

financially successful, and with each day that passed, Plaintiffs and Class members grew another day older and deeper in debt. At the end of their relationship with Defendants, Plaintiffs and Class members often ended up “owing their soul to the company store.” On behalf of themselves and all others similarly situated, Plaintiffs seek declaratory, injunctive and monetary relief and allege as follows:

NATURE OF THE ACTION

1. This action is a class action brought to recover for the injuries sustained by Plaintiffs and Class members as a result of Defendants’ violations of the Kansas Consumer Protection Act and Defendants’ violations of Federal Motor Carrier Safety Administration “Truth in Leasing” regulations.

2. Plaintiffs and Class members are independent truck drivers known as owner-operators. Owner-operators are small business men and women who own or control motor vehicle equipment (hereinafter “a truck” or “the truck”) used to transport freight over the nation’s highways.

3. Owner-operators lease or otherwise provide trucks and other equipment and services to federally regulated motor carriers that have the requisite legal operating authority under United States Department of Transportation (“DOT”) regulations to enter into contracts with shippers for the transport of property.

4. Collectively, Defendants are engaged in the business of leasing trucks to owner-operators for use in interstate and intrastate transport of freight and are engaged in the business of transporting property in trucks leased from owner-operators, including Plaintiffs and Class members, as a federally regulated motor carrier under authority issued by the DOT (US DOT No. 315503, Docket No. MC-197897).

5. Defendants promised each Plaintiff and Class member the ability to have a career and make a living. In order to have a career and make a living as an owner-operator, each Plaintiff and Class member needed to be able to drive a certain number of miles in order to be profitable.

6. Defendants represented to Plaintiffs and Class members that they would drive an average of 2,500 to 3,000 miles a week.

7. Defendants, as dispatcher, controlled the trips assigned to Plaintiffs and Class members and therefore also controlled the amount of miles that Plaintiffs and Class members were assigned to drive.

8. Defendants prevented and/or precluded Plaintiffs and Class members from driving a sufficient and/or reasonable number of miles to be successful.

9. Because of Defendants' actions in refusing to allow Plaintiffs and Class members to drive any reasonable number of miles, each Plaintiff and Class member was unable to earn a living as an owner-operator, even though Defendants told Plaintiffs and Class members that Defendants were "committed to [Plaintiffs' and Class members'] financial and personal success" and otherwise represented to Plaintiffs and Class members that they would earn a living as an owner-operator.

10. In addition to Defendants' refusal to allow Plaintiffs and Class members to each earn a living, Defendants damaged Plaintiffs and Class members by violating federal laws and regulations.

11. The relationship between owner-operators and regulated carriers generally is regulated by the DOT under 49 U.S.C. § 14102 *et seq.* and 49 C.F.R. Part 376. Under federal law and regulations, authorized motor carriers like Defendants may provide

authorized transportation in equipment they do not own only if that equipment is covered by a written lease meeting the requirements set forth by 49 U.S.C. § 14102 and by regulation, including the written lease requirements set forth in 49 C.F.R. § 376.12. A person damaged by an authorized carrier's failure to comply with the federal leasing regulations may bring an action seeking injunctive relief and damages pursuant to 49 U.S.C. § 14704(a)(1) and (2), and may recover attorney's fees under 49 U.S.C. § 14704(e). During all times material to this case, Defendants are and have been an "authorized carrier" within the meaning of 49 C.F.R. § 376.2(a).

JURISDICTION AND VENUE

12. Jurisdiction over this matter is granted to this court by 28 U.S.C. § 1332(d) (diversity of citizenship) as the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs, and is a class action in which any member of the Class is a citizen of a State different from any Defendant.

13. In addition, the causes of action alleged herein arise under the laws of the United States regulating commerce and the activities of motor carriers engaged in the transportation of property in interstate commerce, including 49 U.S.C. §§ 13501, 14102 and 14704(a)(1) and (2), and 49 C.F.R. Part 376. Jurisdiction over this matter is granted to this court by 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1337 (proceedings arising under an Act of Congress regulating commerce). This court has supplemental jurisdiction under 28 U.S.C. § 1367 over all other claims asserted in this petition because those other claims are so related to the federal claims subject to original jurisdiction asserted in this action that they form a part of the same case or controversy under Article III of the United States Constitution.

14. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b). Defendants maintain their principal place of business within this judicial district. Further, a substantial part of the events giving rise to the claims raised herein occurred within this district.

PARTIES

15. Plaintiff Candace Fox is a resident of the State of Illinois and is an experienced truck driver. Like each of the similarly situated members of the potential class, Fox, as lessee, contracted with Defendants to lease a truck from Defendants. On the same day that Fox leased the truck from Defendants, Fox then entered into an Independent Contractor Agreement under which Fox leased the truck, with driver services, to Defendants.

16. Plaintiff Anthony Gillespie is a resident of the State of South Carolina and is an experienced truck driver. Like each of the similarly situated members of the potential class, Gillespie, as lessee, contracted with Defendants to lease a truck from Defendants. On the same day that Gillespie leased the truck from Defendants, Gillespie then entered into an Independent Contractor Agreement under which Gillespie leased the truck, with driver services, to Defendants.

17. Plaintiff Charles Schreckenbach is a resident of the State of Iowa and is an experienced truck driver. Like each of the similarly situated members of the potential class, Schreckenbach, as lessee, contracted with Defendants to lease a truck from Defendants. On the same day that Schreckenbach leased the truck from Defendants, Schreckenbach then entered into an Independent Contractor Agreement under which Schreckenbach leased the truck, with driver services, to Defendants.

18. Defendant TransAm Leasing, Inc., is a Kansas corporation which may be served by serving its resident agent, SBLSG Registered Agent, LLC, 8675 W. 96th Street Suite 208, Overland Park, Kansas 66212. TransAm Leasing is principally engaged in the business of leasing motor vehicle equipment used by for-hire motor carriers for the interstate and intrastate transport of freight. TransAm Leasing's principal place of business is located in Olathe, Kansas.

19. Defendant TransAm Trucking, Inc., is a Missouri corporation which may be served by serving its resident agent, SBLSG Registered Agent, LLC, 8675 W. 96th Street Suite 208, Overland Park, Kansas 66212. TransAm Trucking is a federally regulated motor carrier engaged in the interstate and intrastate transport of freight. TransAm Trucking's principal place of business is located in Olathe, Kansas.

20. Each of the Defendants named herein acted as the agent or joint-venturer of or for every other Defendant with respect to the acts, violations, and common course of conduct alleged herein.

CLASS ACTION ALLEGATIONS

21. Each Plaintiff brings this action on behalf of him or herself and as a class action under the provisions of Rule 23 of the Federal Rules of Civil Procedure on behalf of the members of the following Plaintiff Class:

All persons, including entities, who operated under an Equipment Lease Agreement and an Independent Contractor Agreement with Defendants between November 2, 2009, through the Present.

22. The prerequisites of Fed. R. Civ. P. 23(a) are satisfied:

- a. Numerosity: Plaintiffs believe there are thousands of owner-operators who are members of this Class, the exact number and their identities being known to Defendants. These owner-operators are residents of various states and travel continuously and are, therefore, widely dispersed geographically. Thus, joinder of all potential Class Members would be impracticable.
- b. Common Questions Predominate: There are questions of law and fact common to the Class, including, but not limited to:
 - i. Whether Defendants' acts and practices are unconscionable and/or constitute deceptive acts and practices.
 - ii. Whether the Independent Contractor Agreement, as drafted by Defendants and signed by Plaintiffs and Class members, violates federal Truth in Leasing regulations.
- c. Typicality: Plaintiffs' claims are typical of the claims of the members of the Plaintiff Class because each Plaintiff, like each Class member, contracted with Defendants by signing an Equipment Lease Agreement and an Independent Contractor Agreement, and therefore Plaintiffs' claims arise from the same common course of conduct giving rise to the claims of the members of the Class and the relief sought is common to the Class.
- d. Fair and Adequate Representation: Plaintiffs will fairly and adequately protect the interests of the Class in that Plaintiffs' interests are aligned with, and not antagonistic to, those of the other members of

the Class and Plaintiffs have retained counsel competent and experienced in the prosecution of class actions to represent themselves and the Class.

23. Class Certification is Appropriate Under Rule 23(b)(2): Defendants have acted and/or failed to act on grounds generally applicable to the potential class as a whole, as described further herein. Thus, injunctive and declaratory relief is appropriate with respect to the potential class as a whole, making class certification appropriate under Fed. R. Civ. P. 23(b)(2). Further, the restitutionary relief sought is incidental to the requested declaratory and injunctive relief because it:

- a. Will flow directly to the entire class from the requested declaration of regulatory violations;
- b. Is capable of computation by reference only to objective standards;
- c. Is capable of computation without reference to intangible, subjective differences between Class Members;
- d. Does not introduce new and substantial legal or factual issues;
- e. Can be calculated (through use of standardized formulas or restitution grids) by reference to data readily available within Defendants' normal business records; and
- f. Will not require additional member-specific hearings.

24. Class Certification is Appropriate Under Rule 23(b)(3): The questions of law and fact enumerated in the counts below are common to all Class Members, and they predominate over any questions affecting only individual members. A class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

Individual joinder of all damaged Class members is impractical. Prosecution as a class action will eliminate the possibility of repetitious litigation. The damages sought herein suffered by individual class members are relatively small, given the expense and burden of individual prosecution of the claims asserted in this litigation. Absent a class action, it would not be feasible for Class members to seek redress for the violations of law herein alleged. Further, individual litigation presents the potential for inconsistent or contradictory judgments and would greatly magnify the delay and expense to all parties and to the court system. Therefore, a class action presents far fewer case management difficulties and will provide the benefits of unitary adjudication, economy of scale and comprehensive supervision by a single court.

GENERAL ALLEGATIONS

Defendants' Advertising and Representations

25. Defendants maintain a presence on the Internet through the website <http://www.transamtruck.com>. Through this website, Defendants advertise for and recruit company drivers and owner-operators to further Defendants' business, including Defendants' business in the interstate and intrastate transportation of freight.

26. On their website, Defendants represent that their "founding philosophy is to treat people fairly and do what's right." (<http://www.transamtruck.com/Our-Company/About-TransAm-Trucking>.)

27. Defendants represent in a video located on their website that "Overall, our drivers can easily make more money per year than at other carriers."

28. On their website, Defendants state that "TransAm treats you right. With TransAm's great pay scale, miles, stop pay and bonuses, first-year student drivers earn an

average of over \$40,000 per year. Drivers with experience earn an average of \$52,000 per year and TransAm's Independent Contractors gross an average of \$138,000 per year.”
(<http://www.transamtruck.com/Drivers-And-Students/Hiring-Area-Map.>)

29. In a video on their website, Defendants represent that they keep drivers moving an average of 2,500 to 3,000 miles a week.

30. Defendants represent on their website that they have “a superior leasing package that rivals all other leasing programs.” As a part of “the best leasing program in the industry,” Defendants offer “a lease completion incentive and a buy-out option below market value.” (<http://www.transamtruck.com/Leasing-Services/About-TransAm-Leasing.>)

31. Defendants represent in a video on their website that Defendants’ “independent contractors make over 138,000 dollars per year on average.”

