

# Exhibit 9

**COMMERCIAL/BUSINESS USE VEHICLE LEASE AGREEMENT  
(ZERO TRAC LEASE)**

**Lease Number:**  
**VIN #**

**Lease Date:**

**PARTIES**

**Lessor Name and Address:**  
Rail Delivery Services, Inc.  
8600 Banana Avenue  
Fontana, CA 92335  
Phone: 909-355-4100

**Lessee Name and Address:**

**Phone:**

In this agreement, the words "you" "your" and "yours" refer to Lessee. The words "we" "us" and "our" refer to Lessor, Rail Delivery Services, Inc., a California corporation (sometimes also referred to as "RDS") and any subsequent assignee.

**RECITALS**

Whereas, RDS operates in southern California as a for-hire interstate motor carrier of property under authority originally granted by the Interstate Commerce Commission in Docket MC-162519, and;

Whereas, Lessee is an individual engaged in a sole proprietorship business as an "owner-operator" of a pre-2007 engine powered heavy duty over-the-road three axle tractor who is desirous of continuing in that capacity, and;

Whereas, the California Air Resources Board, ("CARB") has, by regulation, outlawed pre-2007 diesel engine powered over-the-road heavy duty tractors for use in rail and port intermodal interstate service effective January 1, 2013 and in any interstate service within California effective January 1, 2014, and;

Whereas, RDS and Lessee have an existing business relationship whereas Lessee provides Owner-Operator services to RDS pursuant to a Transportation Agreement between the parties in compliance with 49 CFR 376.12, and;

Whereas, Lessee has insufficient funds and credit rating to be able to effectively purchase or lease a CARB compliant vehicle to continue operating within California as an Owner-Operator, and;

Whereas, RDS, in recognition of both Lessee's previous service and the general lack of Owner-Operator's operating CARB 2013 compliant tractors, desires to continue its business relationship with Lessee pursuant to its Transportation Agreement, and, for those reasons is prepared to acquire and thereafter lease a compliant vehicle to Lessee for those purposes as more fully appears in this agreement;

Now therefore, the parties agree as follows:

## LEASE AGREEMENT

This open-end, commercial/business vehicle lease agreement ("Lease Agreement") is a lease of property under which you agree to lease certain over the road heavy trucking equipment as appears in the Schedule attached hereto and incorporated herein by this reference, subject to all of the terms and conditions of this Lease Agreement and that Schedule. This Lease Agreement, its Schedule and any Exhibits and/or other attachments thereto constitute the entire agreement between you and us with respect to the lease of the vehicle described in such Schedule. In the event of any inconsistency or conflict between the terms of the Schedule and the terms of the Lease Agreement, the terms of the Schedule shall control with respect to the vehicle which is the subject of this Lease Agreement.

By signing below and signing the Schedule you agree to lease the vehicle described in Schedule under the terms and conditions set forth herein. By signing below you also certify that in accordance with Section 7701(h) of the Internal Revenue Code of 1986, you intend that more than 50% of the use of the vehicle leased under this Lease Agreement is to be in pursuit of your trade or business as a commercial truck Owner-Operator engaged in interstate transportation of goods for hire.

You are party to a Transportation Agreement with us which said agreement is incorporated herein by this reference. Consideration for and the below market terms of this lease is in substantial part based upon the continued existence of said Transportation Agreement between us and lessee's willingness to continue to provide such services as anticipated therein during the term of this lease.

### 1. OFFICIAL FEES, TAXES AND FINES

Ownership of and legal title to the vehicle identified in the Schedule will remain with us, notwithstanding your use and possession of the vehicle. You agree that your interests in the vehicle being leased are that of a lessee, not an owner. You agree to promptly pay when due all sales, use, property, excise and other taxes and all license, registration or official fees imposed by a government body or agency incurred during the term of the lease, except for those levied on our net income. You must also promptly pay any fines or other fees incurred on the vehicle in connection with its use, such as parking or traffic tickets. We may send certain bills incurred in connection with your use of the vehicle directly to you for direct payment or may pay such bills on your behalf and thereafter bill you for such expenditures. Any and all expenses incurred in the operation or use of this vehicle is your responsibility alone. Should we be required by circumstance, law or otherwise to advance payment of any such expenses we have the right to immediately require you to repay same.

