



YAMAHA

Commercial Customer Finance

CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT (this "Agreement") dated as of February 17, 2015 by and between Yamaha

Motor Corporation, U.S.A. (hereinafter called "Seller") having its principal office and place of business at 6555 Katella Avenue, Cypress, California 90630 and CITY OF GRAND ISLAND

(hereinafter call "Purchaser") having its principal office and place of business at _____

PO BOX 1968, GRAND ISLAND, NE 68802

1. **PROPERTY SOLD.** In consideration of the agreement to purchase by Purchaser and the covenants and agreements hereinafter set forth, Seller hereby sells to purchaser all of the tangible personal property (collectively, the "Equipment") listed on the Equipment Schedule(s) attached hereto as Exhibit A (the "Equipment Schedule").

2. **TERM.** The term of this Agreement shall commence on the date set forth above and shall continue in effect thereafter so long as the Equipment Schedule remains in effect.

3. **PAYMENT.** Purchaser shall pay to Seller, for the Equipment during each month of the Term of the Equipment Schedule, the monthly payment set forth in the Equipment Schedule plus any taxes, fees, etc. associated with proper filings and ownership by Purchaser together with any down payment set forth in the Equipment Schedule. Whenever any payment is not made when due hereunder, Purchaser shall pay Seller interest on such amount at the maximum allowable rate of interest permitted by the law of the state where the Equipment is located.

4. DELIVERY AND ACCEPTANCE; WARRANTY AND DISCLAIMER OF WARRANTIES.

4.1 **Delivery and Acceptance of The Equipment.** Purchaser has selected and shall take delivery of all the Equipment directly from Yamaha Golf-Car Company, a Yamaha Authorized Dealer, or an authorized agent. All costs of delivery are the sole responsibility of Purchaser. Seller shall not be liable for any loss or damage resulting from the delay or failure to have any Equipment available for delivery. Purchaser shall inspect the Equipment to determine that the Equipment is as represented and has been equipped or prepared in accordance with any prior instructions given in writing by Purchaser. Purchaser shall accept the Equipment if it meets the criteria set forth in the preceding sentence and shall execute and deliver a Certificate of Acceptance with respect to each shipment of Equipment. For all purposes of this Agreement, the Equipment will be considered accepted by Purchaser upon the earlier of (i) delivery of the Certificate of Acceptance, and (ii) 10 days after delivery of the Equipment (unless prior to such time Purchaser has properly rejected the Equipment and advised Seller in writing of same). Purchaser authorizes Seller to insert in the Equipment Schedule the serial number and other identifying data of the Equipment.

4.2 **Warranty and Disclaimer of Warranties.** Seller warrants to Purchaser that, so long as Purchaser shall not be in default of any of the provisions of the Equipment Schedule, neither Seller nor any assignee of Seller will disturb Purchaser's quiet and peaceful possession of the Equipment.

In addition, the Equipment is warranted only in accordance with the manufacturer's warranty, which may be amended or modified from time to time only by Seller. OTHER THAN THE WARRANTY AS REQUIRED BY LAW AND EXCEPT AS EXPRESSLY PROVIDED ABOVE, SELLER DISCLAIMS ANY OTHER WARRANTY, EXPRESSED OR IMPLIED, INCLUDING BUT NOT BY WAY OF LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER DISCLAIMS ANY LIABILITY FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES

OR COMMERCIAL LOSSES SUFFERED BY CUSTOMER OR ANY THIRD PARTY. No defect, unfitness, loss, damage or other condition of the Equipment shall relieve Purchaser of the obligation to pay any installment under this Agreement.

5. TITLE AND ASSIGNMENT.

5.1 **Title.** At the time of acceptance, title to the Equipment shall pass to Purchaser. As security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of each and every obligation, covenant, agreement and commitment of Purchaser under this Agreement and/or the Equipment Schedule (including, without limitation, the prompt and complete payment by Purchaser, as and when due and payable, whether at the stated maturity, by acceleration or otherwise, of all amounts owing from time to time by Purchaser to Seller under this Agreement and/or the Equipment Schedule), Purchaser hereby grants Seller a continuing security interest in all of the Equipment and all proceeds thereof (in whatever form). Seller is hereby authorized by Purchaser to file any UCC financing statements or any other documents to evidence, establish, perfect or enforce the security interest granted hereunder.

5.2 **Location, Inspection.** Purchaser shall not move the Equipment from the location specified on the Equipment Schedule without the prior written consent of Seller, which consent shall not be unreasonably withheld.