32. Defendants represent on their website that those leasing equipment from Defendants “have the opportunity to become independent contractors” with Defendants. This “exceptional owner/operator program” includes: Starting at 84 cents per mile loaded and empty with annual rate increases based on safety; Paid base plates and permits; Free paperwork scanning service (truck stop and in-cab); Access to a discount fuel network; Fuel surcharge paid on loaded and empty miles; Paid reefer fuel; Paid tolls; No Hazmat; Easy bonuses; No touch freight; Being an independent business operator!
(<http://www.transamtruck.com/Leasing-Services/About-TransAm-Leasing.>)

33. Because “your success is important,” Defendants represent on their website that they “have a full staff of personnel focused on your needs. Professional personnel help you though the process of signing your lease and selecting the right truck

for you. Highly-trained Planners work to get you the miles you need to be successful while one-on-one advice from a Business Development Manager is just a phone call away. Have a question about taxes? A CPA is on hand once a week at the Olathe terminal or can be reached via phone during normal business hours.”
(<http://www.transamtruck.com/Leasing-Services/Committed-to-Your-Success>.)

34. Defendants represent on their website that they have “implemented an intelligent route solution program to reduce the number of out of route miles generated by manual trip planning. With the reduction in unnecessary miles, TransAm’s drivers complete trips and are dispatched on other loads more quickly. Additionally, one of the ‘green’ benefits includes a reduction in the amount of diesel fuel used per trip. In conjunction with the route solution, TransAm drivers are also provided with a fuel solution. This solution locates the most economical fuel locations along the driver’s route and calculates the optimal amount of fuel to purchase at each location.”
(<http://www.transamtruck.com/Our-Company/Sustainability>.)

35. On their website, Defendants represent that “All trucks have condo cabs, dual bunks, refrigerators, CD players, Auxiliary Power Units, inverters and are satellite radio-equipped.” (<http://www.transamtruck.com/Drivers-And-Students/For-Experienced-Divers>.)

36. Defendants represent on their website that they offer “a fuel optimization program that identifies the best fuel prices along the routes that we run. As an independent contractor, you can opt to have access to the optimization solutions which are transmitted to you when you are dispatched. This program provides you the

opportunity to save between \$.04 and \$.08 per gallon.”

(<http://www.transamtruck.com/Leasing-Services/Committed-to-Your-Success>.)

37. On their website, Defendants represent that “All leased tractors come equipped with Tri-Pac Auxiliary Heating/Cooling Temperature Management Systems. Auxiliary Power Units eliminate the need to idle your truck and consume only 20% of the fuel that the tractor consumes while idling.” (<http://www.transamtruck.com/Leasing-Services/Committed-to-Your-Success>.)

38. In a video on their website, Defendants represent that “every TransAm rig comes equipped with an auxiliary power unit, or APU.”

39. Defendants also represent in a video on their website that Defendants “include an on-board navigation system in every truck. . . . This built-in feature means never again forgetting your own GPS system or hassling with the cable set-up and security of portable systems.”

40. In a video on their website, Defendants represent that their no-touch freight policy means that Defendants pay for all loading and unloading.

41. Defendants represent in a video on their website that in keeping with their environmental commitments, Defendants equip each truck with an auxiliary power unit.

42. In a video on their website, Defendants represent that they pay for practical, safe-route mileage, not shortest-route mileage, which is common with many carriers.

43. Defendants promote their business with direct mail pieces (“mailers”).

44. In their mailers, under the headline "Maximize Your Earning Potential," Defendants represent that they give Plaintiffs and Class members "an excellent cent-per-mile pay scale and the miles you need to achieve your earning potential."

45. Defendants represent in their mailers that their first-year experienced drivers can earn over \$50,000 per year.

46. Defendants represent in their mailers that their independent contractors gross an average of \$138,000 per year.

Defendants' Orientation and Plaintiffs'/Class Members' Decisions to Become Independent Contractors with Defendants

47. Generally, potential drivers contact Defendants about driving for Defendants, either as company drivers or as independent contractors. If Defendants approve the potential driver, Defendants invite the potential driver to orientation.

48. At orientation, Defendants pitch, encourage, promote, push, persuade, and urge potential drivers to become independent contractors instead of company drivers with Defendants.

49. As a part of orientation, and before the execution of any written agreements, Defendants give each potential driver a brochure and/or folder describing Defendants' Leasing Program ("Leasing Program Information Folder"). A model of the Leasing Program Information Folder is attached hereto as Exhibit A and is incorporated herein by reference.

50. In the Leasing Program Information Folder, Defendants make representations including, but not limited to:

- a. "On average [*sic*], TransAm Trucking's owner/operators make \$40,000 more than company drivers over a four-year period."

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- b. Defendants have the “Best Leasing Program and Owner/Operator Benefits in the Industry.”
- c. Defendants’ “superior leasing package” includes, but is not limited to:
 - i. “Lease new or used tractors with reasonable payments and full extended warranty”
 - ii. “Lease completion incentive”
 - iii. “Buy-out option below market value”
 - iv. “Tax advantages”
- d. Defendants’ “exceptional owner/operator benefits” include, but are not limited to:
 - i. “84 cents per mile loaded & empty”
 - ii. “Great miles”
 - iii. A contract Plaintiffs and Class members can understand
 - iv. “Paid base plates & permits”
 - v. “Discount fuel network”
 - vi. “Fuel surcharge program”
 - vii. “100% lump sum reimbursement”
 - viii. “Make between \$100,000 - \$200,000 per year.”
 - ix. “Paid reefer fuel”
 - x. “Paid tolls”
 - xi. “99% no touch freight”
 - xii. “No hazmat”
 - xiii. “Stop pay \$40”

- xiv. "Tax advantages"
- xv. "Easy bonuses"
- e. Defendants offer great equipment for lease.
- f. Defendants set up a performance escrow that "bears interest well above a standard savings account."
- g. Defendants offer a lease completion incentive of three cents per mile for all odometer miles, which "can be applied toward the purchase of the tractor or can be taken as a cash settlement."
- h. "All tractors come equipped with Tri-Pac Auxiliary Heating/Cooling Temperature Management Systems [APUs]."
- i. Defendants set up a maintenance escrow designed "to ensure that maintenance costs are a manageable part of your business."
- j. All new model equipment "comes with a four-year, 525,000 mile bumper-to-bumper warranty and up to 550,000 mile engine warranty (including injectors, turbos and water pump)."
- k. Defendants are "committed to your financial and personal success."

51. Each Plaintiff and Class member became an owner-operator and contracted with Defendants instead of pursuing a position as a company driver with Defendants.

**The Contractual Structure of Defendants' and
Plaintiffs'/Class Members' Relationship**

52. As an owner-operator, each Plaintiff and Class member entered into multiple contracts with Defendants.

53. The first contract each Plaintiff and Class member entered into with Defendants, titled the "Equipment Lease Agreement," is an agreement pursuant to which each Plaintiff and Class member leased from Defendants, with the option to purchase, a truck. A model of the Equipment Lease Agreement entered into by and between Defendants and each of the named Plaintiff owner-operators, which is typical of each Class member's Equipment Lease Agreement with Defendants, is attached hereto as Exhibit B and is incorporated herein by reference.

54. After each Plaintiff and Class member signed the Equipment Lease Agreement, each Plaintiff and Class member signed an Addendum to Equipment Lease Agreement under which Plaintiffs rented from Defendants, for an additional fee payable weekly, an Auxiliary Power Unit ("APU") for use in the truck leased from Defendants. A model of the Addendum to Equipment Lease Agreement entered into by and between Defendants and each of the named Plaintiff owner-operators, which is typical of each Class member's Addendum to Equipment Lease Agreement with Defendants, is attached hereto as Exhibit C and is incorporated herein by reference.

55. Each Plaintiff and Class member entered into a written agreement with Defendants, titled the "Independent Contractor Agreement," pursuant to which each Plaintiff and Class member leased a truck and the services of a qualified driver to Defendants as a carrier in the transport of property. The truck that each Plaintiff and Class member leased to Defendants is the same truck each Plaintiff and Class member

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leased from Defendants under the Equipment Lease Agreement. A model of the Independent Contractor Agreement entered into by and between Defendants and each of the named Plaintiff owner-operators, which is typical of each Class member's Independent Contractor Agreement with Defendants, is attached hereto as Exhibit D and is incorporated herein by reference.

56. Pursuant to the Independent Contractor Agreement, Plaintiffs and Class members, on behalf of and at the direction of Defendants, transport and deliver property from pick-up points to points of delivery. Plaintiffs and Class members are generally compensated based upon a flat rate per mile. Plaintiffs and Class members receive their sole payment in the form of "settlement checks" issued to Plaintiffs and Class members by Defendants, usually on a weekly basis.

57. The terms and conditions of the Independent Contractor Agreement are regulated under 49 C.F.R. § 376 *et seq.* because the Independent Contractor Agreement constitutes a "lease" within the meaning of 49 C.F.R. § 376.2(e).

58. The Independent Contractor Agreement does not meet the requirements of 49 C.F.R. § 376.12. Numerous terms required by § 376.12 to be set forth in such an agreement are not set forth in the Independent Contractor Agreement.

59. For example, 49 C.F.R. § 376.12(h) requires the Independent Contractor Agreement set forth all items that may be initially paid for by Defendants but ultimately deducted from Plaintiffs' and Class members' compensation at the time of payment or settlement, together with a recitation as to how the amount of each item is to be computed. Despite the requirements of § 376.12(h), Defendants do not set forth in the Independent Contractor Agreement many items that they ultimately deduct from

Plaintiffs' and Class members' compensation, including, but not limited to, collision, fire, and theft (physical damage) insurance, a PrePass, a fuel optimizer, handloading, breakdown premiums, buy-down insurance, and rider insurance. Defendants further fail to comply with 49 C.F.R. § 376.12(h) by failing to provide any recitation as to how the amount of each deduction is to be computed.

60. By way of further example, 49 C.F.R. § 376.12(j)(1) requires Defendants to specify in the Independent Contractor Agreement the amount which will be charged back to Plaintiffs and Class members for insurance. Contrary to 49 C.F.R. § 376.12(j)(1), Defendants do not specify the amount charged back to Plaintiffs and Class members for collision, fire, and theft (physical damage) insurance. Also contrary to 49 C.F.R. § 376.12(j)(1), Defendants set forth one amount in the Independent Contractor Agreement but charge back a different, higher, amount to Plaintiffs and Class members for bobtail and deadhead insurance and occupational accident/workers' compensation insurance.

61. Further, in direct contravention of 49 C.F.R. § 376.12(h), Defendants did not provide Plaintiffs and Class members copies of those documents necessary to determine the validity of the charges Defendants deducted from Plaintiffs' and Class members' compensation.

62. Other terms in the Independent Contractor Agreement conflict with requirements of § 376.12. For example, 49 C.F.R. § 376.12(i) requires that "[t]he lease shall specify that the lessor is not required to purchase or rent any products, equipment, or services from the authorized carrier as a condition of entering into the lease arrangement." Despite this requirement, Defendants require Plaintiffs and Class members

to purchase and/or rent satellite services from Defendants in the form of a "satellite communications system usage fee" of Fifteen Dollars (\$15.00) per week, in direct conflict with 49 C.F.R. § 376.12(i).

Plaintiffs'/Class Members' Damages Due to Defendants' Actions

63. Plaintiffs and Class members did not make over \$138,000 per year on average, nor did they easily make more money per year with Defendants than at other carriers.

64. Plaintiffs and Class members did not make between \$100,000 and \$200,000 per year.

65. Plaintiffs and Class members did not make, on average, more than \$40,000 per year more than company drivers over a four-year period.

66. Plaintiffs and Class members did not earn over \$50,000 per year.

67. Rather, Plaintiff Schreckenbach drove almost 45,000 miles for Defendants in four months but made less than \$5,000.

68. Plaintiff Gillespie drove almost 31,000 miles for Defendants in approximately 3 months but made less than \$4,200.

69. Defendants did not give Plaintiffs and Class members a reasonable number of miles and prevented them from maximizing their earning potential.