### 2. PERMITTED & PROHIBITED USES

This lease is conditioned upon the vehicle being operated (during the lease term) according to the Transportation Agreement between Lessee and RDS. If, at any time during the lease term you become disqualified from providing the services contemplated by the Transportation Agreement, we may declare the lease to have been breached by that occurrence or we may otherwise condition the lease as we deem best. You will operate the vehicle in compliance with all applicable laws and regulations and will be solely responsible for your failure to do so. Any breach of the Transportation Agreement is deemed to also be a breach of this lease. You will garage the vehicle at an agreed location with us during its periods of non-use. You will not, without our prior consent, remove the vehicle from California. You

will not remove any equipment from the vehicle without our prior consent nor will you add anything to the vehicle without our prior consent. You will not allow any other person than yourself to operate the vehicle without our prior consent. This lease may not be transferred, assigned nor sub-leased to a third party without our written consent. If, at any time requested by us, for any reason whatsoever, you will deliver the vehicle to our facility at 8600 Banana Avenue, Fontana, CA 92335 within not later than four (4) hours following our verbal request to do so and in any event by not later than five (5) o'clock PM of the day in which the request was made.

### 3. VEHICLE MAINTENANCE AND DAMAGE

You agree to maintain this vehicle according to original equipment manufacturer recommended practices and to provide the vehicle to us annually for a comprehensive inspection and each quarter for the inspection and preventative maintenance required by California's Biennial Inspection of Terminals law and the regulations promulgated pursuant to same. We have the right at any time to require that the vehicle be delivered for inspection by personnel of our choosing. If so requested, you will deliver the vehicle to our facility at 8600 Banana Avenue, Fontana, CA 92335 within not later than four (4) hours following our verbal request to do so and in any event by not later than five (5) o'clock PM of the day in which the request was made.

If the vehicle is damaged in any manner you must immediately report such damage to us and permit inspection and repair at our discretion. During the lease you must maintain the vehicle in the same condition, reasonable wear and tear excepted, as it was upon delivery to you. You agree to the installation of a GPS device that will track the vehicles location at all times. Any attempt to disable this device constitutes a breach of this lease and permits us, at our discretion, to recover the vehicle, terminate the lease and otherwise exercise our rights under this lease and the Transportation Agreement between us.

### 4. PAYMENTS & LATE CHARGES

Payments are due according to Schedule 1 hereto. You authorize us to deduct payments due each week from your settlements due under the Transportation Agreement or from any other funds belonging to you under our control. Should insufficient funds belonging to you be available when a payment is due, we may choose to accrue the unpaid balance and deduct it on the date of the next scheduled payment or we may declare the lease to be breached - all at our sole discretion. Should we declare the lease to be breached, the entire balance of the lease payments shall be advanced to currently due status at our discretion. Late charges, amounting to five percent (5%) of the missed payment may be collected or we may choose to waive same.

### 5. SURRENDER OF VEHICLE

This vehicle remains owned by us. You appear on the California Registration Card as Lessee. We may, at any time and for any reason, require you to surrender the vehicle. Your failure to do so will constitute a breach of the lease. Your failure to garage the vehicle where agreed will likewise constitute a breach. Disabling of the GPS unit constitutes a breach. Failure to perform services under the Transportation Agreement constitutes a breach. In any breach we may choose at our sole discretion to waive the breach. It is our intention that you perform this lease fully and at its termination become the owner of the vehicle.

## 6. PAYMENT OBLIGATIONS, HOLDING OVER AND APPLICATION OF PAYMENTS

You must make all payments when due. Your obligation to make payments is not affected by and does not change for any reason, including if the vehicle is stolen, destroyed, seized by a governmental agency, or does not operate or perform as intended or to your satisfaction. If you do not return the vehicle by its scheduled Maturity Date, you must continue to pay monthly payments in the amount regularly billed to you prior to the Maturity Date. However, continued payment does not permit you to continue to retain the vehicle or otherwise vary your obligations hereunder. We may, as an accommodation to you, agree to up to a three week delay in your payment program's first installment. If we choose to do so and you terminate the lease prior to its maturity date, any deferred installments will become immediately due and payable by you. Such accelerated payments may be recovered from any funds due you in our possession and control.

