

## **ADDENDUM TO LEASE AGREEMENT – FAIR MARKET VALUE AND MAINTENANCE AGREEMENT**

**THIS ADDENDUM TO THE LEASE AGREEMENT – FAIR MARKET VALUE** (“Lease”) and **MAINTENANCE AGREEMENT** (“Agreement”), both dated \_\_\_\_\_, 2017 between the Village of Oak Park, an Illinois home rule municipal corporation (“Lessee”), and Xerox Financial Services LLC, a Delaware corporation authorized to conduct business in the State of Illinois (“Lessor”), is entered into this \_\_\_\_ day of \_\_\_\_\_, 2017 (also collectively referred to as the “Parties”).

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties hereto agree as follows:

1. **AMENDMENT TO SECTION 2 OF THE LEASE.** Section 2 of the Lease is amended by adding the underlined language and deleting the overstricken language as follows:

**Lease, Payments and Late Payments.** You agree and represent all Equipment was selected, configured and negotiated by you based upon your own judgment and has been, or is being, supplied by Dealer. At your request, XFS has acquired, or will acquire, the same to lease to you under this Lease and you agree to lease the same from XFS. The Initial Lease Term, which is indicated above, commences on the Inception Date. You agree to pay XFS the first Lease Payment plus any applicable interim Payment 30 days after the Commencement Date; each subsequent Lease Payment, which may include charges you, Dealer and XFS agree will be invoiced by us, shall be ~~payable on the same date of each month thereafter, whether or not XFS invoices you~~ invoiced and payable by the due date. If any payment is not paid in full within 5 days after its due date, you will pay a late charge of the greater of 10% of the amount due or \$25, not to exceed the maximum amount permitted by law. For each dishonored or returned payment, you will be assessed the applicable returned item fee, which shall not exceed \$35. Restrictive covenants on any method of payment will be Ineffective.

2. **AMENDMENT TO SECTION 3 OF THE LEASE.** Section 3 of the Lease is amended by adding the underlined language and deleting the overstricken language as follows:

**Equipment and Software.** To the extent that the Equipment includes intangible property or associated services such as software licenses, such intangible property shall be referred to as “Software.” ~~You acknowledge and agree that XFS has no right, title or interest in the Software and you will comply throughout the Lease Term with any license and/or other agreement (“Software License”) with the supplier or the Software (“Software Supplier”). You are responsible for entering into any required Software License with the Software Supplier no later than the Inception Date.~~ Should Lessee require any software licenses associated with utilizing any equipment provided under this Lease,

Lessor shall be responsible for obtaining such licenses on behalf of the Lessee at no additional cost to Lessee. You agree the Equipment is for your lawful business use in the United States (including its possessions and territories), will not be used for personal, household or family purposes, and is not being acquired for resale. You will not attached the Equipment as a fixture to real estate or make any permanent alterations to it.

3. **AMENDMENT TO SECTION 4 OF THE LEASE.** Section 3 of the Lease is amended by adding the underlined language and deleting the overstricken language as follows:

**Non-Cancellable Lease.** ~~THIS LEASE CANNOT BE CANCELLED OR TERMINATED BY YOU PRIOR TO THE END OF THE INTIAL LEASE TERMS.~~ LESSEE RESERVES THE RIGHT TO TERMINATE THIS LEASE SHOULD LESSOR BREACH ANY OBLIGATIONS SET FORTH HEREIN. IN THE ABSENCE OF SUCH A BREACH BY THE LESSOR, THIS LEASE SHALL BE NON-CANCELLABLE. YOUR OBLIGATION TO MAKE ALL LEASE PAYMENTS, AND TO PAY ALL OTHER AMOUNTS DUE OR TO BECOME DUE, IS ABSOLUTE AND UNCONDITIONAL AND NOT SUBJECT TO DELAY, REDUCTION, SET-OFF, DEFENSE, COUNTERCLAIM OR RECOUPMENT FOR ANY REASON WHATSOEVER, IRRESPECTIVE OF THE PERFORMANCE OF THE EQUIPMENT, DEALER, ANY THIRD PARTY OR XFS. Any pursued claim by you against XFS for alleged breach of our obligations hereunder shall be asserted solely in a separate action; provided, however, that your obligations under this Lease shall continue unabated.