70. Defendants' actions damaged Plaintiffs and Class members both economically and non-economically.

71. Plaintiffs and Class members expended both their money and time in an effort to make a living and to be a financial and personal success. In doing so, Plaintiffs and Class members materially contributed to Defendants' success in the trucking

industry. In return, Defendants prevented Plaintiffs and Class members from attaining any measure of success and preempted Plaintiffs and Class members from making a living as owner-operators with Defendants.

72. Defendants have engaged in a pattern and practice of ignoring their obligations under 49 C.F.R. Part 376, resulting in violations of those regulations and damages to Plaintiffs and Class members.

COUNT I – DECEPTIVE ACTS AND PRACTICES
(in violation of K.S.A. 50-626(a) and (b))

73. Plaintiffs restate and incorporate by reference the previous paragraphs of this Class Action Complaint as if fully set forth herein.

74. Plaintiffs and Class members are consumers within the meaning of K.S.A. 50-624(b).

75. Defendants are suppliers within the meaning of K.S.A. 50-624(l).

76. The transactions between Plaintiffs and Class members on one side and Defendants on the other side are consumer transactions under K.S.A. 50-624(c).

77. K.S.A. 50-626(a) prohibits suppliers from engaging in any deceptive act or practice in connection with a consumer transaction.

78. Defendants have engaged in numerous deceptive acts and practices in connection with their consumer transactions with Plaintiffs and Class members.

79. By way of example, and not by way of limitation, Defendants represented, knowingly or with reason to know, that Defendants' independent contractors benefitted because they make over \$138,000 per year on average. Defendants did not rely upon and/or possess a reasonable basis for making such representation.

80. By way of example, and not by way of limitation, Defendants represented, knowingly or with reason to know, that Defendants' independent contractors benefitted because they make between \$100,000 and \$200,000 per year. Defendants did not rely upon and/or possess a reasonable basis for making such representation.

81. By way of example, and not by way of limitation, Defendants represented, knowingly or with reason to know, that Defendants' independent contractors benefitted because on average, they make \$40,000 more than company drivers over a four-year period. Defendants did not rely upon and/or possess a reasonable basis for making such representation.

82. By way of example, and not by way of limitation, Defendants represented that Defendants' independent contractors make over \$138,000 per year on average. Defendants knew or had reason to know that such representation has not been proven or otherwise substantiated. Defendants did not rely upon and/or possess the type and amount of proof or substantiation represented to exist through the citation of such a statistic.

83. By way of example, and not by way of limitation, Defendants represented that Defendants' independent contractors make between \$100,000 and \$200,000 per year. Defendants knew or had reason to know that such representation has not been proven or otherwise substantiated. Defendants did not rely upon and/or possess the type and amount of proof or substantiation represented to exist through the citation of such a statistic.

84. By way of example, and not by way of limitation, Defendants represented that Defendants' independent contractors make \$40,000 more than company drivers over a four-year period. Defendants knew or had reason to know that such representation has not been proven or otherwise substantiated. Defendants did not rely upon and/or possess

the type and amount of proof or substantiation represented to exist through the citation of such a statistic.

85. By way of example, and not by way of limitation, Defendants willfully used, in any oral and/or written representation, exaggeration, falsehood, innuendo or ambiguity as to a material fact when they stated that Defendants' independent contractors make over \$138,000 per year on average.

86. By way of example, and not by way of limitation, Defendants willfully used, in any oral and/or written representation, exaggeration, falsehood, innuendo or ambiguity as to a material fact when they stated that "exceptional owner/operator benefits" included making between \$100,000 and \$200,000 per year.

87. By way of example, and not by way of limitation, Defendants willfully used, in any oral and/or written representation, exaggeration, falsehood, innuendo or ambiguity as to a material fact when they represented that "On avarage [*sic*], TransAm Trucking's owner/operators make \$40,000 more than company drivers over a four-year period."

88. By way of example, and not by way of limitation, Defendants willfully used, in any oral and/or written representation, exaggeration, falsehood, innuendo or ambiguity as to a material fact when they represented that "Highly-trained Planners work to get you the miles you need to be successful."

89. By way of example, and not by way of limitation, Defendants willfully used, in any oral and/or written representation, exaggeration, falsehood, innuendo or ambiguity as to a material fact when they represented that Plaintiffs and Class members

had the opportunity to maximize their earning potential with “an excellent cent-per-mile pay scale and the miles you need to achieve your earning potential.”

90. By way of example, and not by way of limitation, Defendants willfully used, in any oral and/or written representation, exaggeration, falsehood, innuendo or ambiguity as to a material fact when they represented that Defendants keep drivers moving an average of 2,500 to 3,000 miles a week.

91. By way of example, and not by way of limitation, Defendants willfully failed to state a material fact, and/or willfully concealed, suppressed, or omitted a material fact when they failed to state and/or concealed, suppressed, or omitted the material fact that Plaintiffs and Class members would not be allowed to drive and/or receive the opportunity to drive a reasonable number of miles for Defendants.

92. By way of example, and not by way of limitation, Defendants willfully failed to state a material fact, and/or willfully concealed, suppressed, or omitted a material fact when they failed to state and/or concealed, suppressed, or omitted the material fact that Plaintiffs and Class members risked not making over \$50,000 per year, and/or \$52,000 per year, and/or between \$100,000 to \$200,000 per year, and/or \$138,000 per year on average, and/or \$40,000 more than company drivers over a four-year period on average.

93. By way of example, and not by way of limitation, Defendants willfully failed to state a material fact, and/or willfully concealed, suppressed, or omitted a material fact when they failed to state and/or concealed, suppressed, or omitted the material fact that Plaintiffs and Class members risked owing Defendants money, even after several months of work.

94. By way of example, and not by way of limitation, Defendants represented, knowingly or with reason to know, that all trucks it leased to Plaintiffs and Class members “have” or come “equipped with” APUs.

95. Defendants knew or had reason to know that the trucks it leased to Plaintiffs and Class members did not have or come equipped with APUs because Defendants required each Plaintiff and Class member to sign an Addendum to the Equipment Lease Agreement after each Plaintiff and Class member signed the Equipment Lease Agreement. Under the Addendum to Equipment Lease Agreement, each Plaintiff and Class member was required to pay Defendants an amount each week for the APU in addition to the weekly truck lease payment already payable by each Plaintiff and Class member to Defendants under the Equipment Lease Agreement.

96. For example, Plaintiffs Fox, Gillespie, and Schreckenbach each owed an additional \$45 weekly for the APU, despite Defendants’ deceptive representations that the trucks they had already leased from Defendants had or came equipped with an APU.

97. As a direct and proximate result of Defendants’ violations of K.S.A. 50-626, Plaintiffs and Class members have suffered financial injury, and Defendants have been unjustly enriched.

WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of those similarly situated, pray for judgment in their favor and against Defendants on Count I of this Class Action Complaint; for a declaratory judgment that Defendants’ deceptive acts and practices violate the Kansas Consumer Protection Act; for an injunction or restraining order against Defendants; for damages for each count and each violation in an aggregate amount greater than forty-five million dollars (\$45,000,000); for reasonable

attorney fees; for costs; and for such other and further relief as the Court may deem just and proper.

COUNT II – UNCONSCIONABLE ACTS AND PRACTICES
(in violation of K.S.A. 50-627(a))

98. Plaintiffs restate and incorporate by reference the previous paragraphs of this Class Action Complaint as if fully set forth herein.

99. Plaintiffs and Class members are consumers within the meaning of K.S.A. 50-624(b).

100. Defendants are suppliers within the meaning of K.S.A. 50-624(l).

101. The transactions between Plaintiffs and Class members on one side and Defendants on the other side are consumer transactions under K.S.A. 50-624(c).

102. K.S.A. 50-627(a) prohibits a supplier from engaging in any unconscionable act or practice in connection with a consumer transaction.

103. Defendants have engaged in numerous unconscionable acts and practices in connection with their consumer transactions with Plaintiffs and Class members.

104. By way of example, and not by way of limitation, Defendants took advantage of the inability of Plaintiffs and Class members to reasonably protect their own interests because of their ignorance, illiteracy, inability to understand the language of the agreement, and/or their desperate need for a job.

105. By way of example, and not by way of limitation, when the consumer transaction was entered into, the prices and costs to Plaintiffs and Class members in relation to what Plaintiffs and Class members earned as owner-operators for Defendants grossly exceeded the prices and costs Plaintiffs and Class members would have had to

pay in relation to what Plaintiffs and Class members would have earned as an owner-operator in similar transactions by similar consumers in the industry.

106. By way of example, and not by way of limitation, Defendants knew or had reason to know that Plaintiffs and Class members were unable to receive a material benefit from the subject of the transaction and were unable to make any money by independently contracting with Defendants, especially given that Defendants controlled the amount of miles Plaintiffs and Class members were allowed to drive.

107. By way of example, and not by way of limitation, when Plaintiffs and Class members entered into the consumer transactions with Defendants, there was no reasonable probability that Plaintiffs and Class members would meet their obligations in full such that they would have the option to purchase the trucks.

108. By way of example, and not by way of limitation, Defendants knew or had reason to know that the Agreements it entered into with Plaintiffs and Class members were excessively one-sided in favor of Defendants.

109. By way of example, and not by way of limitation, Defendants made misleading statements of opinion on which Plaintiffs and Class members were likely to rely to their detriment. Defendants' misleading statements of opinion include, but are not limited to, statements that Defendants' "superior leasing package" includes the ability to lease new or used tractors with reasonable payments and full extended warranty and that Defendants has "exceptional owner/operator benefits," including great miles and great pay.

110. Defendants knew or had reason to know that the statements of opinion made by Defendants were misleading, and Defendants intended for Plaintiffs and Class members to rely upon these misleading statements of opinion to their detriment.

111. As a direct and proximate result of Defendants' violations of K.S.A. 50-627, Plaintiffs and Class members have suffered financial injury, and Defendants have been unjustly enriched.

WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of those similarly situated, pray for judgment in their favor and against Defendants on Count II of this Class Action Complaint; for a declaratory judgment that Defendants' unconscionable acts and practices violate the Kansas Consumer Protection Act; for an injunction or restraining order against Defendants; for damages for each count and each violation in an aggregate amount greater than forty-five million dollars (\$45,000,000); for reasonable attorney fees; for costs; and for such other and further relief as the Court may deem just and proper.

COUNT III – FORCED PURCHASES
(in violation of 49 C.F.R. § 376.12(i))

112. Plaintiffs restate and incorporate by reference the previous paragraphs of this Class Action Complaint as if fully set forth herein.

113. 49 C.F.R. § 376.12(i) requires that "[t]he lease shall specify that the lessor is not required to purchase or rent any products, equipment, or services from the authorized carrier as a condition of entering into the lease arrangement."

114. Defendants state in the Independent Contractor Agreement that Plaintiffs and Class members are not required to purchase or rent any products, equipment or services from Defendants or Defendants' affiliates as a condition of the Agreement.

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115. Despite its boilerplate language that Plaintiffs and Class members were not required to purchase or rent products, equipment, or services from Defendants or their affiliates, Defendants required each Plaintiff and Class member to purchase and/or rent satellite communications services from Defendants as a condition of entering into the Independent Contractor Agreement.

116. The Independent Contractor Agreement required each Plaintiff and Class member to pay a “satellite communications system usage fee” in the amount of Fifteen Dollars (\$15.00) per week.

117. As a direct and proximate result of Defendants’ violations of 49 C.F.R. § 376.12(i), Plaintiffs have suffered financial injury, and Defendants have been unjustly enriched.