## 7. REQUIRED INSURANCE

We will obtain insurance on your behalf as is set forth in the Transportation Agreement between us including physical damage coverage on the vehicle in its fair market value. You will pay for all of the insurances as set forth in the Transportation Agreement between us. Where circumstances arise which call for the payment of deductibles in connection with such insurance coverages, you are solely responsible for same. We may advance the payment of such deductibles and reimburse ourselves from your funds held by us or to be earned by you in the future.

## 8. OBLIGATIONS AND LIABILITY AT MATURITY DATE

At the scheduled Maturity Date of the Lease Term of the vehicle, if you do not purchase the vehicle pursuant to your right to do so, you must return it to us at the time and place that we specify. This vehicle lease is open-end "TRAC" lease subject to the following terminal rental adjustment clause at the scheduled end of the Lease Term. Upon return of the vehicle, we will sell the vehicle at wholesale or otherwise dispose of it. If you decide not to exercise the purchase option, you agree to pay us, upon demand, the following amounts: (i) any unpaid amounts due under the Lease Agreement and applicable Schedule 1 (including any late charges) as of the time that the vehicle is returned, including unpaid weekly payments; plus (ii) any disposition fee for the vehicle as shown in Schedule 1; plus (iii) any official fees or taxes charged in connection with the termination of the lease of the returned vehicle; plus (iv) the amount by which the residual value as set forth for such vehicle in the Schedule 1 exceeds the net proceeds from the sale or disposition of the vehicle. "Net proceeds" means the proceeds, received by us, after deducting all costs and expenses incurred in connection with the recovery, repair, storage and sale of the vehicle, including any collection costs and reasonable attorney's fees and legal costs we incurred, to the extent not prohibited by applicable law. If the vehicle is a total loss due to damage or unrecovered theft, the net proceeds are the amount of any insurance proceeds we receive from the insurance you maintain on the vehicle. If there are no insurance proceeds from insurance then net proceeds are zero. If the amount of net proceeds exceeds the residual value we will refund to you any amount remaining after applying it to the amount that you owe.

## 9. OPTION TO PURCHASE VEHICLE

You may purchase the vehicle at any time during its Lease Term or at the scheduled Maturity Date (unless a government agency has seized or imposed a lien or other obligation on the vehicle and instructed us not to release the vehicle to you). You may purchase the vehicle by paying us: (i) any

remaining lease payments including any amounts due under Schedule 1; plus (ii) any official fees or taxes, or other fees charged, including any fees we impose, in connection with the purchase of the vehicle; plus (iii) any residual value or Adjusted Lease Balance as appears or can be calculated as shown in Schedule 1.

#### 10. DEFAULT AND REMEDIES

You will be in default if:

- a) You fail to make any lease payment or any other payment by the date it is due;
- b) You fail to keep any other agreement in the Lease Agreement;
- c) The vehicle is stolen, lost, seized or damaged beyond reasonable repair;
- d) You provided false or misleading information to us in connection with this Lease Agreement;
- e) Your name appears on the list of Specially Designated Nationals and Blocked Person published by the U.S. Treasury Department or we are prohibited by any federal or state law, rule, regulation or order from doing business with you;
- f) You become the subject of a bankruptcy or insolvency proceeding;
- g) There is an appointment of a trustee or receiver for your assets or you make an assignment for the benefit of creditors;
- h) You are in default of any schedule or other agreement you have with us;
- i) There are negative material changes which, in our discretion, substantially impact your business operations;
- j) You become incompetent or die;
- k) You materially breach your Transportation Agreement with us;
- l) You fail to return the vehicle in light of any of the circumstances set forth herein or otherwise frustrate our ability to protect the vehicle;

If you are in default, we may do any of the following:

- i. Terminate this Lease Agreement and your right to possess or use the vehicle;
- ii. Declare a default under and terminate any Schedule or other agreement that you have with us;
- iii. Take possession of the vehicle from your property or elsewhere;
- iv. Require you to pay the amounts set forth in Section 11 hereof.
- v. Pursue any other remedy allowed by law;
- vi. Require you to pay all of our expenses for taking these actions, including but not limited to, expenses of repossession, transportation, storage, sale, collection, repair to fair market condition sufficient to meet reasonably anticipated trade terms, including reasonable attorney's fees and legal expenses;
- vii. Proceed to court action to enforce performance by you and/or to recover costs or expenses we incur.