5.3 Assignment by Seller.

(a) Purchaser does not have the right or power to, and shall not, sell, transfer, assign, pledge (except for short-term rentals to patrons in the ordinary course of business) any of the Equipment without the prior written consent of Seller. Any attempt to sell, transfer, assign, pledge any of the Equipment in violation of the foregoing shall be null and void and of no force or effect.

(b) Seller may assign its rights hereunder, whole or in part, without Purchaser's consent. If Purchaser is given notice of any assignment by Seller, Purchaser agrees to pay directly to such assignee all sums payable hereunder if so directed.

(c) Any assignment or transfer by Seller shall not materially change Seller's duties or obligations under this Agreement.

6. TAXES AND FEES.

6.1 **Taxes and Fees.** Purchaser shall pay all property taxes and sales and use tax due on the Equipment. Purchaser agrees to indemnify and hold harmless the Seller from and against all taxes, fees or other charges of any nature whatsoever (together with any related interest or penalties thereon) now or hereinafter imposed or assessed during the term of the Equipment Schedule by any governmental authority upon or with respect to the Equipment or upon the ordering, purchase, sale, ownership, delivery, leasing, possession, use, operation, return or other disposition thereof or upon the receipts or earnings arising therefrom or upon or with respect to the Equipment Schedule (excepting only Federal, state and local taxes based on or measured by the net income of Seller).

7. CARE, USE AND MAINTENANCE; ALTERATIONS AND ATTACHMENTS.

7.1 Care, Use and Maintenance. Purchaser shall, at its sole expense, at all times during the term of the Equipment Schedule, keep the Equipment clean, serviced and maintained in good operating order, repair, condition and appearance in accordance with Seller's manuals and other instructions received from Seller.

7.2 Alterations and Attachments. Purchaser may, with Seller's prior written consent, make such cosmetic modifications to the Equipment as Purchaser may deem desirable in the conduct of its business; **provided, however,** that such alterations shall not diminish the value or utility of the Equipment, or cause the loss of any warranty thereon or any certification necessary for the maintenance thereof, and provided, further, that such modification shall be removable without causing damage to the Equipment.

8. REPRESENTATIONS AND WARRANTIES OF PURCHASER. Purchaser hereby represents and warrants to Seller that with respect to the Agreement and the Equipment Schedule:

(a) The execution, delivery and performance thereof by the Purchaser have been duly authorized by all necessary corporate action.

(b) The individual executing such was duly authorized to do so.

(c) The Agreement and the Equipment Schedule constitute legal, valid and binding agreements of the Purchaser enforceable in accordance with their respective terms.

(d) The Equipment is personal property and when subjected to use by the Purchaser will not be or become fixtures under applicable law.

(e) Purchaser's name as set forth in the preamble to this Agreement is the exact legal name of Purchaser.

9. DELIVERY OF EQUIPMENT. Purchaser hereby assumes the full expense of transportation and in-transit insurance from the Seller to Purchaser's premises and delivery thereof of the Equipment.

10. INDEMNITY. Purchaser shall and does hereby indemnify and hold Seller and any and all of its assignees harmless from and against any and all claims, costs, expenses, damages, losses and liabilities (including negligence, tort and strict liability), including reasonable attorney's fees, arising out of or in any manner connected with the ownership, selection, possession, leasing, renting, purchase, financing, operation, control, use, maintenance, transportation, storage, repair, delivery, return or other disposition of the Equipment including without limitation, claims for injury to or death of persons and for damage to property. Purchaser agrees to give Seller prompt notice of any such claim or liability.

11. RISK OF LOSS. Seller and Purchaser agree Purchaser shall bear the entire risk of loss, theft, destruction or damage to the Equipment from any cause whatsoever and shall not be relieved of the obligation to pay the total of the monthly payments or any other obligation hereunder because of any such occurrence. Purchaser further agrees to insure the Equipment for full value and to cause Purchaser's insurance carrier to name Seller as a loss payee and provide Seller with loss payee certificate of insurance.

12. DEFAULT. Each of the following shall be an Event of Default under this Agreement (each an "Event of Default"):

(a) Failure by Purchaser to pay Seller any installment payment or other amount payable by Purchaser to Seller under this Agreement and/or the Equipment Schedule as and when the same becomes due and payable; or

(b) To the extent not covered by subsection 12(a) above, failure by Purchaser to comply with any term, covenant, agreement or condition in this Agreement and/or the Equipment Schedule, which failure continues for a period of 10 days after notice of such failure is provided by Seller to Purchaser; or

(c) Any representation or warranty made by Purchaser in the Equipment Schedule, this Agreement, or in any document or certificate furnished to the Seller in connection therewith shall be incorrect, false or misleading in any material respect when so made or furnished.