WHEREFORE, based on the foregoing, Plaintiffs, on behalf of themselves and on behalf of those similarly situated, pray for judgment in their favor and against Defendants on Count III of this Class Action Complaint; for declaratory judgment that Defendants’ acts and practices violate the Truth in Leasing regulations set forth in 49 C.F.R. Part 376; for an injunction or restraining order against Defendants; for damages; for reasonable attorney fees; for costs; and for such other and further relief as the Court may deem just and proper.

COUNT IV – UNLAWFUL CHARGE BACKS FOR INSURANCE
(in violation of 49 C.F.R. §§ 376.12(h) and (j))

118. Plaintiffs restate and incorporate by reference the previous paragraphs of this Class Action Complaint as if fully set forth herein.

119. 49 C.F.R. § 376.12(j)(1) requires “The lease shall clearly specify the legal obligation of the authorized carrier to maintain insurance coverage for the protection of

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the public pursuant to FMCSA regulations under 49 U.S.C. 13906. The lease shall further specify who is responsible for providing any other insurance coverage for the operation of the leased equipment, such as bobtail insurance. If the authorized carrier will make a charge back to the lessor for any of this insurance, the lease shall specify the amount which will be charged-back to the lessor.”

120. 49 C.F.R. § 376.12(h) requires that “The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor’s compensation at the time of payment or settlement, together with a recitation as to how the amount of each item is to be computed. The lessor shall be afforded copies of those documents which are necessary to determine the validity of the charge.”

121. The Independent Contractor Agreement provides that pursuant to FMCSA regulations, Defendants shall maintain at its own expense public liability and property damage insurance coverage. Notwithstanding, Defendants further state in the Independent Contractor Agreement, in direct contravention of 49 C.F.R. § 376.12(j)(1), that if Plaintiffs or Class members are responsible for an accident resulting in loss or damage to third parties and/or their property (i.e., public liability) while operating the truck, then Plaintiffs or Class members are liable to Defendants in an amount up to and including \$2,000.

122. Plaintiffs and Class members have suffered substantial damages as a direct and proximate result of Defendants’ illegal conduct, and Defendants have been unjustly enriched as a result of Defendants’ illegal conduct.

WHEREFORE, based on the foregoing, Plaintiffs, on behalf of themselves and on behalf of those similarly situated, pray for judgment in their favor and against Defendants on Count IV of this Class Action Complaint; for declaratory judgment that Defendants' acts and practices violate the Truth in Leasing regulations set forth in 49 C.F.R. Part 376; for an injunction or restraining order against Defendants; for damages; for reasonable attorney fees; for costs; and for such other and further relief as the Court may deem just and proper.

**COUNT V – UNLAWFUL CHARGE BACKS FOR
BOBTAIL AND DEADHEAD INSURANCE
(in violation of 49 C.F.R. §§ 376.12(h) and (j))**

123. Plaintiffs restate and incorporate by reference the previous paragraphs of this Class Action Complaint as if fully set forth herein.

124. 49 C.F.R. § 376.12(j)(1) requires “The lease shall clearly specify the legal obligation of the authorized carrier to maintain insurance coverage for the protection of the public pursuant to FMCSA regulations under 49 U.S.C. 13906. The lease shall further specify who is responsible for providing any other insurance coverage for the operation of the leased equipment, such as bobtail insurance. If the authorized carrier will make a charge back to the lessor for any of this insurance, the lease shall specify the amount which will be charged-back to the lessor.”

125. 49 C.F.R. § 376.12(h) requires that “The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor’s compensation at the time of payment or settlement, together with a recitation as to how the amount of each item is to be computed. The lessor shall be

afforded copies of those documents which are necessary to determine the validity of the charge.”

126. Under the Independent Contractor Agreement, Defendants require Plaintiffs and Class members to maintain bobtail and deadhead insurance coverage.

127. Despite the clear requirements of 49 C.F.R. § 376.12(j)(1), however, the Independent Contractor Agreement does not correctly specify the amount that will be charged back to Plaintiffs and Class members for bobtail and deadhead insurance coverage.

128. Plaintiffs and Class members have suffered substantial damages as a direct and proximate result of Defendants’ illegal conduct, and Defendants have been unjustly enriched as a result of Defendants’ illegal conduct.

WHEREFORE, based on the foregoing, Plaintiffs, on behalf of themselves and on behalf of those similarly situated, pray for judgment in their favor and against Defendants on Count V of this Class Action Complaint; for declaratory judgment that Defendants’ acts and practices violate the Truth in Leasing regulations set forth in 49 C.F.R. Part 376; for an injunction or restraining order against Defendants; for damages; for reasonable attorney fees; for costs; and for such other and further relief as the Court may deem just and proper.

**COUNT VI – UNLAWFUL CHARGE BACKS FOR
COLLISION, FIRE, AND THEFT INSURANCE
(in violation of 49 C.F.R. §§ 376.12(h) and (i))**

129. Plaintiffs restate and incorporate by reference the previous paragraphs of this Class Action Complaint as if fully set forth herein.

130. 49 C.F.R. § 376.12(j)(1) requires “The lease shall clearly specify the legal obligation of the authorized carrier to maintain insurance coverage for the protection of the public pursuant to FMCSA regulations under 49 U.S.C. 13906. The lease shall further specify who is responsible for providing any other insurance coverage for the operation of the leased equipment, such as bobtail insurance. If the authorized carrier will make a charge back to the lessor for any of this insurance, the lease shall specify the amount which will be charged-back to the lessor.”

131. 49 C.F.R. § 376.12(h) requires that “The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor’s compensation at the time of payment or settlement, together with a recitation as to how the amount of each item is to be computed. The lessor shall be afforded copies of those documents which are necessary to determine the validity of the charge.”

132. Under the Independent Contractor Agreement, Defendants require Plaintiffs and Class members to maintain collision, fire, and theft insurance coverage.

133. Notwithstanding the clear requirements of 49 C.F.R. § 376.12(j)(1), however, the Independent Contractor Agreement does not specify the amount that will be charged back to Plaintiffs and Class members for collision, fire, and theft insurance coverage.

134. Plaintiffs and Class members have suffered substantial damages as a direct and proximate result of Defendants’ illegal conduct, and Defendants have been unjustly enriched as a result of Defendants’ illegal conduct.

WHEREFORE, based on the foregoing, Plaintiffs, on behalf of themselves and on behalf of those similarly situated, pray for judgment in their favor and against Defendants on Count VI of this Class Action Complaint; for declaratory judgment that Defendants' acts and practices violate the Truth in Leasing regulations set forth in 49 C.F.R. Part 376; for an injunction or restraining order against Defendants; for damages; for reasonable attorney fees; for costs; and for such other and further relief as the Court may deem just and proper.

**COUNT VII – UNLAWFUL CHARGE BACKS FOR OCCUPATIONAL
ACCIDENT/WORKERS' COMPENSATION INSURANCE
(in violation of 49 C.F.R. §§ 376.12(h) and (j))**

135. Plaintiffs restate and incorporate by reference the previous paragraphs of this Class Action Complaint as if fully set forth herein.

136. 49 C.F.R. § 376.12(j)(1) requires "The lease shall clearly specify the legal obligation of the authorized carrier to maintain insurance coverage for the protection of the public pursuant to FMCSA regulations under 49 U.S.C. 13906. The lease shall further specify who is responsible for providing any other insurance coverage for the operation of the leased equipment, such as bobtail insurance. If the authorized carrier will make a charge back to the lessor for any of this insurance, the lease shall specify the amount which will be charged-back to the lessor."

137. 49 C.F.R. § 376.12(h) requires that "The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at the time of payment or settlement, together with a recitation as to how the amount of each item is to be computed. The lessor shall be

afforded copies of those documents which are necessary to determine the validity of the charge.”

138. Under the Independent Contractor Agreement, Defendants require Plaintiffs and Class members to maintain occupational accident/workers’ compensation insurance coverage.

139. Notwithstanding the clear requirements of 49 C.F.R. § 376.12(j)(1), however, the Independent Contractor Agreement does not correctly specify the amount that will be charged back to Plaintiffs and Class members for occupational accident/workers’ compensation insurance coverage.

140. Plaintiffs and Class members have suffered substantial damages as a direct and proximate result of Defendants’ illegal conduct, and Defendants have been unjustly enriched as a result of Defendants’ illegal conduct.

WHEREFORE, based on the foregoing, Plaintiffs, on behalf of themselves and on behalf of those similarly situated, pray for judgment in their favor and against Defendants on Count VII of this Class Action Complaint; for declaratory judgment that Defendants’ acts and practices violate the Truth in Leasing regulations set forth in 49 C.F.R. Part 376; for an injunction or restraining order against Defendants; for damages; for reasonable attorney fees; for costs; and for such other and further relief as the Court may deem just and proper.

COUNT VIII – UNLAWFUL CHARGE BACKS FOR INSURANCE
(in violation of 49 C.F.R. §§ 376.12(h) and (j))

141. Plaintiffs restate and incorporate by reference the previous paragraphs of this Class Action Complaint as if fully set forth herein.

142. 49 C.F.R. § 376.12(j)(1) requires “The lease shall clearly specify the legal obligation of the authorized carrier to maintain insurance coverage for the protection of the public pursuant to FMCSA regulations under 49 U.S.C. 13906. The lease shall further specify who is responsible for providing any other insurance coverage for the operation of the leased equipment, such as bobtail insurance. If the authorized carrier will make a charge back to the lessor for any of this insurance, the lease shall specify the amount which will be charged-back to the lessor.”

143. 49 C.F.R. § 376.12(h) requires that “The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor’s compensation at the time of payment or settlement, together with a recitation as to how the amount of each item is to be computed. The lessor shall be afforded copies of those documents which are necessary to determine the validity of the charge.”

144. Defendants failed to properly afford copies of those documents necessary to determine the validity of the charges.

145. Plaintiffs and Class members have suffered substantial damages as a direct and proximate result of Defendants’ illegal conduct, and Defendants have been unjustly enriched as a result of Defendants’ illegal conduct.

WHEREFORE, based on the foregoing, Plaintiffs, on behalf of themselves and on behalf of those similarly situated, pray for judgment in their favor and against Defendants on Count VIII of this Class Action Complaint; for declaratory judgment that Defendants’ acts and practices violate the Truth in Leasing regulations set forth in 49 C.F.R. Part 376; for an injunction or restraining order against Defendants; for damages; for reasonable

attorney fees; for costs; and for such other and further relief as the Court may deem just and proper.

COUNT IX – UNLAWFUL CHARGE BACKS FOR INSURANCE
(in violation of 49 C.F.R. §§ 376.12(h) and (i))

146. Plaintiffs restate and incorporate by reference the previous paragraphs of this Class Action Complaint as if fully set forth herein.

147. 49 C.F.R. § 376.12(j)(1) requires “The lease shall clearly specify the legal obligation of the authorized carrier to maintain insurance coverage for the protection of the public pursuant to FMCSA regulations under 49 U.S.C. 13906. The lease shall further specify who is responsible for providing any other insurance coverage for the operation of the leased equipment, such as bobtail insurance. If the authorized carrier will make a charge back to the lessor for any of this insurance, the lease shall specify the amount which will be charged-back to the lessor.”

148. 49 C.F.R. § 376.12(h) requires that “The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor’s compensation at the time of payment or settlement, together with a recitation as to how the amount of each item is to be computed. The lessor shall be afforded copies of those documents which are necessary to determine the validity of the charge.”

149. Defendants failed to provide a recitation in the Independent Contractor Agreement as to how the amount of each item is to be computed.

150. Plaintiffs and Class members have suffered substantial damages as a direct and proximate result of Defendants’ illegal conduct, and Defendants have been unjustly enriched as a result of Defendants’ illegal conduct.