#### 11. EARLY TERMINATION

This Lease Agreement and any accompanying Schedule cannot be cancelled or terminated by you prior to the Maturity Date, except if you purchase the vehicle prior to the Maturity Date as set forth in Section 9 hereof. We will, upon a showing of good cause, as determined in our sole discretion, permit the transfer of this Lease Agreement to a successor lessee acceptable to us provided that, at the time of the

transfer, the Lease Agreement is not in breach and that, at the time of the proposed transfer the vehicle is in good working order and repair and has been maintained as required by Section 3 hereof. Upon completion of such transfer, your ongoing obligations as to the vehicle will be extinguished and you will have no further rights in the vehicle whatsoever.

**12. ADJUSTED LEASE BALANCE**

For purposes of your exercise of an early purchase option of the vehicle outlined in Section 9 hereof, or in the case of your default and our early termination of the applicable Schedule as outlined in Section 10 hereof, the Adjusted Lease Balance is calculated as follows: (i) the Base Monthly Payment as shown on the Schedule times the number of payments from the date of early termination to the scheduled end of the Lease Term; plus (ii) the residual value as shown for the vehicle on the Schedule; plus (iii) a disposition fee or other fees as shown on the Schedule.

**13. JOINT AND SEVERAL LIABILITY**

If we permit a co-lessee to this agreement, each and all of the references to you made herein apply equally to the co-lessee and any liability you have by reason of this Lease Agreement and Schedule shall be joint and several. At our discretion we can release, waive or delay enforcement of this agreement against either of you without affecting in any way the obligations of the other.

**14. INDEMNIFICATION**

You agree to indemnify and hold us harmless from and against any claims, losses, liabilities (including negligence, tort and strict liability), damages, judgments, suits and all legal proceedings, and any and all costs and expenses in connection therewith (including attorney's fees and costs) arising out of or in any manner connected to the manufacture, purchase, ownership, delivery, rejection, transportation, possession, use, storage, operation, condition, maintenance, repair, return or other disposition of the vehicle. You agree that these claims may include claims for injury or death of persons and for damage to property. You will give us prompt notice of such claims immediately following their occurrence.

**15. CREDIT AND PERSONAL INFORMATION**

You authorize us, at any time, to investigate any information you have provided in connection with any agreement with us, including obtaining credit reports and reports on civil and criminal personal history.

**16. CHOICE OF VEHICLE AND DISCLAIMER OF WARRANTIES**

You agree that you have selected the vehicle that you lease hereunder based on your own judgment and after ample opportunity to inspect the vehicle. The fact that we may have participated in your choice by specifying the vehicle types and specifications that we believed most compatible with your duties under your Transportation Agreement with us and that we may have also inspected the vehicle prior to purchase was done solely to minimize our risk of loss in connection with the purchase and lease of the vehicle and not by way of limiting your choice. You agree that you were given reasonable opportunity to find and propose vehicles solely of your choosing as the vehicle being leased hereunder. YOU LEASE THE VEHICLE FROM US "AS-IS" KNOWING THAT THE VEHICLE IS USED AND THAT, ABSENT DISASSEMBLY, SIGNIFICANT PORTIONS OF THE VEHICLES CURRENT CONDITION ARE NOT CAPABLE OF DOCUMENTATION. WE MAKE NO WARRANTY WITH RESPECT TO THIS VEHICLES CONDITION.



**17. RIGHT OF SET OFF**

You give us the continuing right to apply all monies received, without prior notice to you: (i) to amounts due under the Schedule; including the proceeds of any insurance policy or any other lease or obligation entered into by the parties hereto, as well as any claims recoveries against third parties (including but not limited to insurance companies) for loss of or damage to a vehicle.