13. REMEDIES. Upon the occurrence of an Event of Default, Seller, at its option: 1) may declare immediately due and payable any or all amounts payable under this Agreement and/or the Equipment Schedule (whether such amounts are due or not yet due), whereupon the same shall become immediately due and payable by Purchaser to Seller; 2) may proceed by appropriate court action or actions either at law or in equity to enforce performance by Purchaser of the terms and conditions of this Agreement and/or the Equipment Schedule; 3) may recover from Purchaser any and all damages or expenses, including reasonable attorney's fees, which Seller shall have sustained by reason of the Event of Default or on account of Seller's enforcement of its remedies thereunder; and/or 4) may exercise its rights as a secured creditor under the Uniform Commercial Code as enacted in California ("UCC") including, without limitation, taking immediate possession of the Equipment, disposing of such Equipment in accordance with the provisions of the UCC, and collecting for any deficiency as a result of the disposal of the Equipment by Seller together with all reasonable attorneys fees and costs incurred by Seller during the disposal of such Equipment. Seller's rights and remedies under this Agreement and the Equipment Schedule shall be cumulative and in addition to any rights and remedies Seller may have under applicable law and the exercise or failure to exercise any right or remedy shall not preclude Seller from exercising any other right or remedy.

14. MISCELLANEOUS.

14.1 No Waiver. No omission or delay by Seller at any time to enforce any right or remedy reserved to it, or to require performance of any of the terms, covenants or provisions hereof by Purchaser at any time designated, shall be a waiver of any such right or remedy to which Seller is entitled, nor shall it in any way affect the right of Seller to enforce such provisions thereafter.

14.2 Binding Nature. This Agreement and the Equipment Schedule shall be binding upon, and shall inure to the benefit of Seller, Purchaser and their respective successors, legal representatives and assigns.

14.3 Notices. Any notice, request or other communication to either party by the other as provided for herein shall be given in writing and only shall be deemed received upon the earlier of receipt or three days after mailing if mailed postage prepaid by regular or airmail to Seller or Purchaser, as the case may be, at the address for such party set forth in this Agreement or at such changed address as may be subsequently submitted by written notice of either party.

14.4 Severability. In the event any one or more of the provisions of this Agreement and/or the Equipment Schedule shall for any reason be prohibited or unenforceable in any jurisdiction, any such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

14.5 Signed Counterparts. The parties agree that this Agreement may be signed in counterparts, that delivery of an executed counterpart of the signature page to this Agreement by fax, email, or other electronic means shall be as effective as delivery of a manually executed counterpart, and any failure to deliver the original manually executed counterpart sent by fax, email or other electronic means shall not affect the validity, enforceability or binding effect of this Agreement. Notwithstanding any other provision of this agreement the sole original of this Agreement shall be the Agreement bearing the manually executed signature of the Purchaser. The Purchaser, by making any payment required under this Agreement ratifies all of the terms of this Agreement.

14.6 Registration and License. Purchaser shall perform and pay for the titling, registration and licensing (if required by applicable law) of any items or Equipment in the Purchaser's name and all inspections of such items of Equipment which may be required by any governmental authority unless such fees and taxes shall be included in the payment as shown on the Equipment Schedule applicable to any such items of Equipment.

14.7 Involuntary transfer Constitutes Default.

Except for the security interest granted to Seller under this Agreement, Purchaser shall not create, incur, assume or suffer to exist any mortgage, lien, pledge or other encumbrance or attachment of any kind whatsoever upon, affecting, or with respect to the Equipment or of Seller's interest thereunder.

14.8 Statute of Limitations.

Any action by Purchaser against Seller for any default by Seller under this Agreement, including breach of warranty or indemnity, shall be commenced within one year after any such cause of action accrues.

14.9 Entire Agreement.

Seller and Purchaser acknowledge that there are no agreements or understandings, written or oral, between Seller and Purchaser with respect to the Equipment, other than as set forth herein and in the Equipment Schedule and that this Agreement and the Equipment Schedule contains the entire Agreement between Seller and Purchaser with respect thereto. Neither this Agreement nor the Equipment Schedule may be altered, modified, terminated or discharged except by a writing signed by the party against whom such alteration, modification, termination or discharge is sought. The Equipment Schedule is hereby incorporated by reference into this Agreement, and made part of this Agreement, as if fully set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on or as of the day and year first above written.

YAMAHA MOTOR CORPORATION, u.s.a.