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WHEREFORE, based on the foregoing, Plaintiffs, on behalf of themselves and on behalf of those similarly situated, pray for judgment in their favor and against Defendants on Count IX of this Class Action Complaint; for declaratory judgment that Defendants' acts and practices violate the Truth in Leasing regulations set forth in 49 C.F.R. Part 376; for an injunction or restraining order against Defendants; for damages; for reasonable attorney fees; for costs; and for such other and further relief as the Court may deem just and proper.

COUNT X – UNLAWFUL CHARGE BACKS FOR INSURANCE
(in violation of 49 C.F.R. §§ 376.12(h) and (j))

151. Plaintiffs restate and incorporate by reference the previous paragraphs of this Class Action Complaint as if fully set forth herein.

152. 49 C.F.R. § 376.12(j)(1) requires “The lease shall clearly specify the legal obligation of the authorized carrier to maintain insurance coverage for the protection of the public pursuant to FMCSA regulations under 49 U.S.C. 13906. The lease shall further specify who is responsible for providing any other insurance coverage for the operation of the leased equipment, such as bobtail insurance. If the authorized carrier will make a charge back to the lessor for any of this insurance, the lease shall specify the amount which will be charged-back to the lessor.”

153. 49 C.F.R. § 376.12(h) states that “The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at the time of payment or settlement, together with a recitation as to how the amount of each item is to be computed. The lessor shall be afforded copies of those documents which are necessary to determine the validity of the charge.”

154. Contrary to 49 C.F.R. § 376.12(h) and (j)(1), Defendants unlawfully made charge backs for insurance that were not specified in the Independent Contractor Agreement, including, but not limited to, charges for buy-down insurance and/or rider insurance.

155. Plaintiffs and Class members have suffered substantial damages as a direct and proximate result of Defendants' illegal conduct, and Defendants have been unjustly enriched as a result of Defendants' illegal conduct.

WHEREFORE, based on the foregoing, Plaintiffs, on behalf of themselves and on behalf of those similarly situated, pray for judgment in their favor and against Defendants on Count X of this Class Action Complaint; for declaratory judgment that Defendants' acts and practices violate the Truth in Leasing regulations set forth in 49 C.F.R. Part 376; for an injunction or restraining order against Defendants; for damages; for reasonable attorney fees; for costs; and for such other and further relief as the Court may deem just and proper.

COUNT XI – UNLAWFUL CHARGE BACKS FOR INSURANCE
(in violation of 49 C.F.R. §§ 376.12(h) and (j))

156. Plaintiffs restate and incorporate by reference the previous paragraphs of this Class Action Complaint as if fully set forth herein.

157. 49 C.F.R. § 376.12(j)(1) requires "The lease shall clearly specify the legal obligation of the authorized carrier to maintain insurance coverage for the protection of the public pursuant to FMCSA regulations under 49 U.S.C. 13906. The lease shall further specify who is responsible for providing any other insurance coverage for the operation of the leased equipment, such as bobtail insurance. If the authorized carrier will make a

charge back to the lessor for any of this insurance, the lease shall specify the amount which will be charged-back to the lessor.”

158. 49 C.F.R. § 376.12(h) requires that “The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor’s compensation at the time of payment or settlement, together with a recitation as to how the amount of each item is to be computed. The lessor shall be afforded copies of those documents which are necessary to determine the validity of the charge.”

159. Contrary to 49 C.F.R. § 376.12(h) and (j)(1), Defendants unlawfully charged back undisclosed mark-ups and/or administration fees to Plaintiffs and Class members.

160. Plaintiffs and Class members have suffered substantial damages as a direct and proximate result of Defendants’ illegal conduct, and Defendants have been unjustly enriched as a result of Defendants’ illegal conduct.

WHEREFORE, based on the foregoing, Plaintiffs, on behalf of themselves and on behalf of those similarly situated, pray for judgment in their favor and against Defendants on Count XI of this Class Action Complaint; for declaratory judgment that Defendants’ acts and practices violate the Truth in Leasing regulations set forth in 49 C.F.R. Part 376; for an injunction or restraining order against Defendants; for damages; for reasonable attorney fees; for costs; and for such other and further relief as the Court may deem just and proper.

COUNT XII – UNLAWFUL CHARGE BACKS – PREPASS
(in violation of 49 C.F.R. § 376.12(h))

161. Plaintiff restates and incorporates by reference the previous paragraphs of this Petition as if fully set forth herein.

162. 49 C.F.R. § 376.12(h) requires that “[t]he lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor’s compensation at the time of payment or settlement, together with a recitation as to how the amount of each item is to be computed.”

163. The Independent Contractor Agreement each Plaintiff and Class member signed with Defendants does not specify that a PrePass may be initially paid for by the authorized carrier, but ultimately deducted from Plaintiffs’ and Class members’ compensation at the time of payment or settlement.

164. The Independent Contractor Agreement each Plaintiff and Class member signed with Defendants fails to recite how the amount of the PrePass is to be computed.

165. Defendants unlawfully made deductions from Plaintiffs’ and Class members’ compensation for a PrePass.

166. As a direct and proximate result of Defendants’ violations of 49 C.F.R. § 376.12(h), Plaintiffs and Class members have suffered financial injury, and Defendants have been unjustly enriched.

WHEREFORE, based on the foregoing, Plaintiffs, on behalf of themselves and on behalf of those similarly situated, pray for judgment in their favor and against Defendants on Count XII of this Class Action Complaint; for declaratory judgment that Defendants’ acts and practices violate the Truth in Leasing regulations set forth in 49 C.F.R. Part 376; for an injunction or restraining order against Defendants; for damages; for reasonable

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attorney fees; for costs; and for such other and further relief as the Court may deem just and proper.

COUNT XIII – UNLAWFUL CHARGE BACKS – FUEL OPTIMIZER
(in violation of 49 C.F.R. § 376.12(h))

167. Plaintiff restates and incorporates by reference the previous paragraphs of this Petition as if fully set forth herein.

168. 49 C.F.R. § 376.12(h) requires that “[t]he lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor’s compensation at the time of payment or settlement, together with a recitation as to how the amount of each item is to be computed.”

169. The Independent Contractor Agreement each Plaintiff and Class member signed with Defendants fails to specify that a fuel optimizer may be initially paid for by the authorized carrier, but ultimately deducted from Plaintiffs’ and Class members’ compensation at the time of payment or settlement.

170. Defendants unlawfully made deductions from Plaintiffs’ and Class members’ compensation for a fuel optimizer.

171. The Independent Contractor Agreement each Plaintiff and Class member signed with Defendants fails to recite how the amount of the fuel optimizer is to be computed.

172. As a direct and proximate result of Defendants’ violations of 49 C.F.R. § 376.12(h), Plaintiffs and Class members have suffered financial injury, and Defendants have been unjustly enriched.

WHEREFORE, based on the foregoing, Plaintiffs, on behalf of themselves and on behalf of those similarly situated, pray for judgment in their favor and against Defendants
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on Count XIII of this Class Action Complaint; for declaratory judgment that Defendants' acts and practices violate the Truth in Leasing regulations set forth in 49 C.F.R. Part 376; for an injunction or restraining order against Defendants; for damages; for reasonable attorney fees; for costs; and for such other and further relief as the Court may deem just and proper.

COUNT XIV – UNLAWFUL CHARGE BACKS – BREAKDOWN PREMIUMS
(in violation of 49 C.F.R. § 376.12(h))

173. Plaintiff restates and incorporates by reference the previous paragraphs of this Petition as if fully set forth herein.

174. 49 C.F.R. § 376.12(h) requires that “[t]he lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor’s compensation at the time of payment or settlement, together with a recitation as to how the amount of each item is to be computed.”

175. The Independent Contractor Agreement each Plaintiff and Class member signed with Defendants fails to specify that breakdown premiums may be initially paid for by the authorized carrier, but ultimately deducted from Plaintiffs’ and Class members’ compensation at the time of payment or settlement.

176. The Independent Contractor Agreement each Plaintiff and Class member signed with Defendants fails to recite how the amount of the breakdown premiums is to be computed.

177. Defendants unlawfully made deductions from Plaintiffs’ and Class members’ compensation for breakdown premiums.

178. As a direct and proximate result of Defendants' violations of 49 C.F.R. § 376.12(e) and (h), Plaintiffs and Class members have suffered financial injury, and Defendants have been unjustly enriched.

WHEREFORE, based on the foregoing, Plaintiffs, on behalf of themselves and on behalf of those similarly situated, pray for judgment in their favor and against Defendants on Count XIV of this Class Action Complaint; for declaratory judgment that Defendants' acts and practices violate the Truth in Leasing regulations set forth in 49 C.F.R. Part 376; for an injunction or restraining order against Defendants; for damages; for reasonable attorney fees; for costs; and for such other and further relief as the Court may deem just and proper.

COUNT XV – UNLAWFUL CHARGE BACKS – HAND LOADING
(in violation of 49 C.F.R. § 376.12(h))

179. Plaintiff restates and incorporates by reference the previous paragraphs of this Petition as if fully set forth herein.

180. 49 C.F.R. § 376.12(h) requires that "[t]he lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at the time of payment or settlement, together with a recitation as to how the amount of each item is to be computed."

181. The Independent Contractor Agreement each Plaintiff and Class member signed with Defendants fails to specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from Plaintiffs' and Class members' compensation at the time of payment or settlement.

182. The Independent Contractor Agreement each Plaintiff and Class member signed with Defendants fails to recite how the amount of each item to be charged back is to be computed.

183. By way of example, and not by way of limitation, the Independent Contractor Agreement does not specify the responsibility of each party with respect to the cost of hand loading, nor does it specify that the hand loading may be deducted from Plaintiffs' and Class members' compensation at the time of payment or settlement.

184. Defendants unlawfully made deductions from Plaintiffs' and Class members' compensation for hand loading.

185. As a direct and proximate result of Defendants' violations of 49 C.F.R. § 376.12(h), Plaintiffs and Class members have suffered financial injury, and Defendants have been unjustly enriched.

WHEREFORE, based on the foregoing, Plaintiffs, on behalf of themselves and on behalf of those similarly situated, pray for judgment in their favor and against Defendants on Count XV of this Class Action Complaint; for declaratory judgment that Defendants' acts and practices violate the Truth in Leasing regulations set forth in 49 C.F.R. Part 376;; for an injunction or restraining order against Defendants; for damages; for reasonable attorney fees; for costs; and for such other and further relief as the Court may deem just and proper.

JURY DEMANDED

Plaintiffs, on behalf of themselves and on behalf of those similarly situated,
hereby demand a trial by jury on all matters so triable.

Plaintiffs hereby designate Kansas City, Kansas as place of trial.