**18. AGREEMENT TERM AND TERMINATION**

The Schedule becomes effective on the Lease Date shown at the top of that Schedule and shall continue until the date identified as the date for termination of the lease of the vehicle identified in the Schedule. The foregoing notwithstanding, this Agreement shall remain in effect until all terms and conditions of this Lease Agreement, the Schedule and the Transportation Agreement have been satisfied.

**19. COMPLETE AGREEMENT**

This Lease Agreement, the Schedule hereto and the Transportation Agreement incorporated herein collectively represent the entire understanding between the parties and all prior written and/or oral agreements are superseded.

**20. CHOICE OF LAW AND SEVERABILITY**

You agree that the law of the state of California will apply to this agreement and that should any of its provisions be voided by a court that such provisions will be deleted and the remainder of the agreement enforced as written, so as to fulfill the purposes of the agreement.

**21. NO WAIVER BY US**

If we delay or refrain from exercising our rights under this Lease Agreement or Schedule, we do not lose those rights. If we accept partial payments or partial performance of conditions from you, we do not waive our rights to receive full and timely payments and performance.

**22. TRAC LEASE DISCLOSURE AND ACKNOWLEDGEMENT**

By signing this Lease Agreement, you certify that in accordance with Section 7701(h) of the Internal Revenue Code of 1986, you intend that this vehicle is intended to be used no less than 50% for business purposes. You agree that the sole intended use of this vehicle is to facilitate your business as an Owner-Operator under contract to us in connection with the Transportation Agreement between us. You acknowledge that for federal income tax reporting purposes, you will not be treated as the vehicle owner and that we will be both the registered owner and will retain the right to depreciation of the vehicle. You acknowledge that the vehicle will be registered in California with the Department of Motor Vehicles and that we will appear on the Certificate of Title and Registration as the vehicle's legal owner and that you will appear as the Lessee.



**23. TRAC LEASE, END-OF-LEASE LIABILITY**

The Schedule hereto provides that you may purchase the vehicle on the Maturity Date for the amount appearing on the Schedule. If you fail to purchase the vehicle we will hold you responsible for 100% of the amount by which the residual value for the vehicle set forth in the Schedule exceeds the net proceeds of the sale or disposition of the vehicle.

**24. ARBITRATION OF DISPUTES**

This lease concerns a vehicle that is intended solely to be used in interstate commerce. In your capacity as a commercial truck driver, you are subject to federal regulation in all aspects of your business conduct as are we and a licensed interstate motor carrier. Our business relationship that forms the basis for our willingness to enter into this Lease Agreement is written and conforms to applicable federal regulations (49 CFR 376.12 et seq.).

Disputes arising under or by reason of the transaction reflected in this agreement shall be arbitrated under the provisions of the Federal Arbitration Act (9 USC 1, et seq.). Your right to jury trial is hereby waived. Arbitration may only be conducted by you as an individual and not as a representative of a class. Arbitration claims will be brought before the American Arbitration Association at Los Angeles, California or at another venue as we may jointly agree in writing. We may advance any costs of the arbitration subject to ultimate allocation of such costs between us as the arbitrator may decide. The arbitrator's award shall be final and binding on both of us. The arbitrator may include the prevailing party's reasonably incurred attorney's fees and costs in his or her award.

**25. EXECUTION AND ACKNOWLEDGEMENTS**

This Lease Agreement, Schedule and associated documents as are identified hereon are executed at Fontana, San Bernardino County, California on the date(s) appearing adjacent to the signatures of the parties hereto. Lessee acknowledges that he has read the Lease Agreement and Schedule and has had the opportunity to seek and receive both legal and income tax advice in connection with the lease.

Lessee acknowledges that he has received a complete duplicate copy of this agreement and Schedule and that he has taken possession of the vehicle set forth in the Schedule and that it was received in good working order and is fit for the business purposes intended.

LESSEE

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

LESSOR

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

RAIL DELIVERY SERVICES, INC.  
By Greg P. Stefflre, CEO