4. **AMENDMENT TO SECTION 5 OF THE LEASE.** Section 5 of the Lease is amended by adding the underlined language and deleting the overstricken language as follows:

**End of Lease Options.** For any purchase option designated on the first page thereof, if you are not in default and if you provide no greater than 150 days an no less than 60 days' prior written notice of XFS, you may, at the end of the Initial Lease Term, either (a) purchase all, but ot less than all, of the Equipment "AS IS, WHERE IS" and WITHOUT ANY WARRANTY AS TO CONDITION OR VALUE at the time of purchase by paying the amount of such purchase option, plus Taxes, (b) enter into a new lease on mutually agreeable terms, or (c) de-install and return the Equipment, as ~~your Lessor's expense, fully insured, to a continental US location XFS specifies.~~ your Lessor's expense. If no purchase option is specified, you shall elect either alternative (b) or (c) in the preceding sentence. If you have not elected one of the above options, you shall be deemed to have entered into a new lease with a 3 month term on terms and conditions identical to this Lease, except that either party may terminate the new lease at the end of its 3 month term on 30 days' prior written notice and, when this new lease terminates, shall take one of the actions identified in (a) (b) or (c) in the preceding sentence or be deemed to have entered into another new lease with a 3 month term as provided in this sentence. The purchase options shall be exercised, with respect to each item of Equipment

on the day immediately following the date of expiration of the Lease Term of such item, and by the delivery at such time by you to XFS of payments, in case or by certified check, of the amount of the applicable purchase price for the Equipment. "Fair Market Value" shall be determined by XFS in our sole but reasonable discretion. Upon payment of the applicable amount, XFS shall, upon your request, execute and deliver to you a bill of sale for the Equipment on an "AS IS," "WHERE IS," "WITH ALL FAULTS" basis, without representation or warranty of any kind or nature whatsoever. After such payment, you may trade-in the Equipment as part of another transaction with XFS and, if you do, you must pass unencumbered title of the Equipment being traded-in to XFS.

5. **AMENDMENT TO SECTION 6 OF THE LEASE.** Section 5 of the Lease is amended by adding the underlined language and deleting the overstricken language as follows:

**Equipment Return.** If the Equipment is returned to XFS, it shall be in the same condition as when delivered to you, normal wear and tear expected and, if not in such condition, you will be liable for all expenses XFS incurs to return the Equipment to such "normal wear and tear" condition. ~~IT IS SOLELY YOUR RESPONSIBILITY TO SECURE ANY SENSITIVE DATA AND PERMANENTLY DELETE SUCH DATA FROM THE INTERNAL MEDIA STORAGE PRIOR TO RETURNING THE EQUIPMENT TO XFS. UPON REMOVAL OF THE LEASED EQUIPMENT, IT SHALL BE THE RESPONSIBILITY OF LESSOR TO PERMANENTLY DELETE ALL SUCH DATA STORED ON THE HARD DRIVE OF THE LEASED EQUIPMENT OR OTHER APPLICABLE STORAGE DEVICE(S) PRIOR TO LESSEE'S RETURN OF THE LEASED EQUIPMENT. YOU SHALL HOLD XFS HARLESS FROM YOUR FAILURE TO SECURE AND PERMANENTLY DELETE ALL SUCH LESSEE DATA AS OUTLINED IN THIS SECTION.~~

6. **AMENDMENT TO SECTION 7 OF THE LEASE.** Section 5 of the Lease is amended by deleting the overstricken language as follows:

**Equipment Delivery and Maintenance.** Equipment will be delivered to you by Dealer at the location specified on the first pay hereof or in an Equipment schedule, and you agree to execute a Delivery & Acceptance Certificate at XFS's request (and confirm same via telephone and/or electronically) confirming that you have received, inspected and accepted the Equipment, and that XFS is authorized to fund the Dealer for the Equipment. If you reject the Equipment, you assume all responsibility for any purchase order or other contract issued on your behalf directly with Dealer. Equipment may not be moved to another location without first obtaining XFS's written consent, which shall not be unreasonably withheld. You shall permit XFS to inspect Equipment and any maintenance records relating thereto during your normal business hours upon reasonable notice. You represent you have entered into a Maintenance Agreement with Dealer to maintain the Equipment in good working order in accordance with the manufacturer's maintenance guidelines, and to provide you

with supplies for use with the Equipment. You understand and acknowledge that XFS is acting solely as an administrator for Dealer with respect to the billing and collecting of the charges under the Maintenance Agreement included in the Lease Payments. ~~IN NO EVENT WILL XFS BE LIABLE TO YOU FOR ANY BREACH BY THE DEALER OF ANY OF ITS OBLIGATIONS TO YOU, NOR WILL ANY OF YOUR OBLIGATIONS UNDER THIS LEASE BE AFFECTED, MODIFIED, RELEASED OR EXCUSED BY ANY ALLEGED BREACH BY DEALER.~~