Respectfully submitted,

SHAFFER LOMBARDO SHURIN, PC

/s/Richard F. Lombardo

Richard F. Lombardo #22326

Gregory P. Forney #16329

Daniel M. Runion #15608

Anne E. Smith #24636

911 Main Street, Suite 2000

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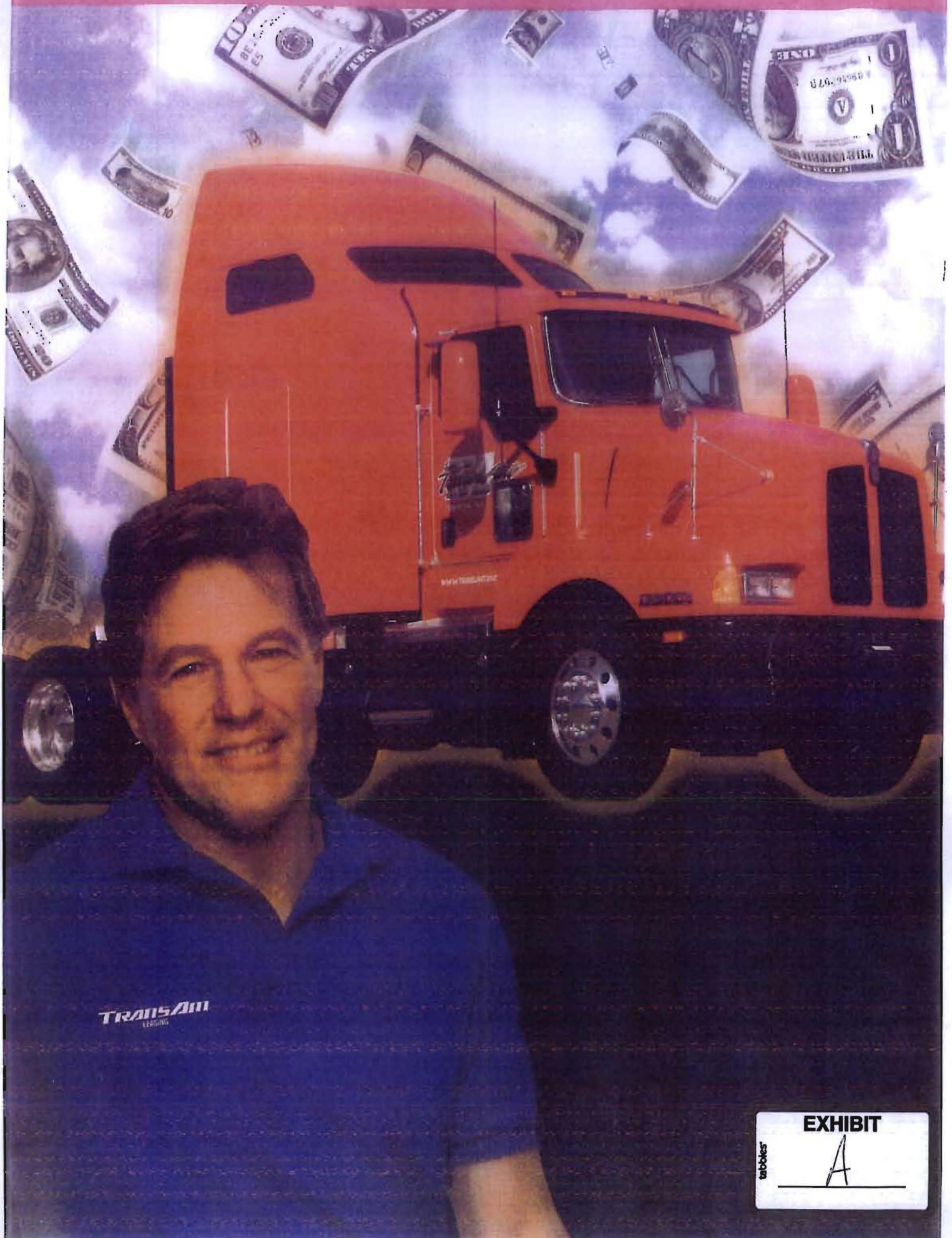
(816) 283-3380

(816) 283-0489 (Facsimile)

gleyh@leyhlaw.com

ATTORNEYS FOR PLAINTIFFS

TransAm Leasing Program

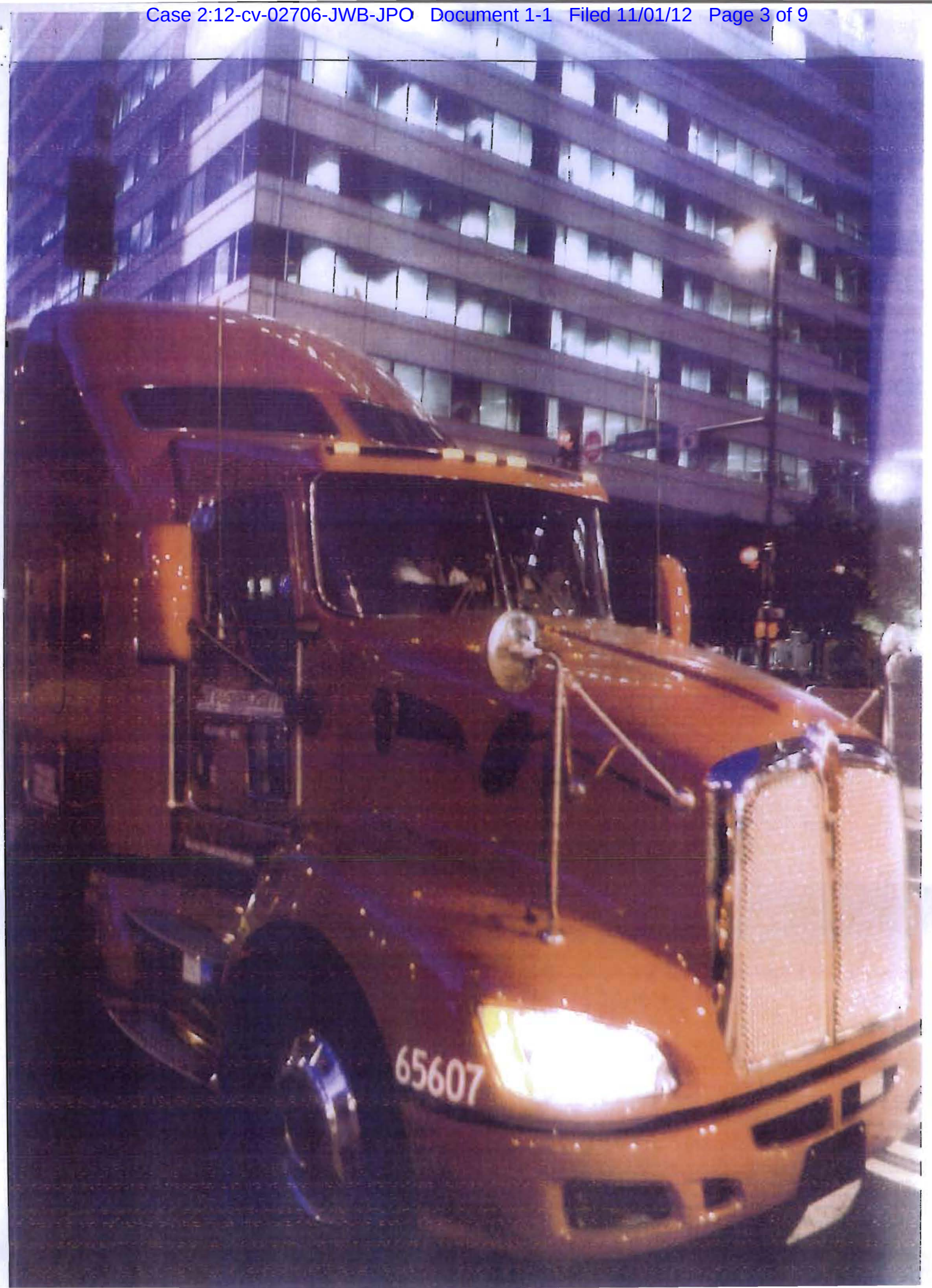


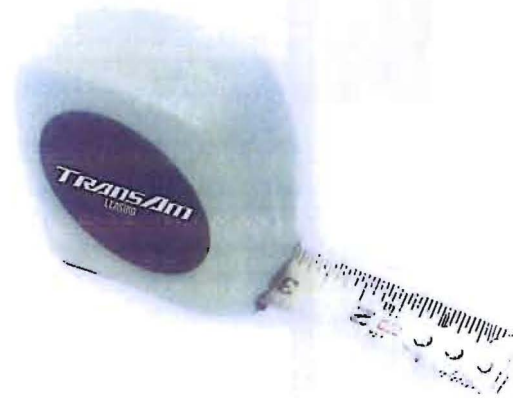
EXHIBIT

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If you've ever wanted to own your own business driving your own truck, making more money than a company-employed driver and having more freedom, take a look at what TransAm Leasing, Inc. has to offer.





The Best Leasing Program and Owner/Operator Benefits in the Industry

Compare TransAm Leasing Inc.'s leasing program and TransAm Trucking's owner/operator benefits to any other program in the industry and the others just don't measure up.

TransAm Leasing, Inc.'s superior leasing package includes the following:

- Lease new or used tractors with reasonable payments and full extended warranty
- Short-term lease options
- Lease completion incentive
- Buy-out option below market value
- Tax advantages

TransAm Trucking's exceptional owner/operator benefits include the following:

- | | |
|---|--|
| • 84 cents per mile loaded & empty | • Paid reefer fuel |
| • Great miles | • Paid tolls |
| • A contract you can understand | • Liberal passenger plan |
| • Paid base plates & permits | • 99% no touch freight |
| • Free TripPak | • No hazmat |
| • Discount fuel network | • Stop pay \$40 |
| • Fuel surcharge program | • Tax advantages |
| • 100% lumper reimbursement | • Easy bonuses |
| • Make between \$100,000 - \$200,000 per year | • Be an independent business operator! |





Great Equipment

TransAm Leasing, Inc. is proud to offer the Kenworth T600 and T660 with a four-year, 525,000 mile bumper-to-bumper warranty and up to 550,000-mile engine warranty. World-class quality, appearance, styling, technology and ergonomics are found in the many details of Kenworth's T600 and T660. Kenworth also ranks highest for customer satisfaction in three segments in J.D. Power and Associates heavy-duty truck study.

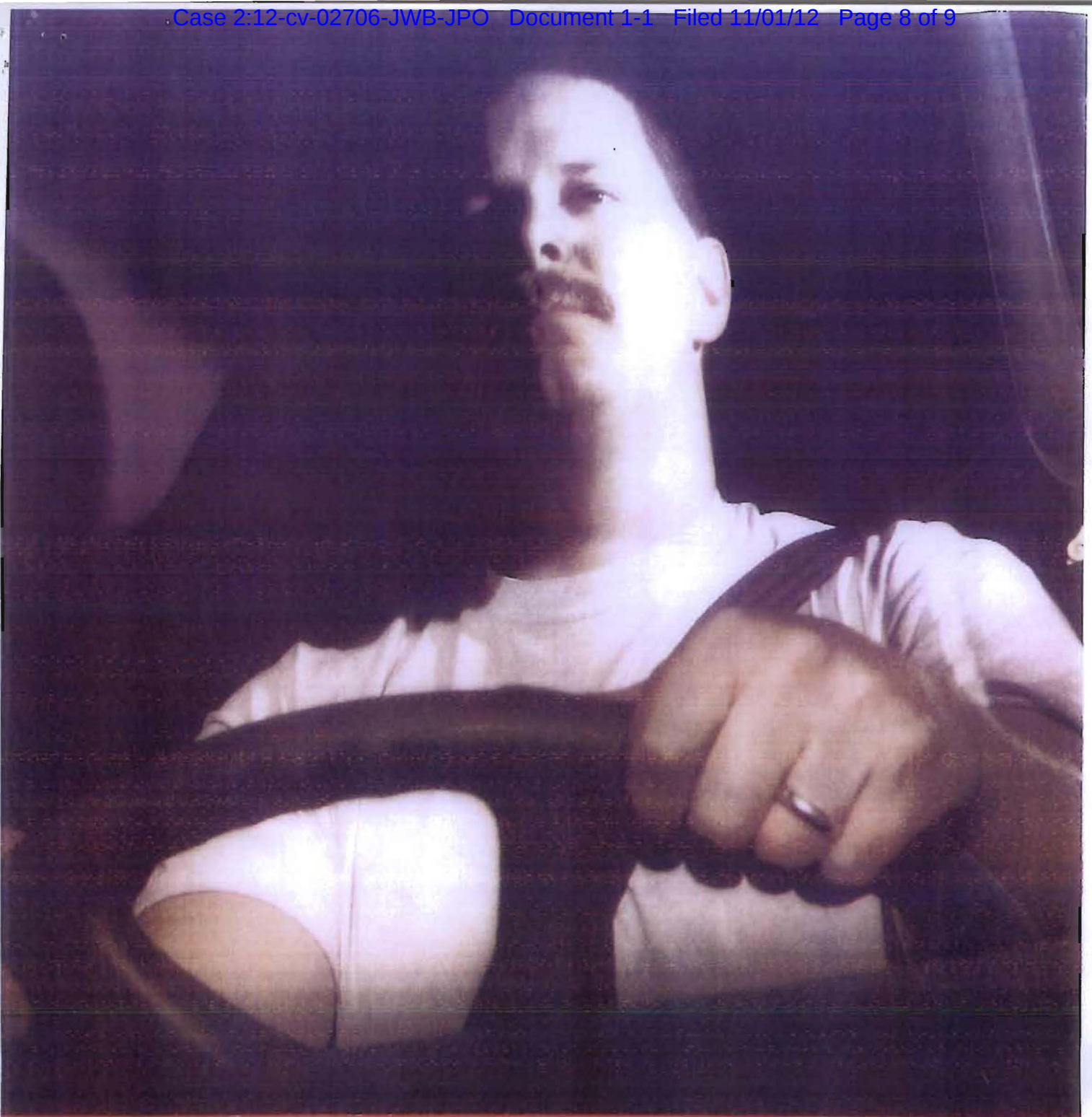
TransAm Leasing, Inc. also has great short-term lease programs on used trucks.

