documents, or any of the Equipment to the exclusive jurisdiction of any court that is either a court of record of the County of Erie, state of New York or a federal court located in the Western District of New York.

No modification of this Agreement shall be effective unless made in writing duly executed by Evans and Broker.

11. **Enforcement.** Broker, will pay to Evans on demand all costs and expenses incurred by Evans (including, but not limited to, all fees and disbursements of counsel to Evans) in enforcing any right or remedy of Evans pursuant to this Agreement, applicable law or otherwise.

12. **Further Assurances.** Broker shall execute and deliver to Evans each Document, instrument and other writing, and take each other action, requested by Evans in order to transfer to Evans all right, title and interest of Broker in a Transaction.

13. **Waiver.** No failure of Evans or Broker, and no delay by Evans or Broker in requiring, the other to comply with any provision of this Agreement shall constitute a waiver of the right to require such compliance. No failure of Evans or Broker to exercise, and no delay by Evans or Broker in exercising, any right or, remedy under this Agreement shall constitute a waiver of such right or remedy, No waiver by Evans or Broker of any right or remedy under this Agreement shall be effective unless made in writing. Any waiver by Evans or Broker of any right or remedy under this Agreement shall be limited to the specific instance and shall not constitute a waiver of such right or remedy in the future.

14. **Binding.** This Agreement shall be binding upon Evans and Broker and upon each successor and assign of Evans and Broker, and shall inure to the benefit of, and be enforceable by, Evans and Broker and each successor and assign of Evans and Broker.

15. **Entire Agreement.** This Agreement contains the entire agreement between Evans and Broker with respect to the subject of this Agreement, and supercedes each course of conduct previously pursued, and each oral agreement and representation made, by Evans or Broker with respect thereto, whether, or, relied or, acted upon. No course of performance or other, conduct pursued, and no oral agreement or representation made, in the future by Evans or Broker, whether or, not relied or acted upon, shall modify or, terminate this Agreement, impair or otherwise affect any obligation of Evans or Broker pursuant to this Agreement or otherwise.

16. **Choice of Law.** This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of New York, without regard to principles of conflict of laws.

Broker: \_\_\_\_\_

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

Name: \_\_\_\_\_

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

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

Address: \_\_\_\_\_

EVANS NATIONAL LEASING, INC.

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

Name: \_\_\_\_\_

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

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

Address: One Grimsby Drive

Hamburg, NY 14075