**7. AMENDMENT TO SECTION 8 OF THE LEASE.** Section 8 of the Lease is amended by deleting the overstricken language as follows:

**Equipment Ownership, Labeling and UCC Filing.** If and to the extent a court deems this Lease to be a security agreement under the UCC, and otherwise for precautionary purposes only, you grant XFS a first priority security interest in your interest in the Equipment and all proceeds thereof in order to secure your performance under this Lease. XFS is and shall remain the sole owner of the Equipment, except the Software. XFS may label the Equipment to identify our ownership interest in it. You authorize XFS to file by any permissible means a UCC financing statement to show, and to do all other acts to protect, our interest in the Equipment. ~~You agree to pay any filing fees and administrative costs for the filing of such financing statements.~~ You agree to keep the Equipment free from any liens or encumbrances and to promptly notify XFS if there is any change in your organization such that a refiling or amendment to XFS's UCC financing statement against you becomes necessary.

**7. AMENDMENT TO SECTION 18 OF THE LEASE.** Section 18 of the Lease is amended by adding the underlined language and deleting the overstricken language as follows:

**Governing Law, Jurisdiction, Venue and JURY TRIAL WAIVER.** THIS LEASE IS GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ~~CONNECTICUT~~ ILLINOIS (WITHOUT REGARD TO CONFLICT OF LAW PRINCIPALS THAT WOULD OTHERWISE REQUIRE APPLICATION OF LAWS OF ANOTHER JURISDICTION). THE JURISDICTION AND VENUE OF ANY ACTION TO ENFORCE THIS LEASE, OR OTHERWISE RELATING TO THIS LEASE, SHALL BE IN A FEDERAL OR STATE COURT IN ~~FAIRFIELD COUNTY, CONNECTICUT OR, EXCLUSIVELY AT XFS'S OPTION, IN ANY OTHER FEDERAL OR STATE COURT WHERE THE EQUIPMENT IS LOCATED OR WHERE XFS'S OR YOUR PRINCIPAL PLACES OF BUSINESS ARE LOCATED, AND YOU HEREBY WAIVE ANY RIGHT TO TRANSFER VENUE~~ COOK COUNTY, ILLINOIS. THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION RELATED TO OR ARISING OUT OF THIS LEASE.

**8. AMENDMENT TO AGREEMENT.** The Agreement between the Parties is amended to add the following underlined language:

A. Per copy charges:

Leased Equipment- B&W \$.003 per copy; Color \$.035 per copy

Owned Equipment- B&W \$.0085 per copy; Color N/A (not applicable)

B. Lessor shall provide adequate means to Lessee so Lessor may read equipment meters. No additional fees shall be charged to Lessee for reading such meters.

C. Lessor shall be responsible for providing/installing appropriate software and storage replacement, if necessary, for all leased equipment at no additional cost to Lessee.

D. Per copy fees shall be fixed during the term of this Maintenance Agreement.

**9. AMENDMENT TO AGREEMENT.** The Agreement between the Parties is amended to add the following underlined language:

The Leased Equipment shall be able to perform OCR scanning which shall enable search and edit functions of scanned documents.

**10. OTHER PROVISIONS OF THE LEASE AND AGREEMENT IN EFFECT.** All other terms and conditions of the Lease and Agreement shall remain in full force and effect. If any provision of this Addendum conflicts with a provision of the Lease and/or Agreement, the provision of this Addendum shall prevail and control.

**11. EFFECTIVE DATE.** This Addendum shall be deemed dated and become effective on the date of its execution by the Village Manager of the Village of Oak Park.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –  
SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to the Contract to be signed by their duly authorized representatives on the dates set forth below.

**VILLAGE OF OAK PARK**

**XEROX FINANCIAL SERVICES LLC**

\_\_\_\_\_  
By: Cara Pavlicek  
Its: Village Manager

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

Dated: \_\_\_\_\_, 2017

Dated: \_\_\_\_\_, 2017

**ATTEST**

**ATTEST**

\_\_\_\_\_  
By: Teresa Powell  
Its: Village Clerk

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

Dated: \_\_\_\_\_, 2017

Dated: \_\_\_\_\_, 2017