Fuel Surcharge Program, Fuel Optimization Program & Fuel Taxes

TransAm Trucking has a fuel optimization program that will identify the best available fuel prices along the routes that we run. You can purchase the optimization solutions that are transmitted via satellite at the time you are dispatched on a load. The weekly cost is \$3.00. This program provides you the opportunity to save between \$.04 and \$.08 per gallon.

You are responsible for payment of \$.01 per mile for fuel taxes. TransAm Trucking will withhold and file all taxes. Individual fuel taxes will be reconciled quarterly.





*T*ransAm Trucking is committed to your financial
and personal success.

TransAm
LEASING

**2008 Kenworth T660***Single*

\$565 weekly plus \$.04 cents per mile
Buyout at end of lease term: \$40,250

Team

\$797 weekly plus \$.04 cents per mile
Buyout at end of lease term: \$42,500

2009 Kenworth T660*Single*

\$575 weekly plus \$.04 cents per mile
Buyout at end of lease term: \$41,000

Team

\$810 weekly plus \$.04 cents per mile
Buyout at end of lease term: \$41,000

2010 Kenworth T660*Single*

\$585 weekly plus \$.04 cents per mile
Buyout at end of lease term: \$41,000

Team

\$820 weekly plus \$.04 cents per mile
Buyout at end of lease term: \$41,000

**2010 Kenworth T660
(PACCAR MX Engine)***Single*

\$600 weekly plus \$.05 cents per mile
Buyout at end of lease term: \$41,500

Team

\$845 weekly plus \$.05 cents per mile
Buyout at end of lease term: \$41,500

**2011 Kenworth T700
(PACCAR MX Engine)***Single*

\$610 weekly plus \$.05 cents per mile
Buyout at end of lease term: \$41,250

Team

\$860 weekly plus \$.05 cents per mile
Buyout at end of lease term: \$42,250

**2012 Kenworth T700
(PACCAR MX Engine)***Single*

\$580 weekly plus \$.05 cents per mile
(260 weeks)
Buyout at end of lease term: \$28,750

Team

\$840 weekly plus \$.05 cents per mile
(170 weeks)
Buyout at end of lease term: \$32,500

Auxiliary Power Units: The weekly cost of the APU is:

- \$50 for the 2008 - 2010 Kenworth T660
- \$55 for the 2010 T660 & 2011 Kenworth T700 (PACCAR MX Engine)
- \$45 for the 2012 Kenworth T700 (PACCAR MX Engine)

Maintenance/Tire Reserve: This may be used for required maintenance or tire expenses at the discretion of the owner/operator. \$.04 cents per mile (\$7,500 maximum for all trucks except the 2012 T700 which is \$10,000 maximum)

Maintenance: Responsibility of the owner/operator. O/O may, at their option, have non-warranty services provided by TransAm Trucking, Inc.

Satellite: \$15/week

Physical Damage Insurance: \$125/week (\$1,000 per occurrence deductible) Optional deductible buy-down insurance available at affordable weekly rates.

Bobtail and occupational accident insurance: Available at affordable group rates

Performance Escrow: \$25/week (\$600 minimum)

Pet Deposit: \$2,500 in advance

Base Plate/Permits/PrePass: TransAm pays for base plate and permits. PrePass is \$3.40/week.

Equipment Modification: Not allowed unless approval is obtained from TransAm Leasing, Inc.

Excess Mileage Charge if Average Miles Greater than 3,000/week (single) and 4,500/week (team): \$.06 per excess mile (calculated on life-to-date basis monthly)

Lease Completion Incentives:

- \$.03 Per Odometer Mile
- Refund Balance of Maintenance Reserve
- Refund Excess Mileage Charges Paid (if tractor purchased)
- Refund Performance Escrow

TransAm
LEASING

1-866-353-0286

TRANSAM LEASING, INC.

EXHIBIT

tabbies

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EQUIPMENT LEASE AGREEMENT

THIS EQUIPMENT LEASE AGREEMENT (this "Agreement") is made and entered into as of the Effective Date set forth on **EXHIBIT A** attached hereto, by and between **TRANSAM LEASING, INC.**, a Kansas corporation ("Lessor"), and the lessee named on **EXHIBIT A** attached hereto ("Lessee").

WITNESSETH:

WHEREAS, Lessor is a Kansas corporation which is principally engaged in the business of leasing motor vehicle equipment used by for-hire motor carriers for the interstate and intrastate transport of freight; and

WHEREAS, Lessee is engaged in the business of transporting freight by motor vehicle pursuant to agreements with for-hire motor carriers; and

WHEREAS, subject to the terms and conditions herein contained, Lessee desires to rent from Lessor and Lessor desires to lease to Lessee certain motor vehicle equipment for use in Lessee's freight transportation business.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, it is hereby agreed as follows:

1. **Leased Equipment.** During the term hereof, Lessor shall lease to Lessee and Lessee shall rent from Lessor the motor vehicle equipment described on **EXHIBIT A** attached hereto (the "Equipment"). Lessee shall inspect the Equipment prior to taking possession thereof and shall immediately report to Lessor in writing any and all existing damage or defects thereto. Unless Lessee has given written notice to Lessor specifying any damage or defects to the Equipment prior to taking possession, it shall be conclusively presumed as between Lessee and Lessor that Lessee has fully inspected the Equipment and that it was free from damage and defects at the time Lessee took possession. In addition, Lessee shall promptly report to Lessor any damage to the Equipment that occurs while the Equipment is under Lessee's control. Lessee shall also provide a current Equipment odometer reading to Lessor on a weekly basis during the term hereof.

2. **Term of Lease.** This Agreement shall be in effect during the term set forth on **EXHIBIT A** attached hereto, subject to the provisions for early termination set forth herein. The term may be extended beyond the stated expiration date only upon mutual written consent of Lessor and Lessee.

3. **Lease Payments.** During the term hereof, Lessee shall pay to Lessor the lease payments set forth on **EXHIBIT B** attached hereto and incorporated herein by reference. Such lease payments shall be due and payable to Lessor by Lessee on a weekly basis, regardless of whether the Equipment is being repaired or is otherwise not in service during all or part of any week. Any amounts past due in excess of fifteen (15) days shall bear interest until paid in full at a rate equal to the average yield or equivalent coupon issue yield on Ninety-One (91)-Day, Thirteen (13)-Week Treasury Bills as established in the weekly auction by the Department of Treasury. For purposes of this Agreement, such interest rate shall be referred to hereinafter as the "Applicable Rate".

4. **Lease Completion Bonus.** If this Agreement remains in full force and effect for the entire term hereof, Lessor shall pay to Lessee a bonus ("Lease Completion Bonus") in an amount equal to three cents (\$0.03) per mile traveled by the Equipment during the term hereof (based on odometer reading).

5. **Lease to Carrier.** The parties acknowledge that, for purposes of conducting Lessee's freight transportation business, during the term hereof Lessee intends to lease the Equipment to at least one for-hire motor carrier. Lessee agrees to notify Lessor in writing of the name of any motor carrier to which Lessee intends to lease the Equipment, and the name and address of such carrier shall be set forth on **EXHIBIT A** attached hereto. Such lease shall be subject to the prior approval of the Lessor, which approval shall not be unreasonably withheld. Lessor may, in

its discretion, condition such approval on obtaining a guaranty of Lessee's payment obligations hereunder from any such carrier. In contracting to lease the Equipment to a motor carrier, Lessee shall comply with all government regulations, including obtaining the appropriate insurance. In addition, the Lessee shall authorize and require each such motor carrier to deduct from the compensation owed by the motor carrier to Lessee, on a weekly basis, an amount equal to Lessee's weekly lease payment obligation hereunder and to deliver such amount to Lessor. Lessee may not move the Equipment from one motor carrier to another unless and until Lessee is current on all of Lessee's payment obligations under this Agreement.

6. **Use of Equipment.** Lessee may possess and use the Equipment in accordance with the terms and conditions of this Agreement, provided that any such use is in conformity with all applicable federal, state and local laws, statutes, ordinances, regulations and orders relating to the possession, use or maintenance of the Equipment, any applicable insurance policies and the warranties of the manufacturer with respect to the Equipment. Lessee shall operate the Equipment leased hereunder using only safe and duly licensed drivers who will operate the Equipment with reasonable care, in accordance with all federal, state and local laws, statutes, ordinances, regulations and orders (specifically including, without limitation, all applicable rules of the Federal Motor Carrier Safety Administration), and will use every reasonable precaution to prevent loss or damage to the Equipment, whether by reason of fire, theft, collision or otherwise, and to prevent injury to third persons or property of third persons. At no time may the Equipment be loaded beyond the gross weights recommended by the manufacturer.

7. **Maintenance/Tire Replacement Reserve.** During the term hereof, Lessee agrees to pay into a maintenance/tire replacement reserve maintained by Lessor the amount of four cents (\$0.04) per mile that the Equipment travels, not to exceed a maximum of \$7,500.00 unless authorized by Lessee. Such mileage shall be based on the Equipment's odometer reading, and may be reconciled on a periodic basis. The reserve shall be used to purchase tires for the Equipment and to maintain and repair the Equipment (i.e., routine maintenance/repairs as necessitated by ordinary wear and tear) while this Agreement is in effect. The reserve shall not be used by Lessee to repair any damage to the Equipment resulting from driver negligence or willful misconduct unless otherwise approved by Lessor in advance. Lessee shall authorize and require the applicable reserve amount to be deducted from Lessee's weekly settlement by any motor carrier to which Lessee leases the Equipment, and shall cause such amount to be delivered to the reserve. Lessor shall provide Lessee with an accounting of any and all transactions involving the reserve on at least a monthly basis during the term hereof (which may be reflected on the settlement documentation provided by the motor carrier to which Lessee leases the Equipment); provided, however, that Lessee may receive an accounting of transactions involving the reserve at any time upon request. If the funds held in the reserve are not sufficient to pay for any costs/expenses for which the reserve may be used, then upon Lessee's request, Lessor may, in its discretion, advance to Lessee all or part of the funds necessary to pay for such costs and expenses and the reserve shall be deemed to have a negative balance to the extent of such advanced funds. In the event the reserve has a negative balance, then Lessee agrees to pay into the reserve the amount of ten cents (\$0.10) per mile that the Equipment travels until such time as the reserve no longer has a negative balance. The amount of any negative balance remaining upon termination of this Agreement shall be immediately due and payable from Lessee to Lessor. Lessor shall pay to Lessee interest on the funds held in the reserve on at least a quarterly basis. The interest rate shall be established on the date funds are first deposited into the reserve and shall be equal to the Applicable Rate. Lessee acknowledges and agrees that Lessor may credit such interest payments against the amounts otherwise payable by Lessee hereunder. Upon termination or expiration of this Agreement (unless Lessee purchases the Equipment pursuant to paragraph 11 below), Lessor shall retain out of the reserve an amount necessary to perform preventative maintenance services and to make any required repairs to the Equipment, and an amount equal to the cost attributable to the amount of wear on the tires which occurred during the time this Agreement was in effect. The specific items and amounts for which Lessee shall be responsible with respect to such maintenance and repairs are set forth on **EXHIBIT C** attached hereto. The balance of the reserve, if any, less any amounts set off as provided in paragraph 26 of this Agreement, shall be paid to Lessee no later than forty-five (45) days from the date of termination, together with a final accounting of all such final deductions. In the event Lessee completes the full term of this Agreement or exercises the option to purchase the Equipment pursuant to paragraph 11 of this Agreement, all amounts accumulated in the reserve, less any amounts set off as provided in paragraph 26, shall be paid to Lessee no later than forty-five (45) days from the date of termination, together with a final accounting.