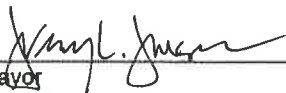
By : Kim Ruiz

Date _____


Signature: 

Title : Vice President

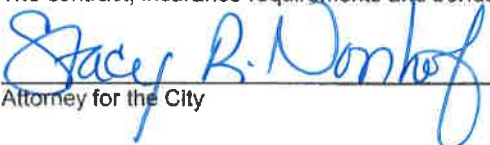
CITY OF GRAND ISLAND, NEBRASKA,

X By 
Mayor

Date 2/25/2015

Attest: 
City Clerk

The contract, insurance requirements and bonds are in due form according to law and are hereby approved.


Attorney for the City

Date 2/25/15

CONDITIONAL SALE EXHIBIT A
EQUIPMENT SCHEDULE # 111487
Dated February 17, 2015

1. This Schedule covers the following property ("Equipment"):
50 YDRA EFI GOLF CARS
2. Location of Equipment:
JACKRABBIT GOLF CLUB
2800 N. SHADY BEND ROAD
GRAND ISLAND, NE 68801
3. The Terms for the Equipment described herein shall commence on April 15, 2015 and shall consist of 60 months from the first day of the month following said date.
4. The down payment of the Equipment shall be \$ \$0.00
5. Payments on the Equipment shall be due on the following schedule.
Schedule of Payments:
5 ANNUAL PAYMENTS IN THE AMOUNT OF \$18,250.00 (APPLICABLE TAXES TO BE BILLED).
STARTING MAY 2015 AND ENDING MAY 2019. DUE THE 15TH DAY OF THE MONTH AS FOLLOWS:
May-15 \$18,250.00 May-16 \$18,250.00 May-17 \$18,250.00 May-18 \$18,250.00 May-19 \$18,250.00

6. The final purchase price for the purchase of the Equipment at the expiration of this Agreement shall be \$108,750.00

7. Other Terms:
Interest Factor: %

Yamaha is not obligated to perform or provide any service, under any circumstances under the terms of this contract. Service is the responsibility of the Purchaser. Failure by Purchaser to maintain or service the equipment consistent with the terms of the Master Agreement shall not relieve Purchaser of the responsibility under the Master Agreement.
includes 2 loaner cars.

Signed Counterparts: The parties agree that this Agreement may be signed in counterparts, that delivery of an executed counterpart of the signature page to this Agreement by fax, email or other electronic means shall be as effective as delivery of a manually executed counterpart, and any failure to deliver the original manually executed counterpart sent by fax, email or other electronic means shall not affect the validity, enforceability or binding effect of this Agreement. Notwithstanding any other provision of this Agreement, the sole original of this Agreement shall be the Agreement bearing the manually executed signature of the Purchasor. The Purchasor, by making any payment required under this Agreement ratifies all of the terms of this Agreement.

This Equipment Schedule and Acceptance Guidelines are issued pursuant to the Agreement dated February 17, 2015
All of the terms and conditions, representations and warranties of the Agreement are hereby incorporated herein and made a part hereof as if they were expressly set forth in this Equipment Schedule .

CITY OF GRAND ISLAND

YAMAHA MOTOR CORPORATION, U.S.A.

By Jeremy L. Jensen
Signature

By Kim Ruiz
Signature

Name: Jeremy L. Jensen
Type or Print

Name: Kim Ruiz
Type or Print

Title: Mayor

Title: Vice President



Service Centers in:
Denver, CO • Kansas City, KS • Billings, MT
Omaha, and Gering, NE
masekgolfcars.com



"Largest Golf Car Distributor in the United States"
A Part of Masek Distribution Inc.

Nebraska
425 M. Street • Gering, NE 69341
Local: 308.436.2100
Toll Free: 800.800.8987
Fax: 308.436.2800

Colorado
5345 Newport Street
Commerce City, CO 80022

February 17, 2015

**The City of Grand Island
Jackrabbit Run Golf Course
PO Box 1968
Grand Island, NE 68802**

**Re: Guarantee of Purchase: 50 Yamaha Golf Cars
Yamaha contract number 111487.**

Gentlemen,

Upon completion of all regular payments, the final payment of \$108,750.00 due in April, 2020, shall be paid either by Masek Golf Car Company, or by Yamaha Golf Cars, and the equipment listed (Fifty 2015 Yamaha YDRA EFI gas golf cars) will become the property of Masek's or Yamaha as the buyer. The agreement is contingent on the condition of the golf cars, which must be intact and equipped as when purchased (normal wear and tear excepted), free of all liens and encumbrances, and in good running order. Vehicles used for purposes other than that intended and understood, or damage due to misuse, abuse, or vandalism, or vehicles with missing equipment will be charged to the Golf Course accordingly.

If the City does NOT want Masek Golf Car Co. to make the final payment on the City's behalf, written notice must be sent to Masek's no later than December 15, 2019, at the address on this letterhead.

Yours truly,

**Joseph P. Masek
President**

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