8. **Performance Escrow Fund.** Lessor will establish a performance escrow fund to be paid by Lessee to Lessor in the aggregate amount of six hundred dollars (\$600.00). Lessee shall pay and Lessor will escrow such funds at a rate of fifty dollars (\$50.00) per week. The specific items to which the performance escrow fund can be applied by Lessor are any and all amounts owed or payable by Lessee pursuant to this Agreement. Lessor shall not apply the performance escrow fund to any items not specified in this Agreement. Lessor will provide an accounting to Lessee of

any transactions involving the performance escrow fund while the fund is under the control of the Lessor by providing a separate accounting to Lessee of any transactions involving the performance escrow fund on a monthly basis during the term hereof; provided, however, that Lessee may receive an accounting of transactions involving the performance escrow fund at any time upon request. Lessor will pay interest on the performance escrow fund on at least a quarterly basis. The interest rate shall be established on the date funds are first deposited into the escrow account and shall be equal to the Applicable Rate. Lessee acknowledges and agrees that Lessor may credit such interest payments against the amounts otherwise payable by Lessee hereunder. Further, Lessee must satisfy all of Lessee's obligations specified under this Agreement in order to have the performance escrow fund returned following termination of this Agreement. At the time of the return of the performance escrow fund, Lessor may deduct monies for those obligations incurred by Lessee as specified in this Agreement, and shall provide a final accounting to Lessee of all such final deductions made to the performance escrow fund. Subject to the foregoing, the balance of the performance escrow fund shall be returned to Lessee within forty-five (45) days from the date of termination of this Agreement.

9. **Pet Deposit.** No pets or animals of any kind shall be permitted in the Equipment unless Lessee first pays to Lessor a pet deposit in the amount of \$2,500.00. If Lessee exercises the option to purchase the Equipment pursuant to paragraph 11 of this Agreement, then the pet deposit shall be refunded to Lessee, less any amounts payable by Lessee under this Agreement.

10. **Unconditional Payment Obligations.** Lessee shall pay to Lessor all lease payments and any other amounts owing hereunder on the due date thereof, and Lessee hereby agrees that its obligation to pay such amounts shall be absolute and unconditional under all circumstances, including, without limitation, the following: (i) any setoff, counterclaim, recoupment, defense, or other right which Lessee may have against Lessor or any vendor or manufacturer of any Equipment, or anyone else for any reason whatsoever; (ii) the existence of any liens, encumbrances, or rights of others whatsoever with respect to such Equipment, whether or not resulting from claims against Lessor not related to the ownership of such Equipment; (iii) any damage to or loss or destruction of the Equipment or any interruption or cessation in the use or possession thereof by Lessee for any reason whatsoever; (iv) any insolvency, bankruptcy, reorganization, or similar proceedings by or against Lessor; or (v) any other event or circumstances whatsoever, whether or not similar to any of the foregoing.

11. **Option to Purchase.** If Lessee is current on all of Lessee's obligations hereunder and this Agreement is in full force and effect, then Lessee will have the option to purchase the Equipment on the date and for the amount set forth on **EXHIBIT D** attached hereto. This option is personal to Lessee, and is not transferable or assignable by Lessee under any circumstances. **Lessee must give Lessor written notice of Lessee's intent to exercise such option to purchase no later than September 30th of the calendar year prior to the calendar year in which the term hereof will expire. Such notice must be sent to Lessor via certified mail. If Lessee fails to provide Lessor with such notice via certified mail on or before such date, then Lessee shall forfeit the option to purchase hereunder. If Lessee exercises the option by timely providing Lessor with the required notice, and this Agreement remains in full force and effect for the entire term hereof, but Lessee fails to purchase the Equipment on the Option Date set forth on EXHIBIT D attached hereto, then the Lease Completion Bonus under paragraph 4 above shall be equal to only \$0.015 per mile traveled by the Equipment during the term hereof (rather than \$0.03 per mile).** LESSOR SHALL MAKE NO WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, WITH RESPECT TO THE EQUIPMENT OR LESSEE'S INTENDED USE OF THE EQUIPMENT. IF LESSEE DOES PURCHASE THE EQUIPMENT, THEN IT WILL BE SOLD ON AN "AS-IS" BASIS. Lessor will transfer, or cause to be transferred, to Lessee any manufacturer's warranties on the Equipment that are then in force and effect and which are properly transferable and assignable to Lessee; provided, however, that Lessee shall be solely responsible for the payment of any charges, fees or costs relating to such transfer.

12. **Title to Equipment.** LESSEE EXPRESSLY ACKNOWLEDGES THAT LESSEE IS NOT BUYING THE EQUIPMENT DURING THE TERM OF THIS AGREEMENT AND WILL NOT HAVE ANY SECURITY, PROPERTY OR OWNERSHIP INTEREST IN THE EQUIPMENT DURING THE TERM OF THIS AGREEMENT, EXCEPT THE RIGHT TO USE THE SAME IN ACCORDANCE WITH AND SUBJECT TO THE TERMS, CONDITIONS AND PROVISIONS OF THIS AGREEMENT. This Agreement constitutes a lease and not a security agreement, under which Lessee only has use of the Equipment and the contingent right to exercise the option to purchase the Equipment in accordance with the conditions contained herein.

13. **Alteration of Equipment.** Lessee shall not add, change or remove any items which are affixed to the Equipment (including any speed controls, satellite communications units, and any painting or ornamentation) without Lessor's prior written consent. Upon Lessee's return of the Equipment to Lessor, any item Lessee affixed to the

Equipment with the approval of Lessor may be removed only if removal will not damage or lessen the value of the Equipment, and Lessee shall pay for such removal. Any alteration to the Equipment which is not approved in writing by the Lessor shall, at Lessor's option, be removed, replaced or repaired at Lessee's expense.

14. **Equipment Inspection.** During the term hereof, Lessor has the right to inspect the Equipment at any reasonable time or place. Upon Lessor's request, Lessee agrees to return the Equipment to Lessor's facilities in Olathe, Kansas, or to such other place specified by Lessor for its inspection.

15. **Operation, Maintenance and Repair Costs.** Lessee, at its own expense, shall keep the Equipment in good repair, mechanical condition and running order. Lessee shall pay all expenses associated with the operation, maintenance and repair of the Equipment, including but not limited to: (i) periodically washing and polishing the Equipment and keeping the interior and exterior of the Equipment clean; (ii) supplying the necessary fuel for the operation thereof; (iii) supplying the necessary oil, lubricants, anti-freeze and other fluids necessary for the operation thereof; (iv) making repairs and replacing worn parts and components, including, but not limited to, brakes, tires, filters, belts and drive line components (i.e. – engine, transmission, differentials and engine cooling system); and (v) maintaining the Equipment in accordance with the manufacturer's requirements in order to maintain any manufacturer's warranty. Notwithstanding the foregoing, Lessee shall not be financially responsible for any repair or replacement to the extent the costs and expenses thereof are covered by a manufacturer's warranty. Lessee agrees to comply with the maintenance procedures established by Lessor. As proof of compliance, Lessee shall supply Lessor with all requested invoices, purchase orders and similar documents evidencing compliance with the maintenance procedures. In the event Lessee fails to maintain or repair the Equipment as required by Lessor, Lessor may take possession of the Equipment, perform the maintenance or repair, and charge the cost thereof to Lessee.

16. **Licenses, Permits, Taxes and Other Charges.** Lessee shall be responsible for paying or causing to be paid all applicable assessments, charges, fees, taxes, including sales, use, excise, personal property, *ad valorem*, stamp and other taxes, fines or penalties whatsoever, now or hereafter imposed by any federal, state or local authority, whether payable by Lessor or Lessee, on or relating to the Equipment or the use, registration, rental, delivery, ownership or operation thereof, or based upon the amount of rent paid or assessed in connection with this Agreement. Nothing contained herein shall require Lessee to pay any taxes on or measured by the net income of Lessor determined substantially in the same manner as net income is presently determined under the Federal Internal Revenue Code. In case any report or return is required to be made with respect to any obligation of Lessee under this paragraph 16 or arising out of this paragraph 16, Lessee shall either make such report or return in such manner as will show Lessor's interest in the Equipment or notify Lessor of such requirement and make such report in such manner as shall be reasonably satisfactory to Lessor. Lessee's obligations under this paragraph 16 shall survive the termination of this Agreement. Lessee shall procure and maintain, at its expense, all licenses, permits, registrations, consents and certificates as may be required for the lawful operation of the Equipment. All certificates of title or registrations applicable to the Equipment shall be applied for, issued, and maintained in the name of the owner, and the Lessee shall pay all costs in relation thereto. If Lessor shall, under any applicable law, be required to directly apply for any such licenses, permits, registrations, consents or certificates, Lessor shall, upon Lessee's request therefor, accompanied by a properly completed application and Lessee's payment in full of the cost thereof, apply for the same; but nothing contained herein shall affect or diminish Lessee's responsibilities under this Agreement. Lessee shall be responsible for all fines due to overload, overlength, overweight, lack of plates or permits, violations of any federal, state or local laws, statutes, ordinances, regulations or orders relating to the operation of the Equipment and similar charges that may be duly and lawfully imposed or assessed by reason of Lessee's failure to comply with any laws, statutes, ordinances, regulations or orders of any governmental bodies having jurisdiction. If the taxes, licensing, registration, or permit fees, fines, or other charges that the Lessee is responsible for under this paragraph 16 are levied, assessed, charged, or imposed against the Lessor, it shall notify the Lessee in writing of such fact. The Lessor may, at its option, pay any such tax, licensing, registration, or permit fee, fine or other charge, whether levied, assessed, charged, or imposed against the Lessor or the Lessee. If such payment is made by the Lessor, the Lessee shall reimburse the Lessor within seven (7) days after receipt of an invoice therefor.

17. **Disclaimer of Warranties.** LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE EQUIPMENT, INCLUDING BUT NOT LIMITED TO: MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS, QUALITY, DURABILITY OR SUITABILITY FOR LESSEE'S PURPOSES, THE DESIGN OR CONDITION OF THE EQUIPMENT; THE QUALITY OF THE EQUIPMENT; THE WORKMANSHIP IN THE EQUIPMENT; COMPLIANCE OF THE EQUIPMENT WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION, OR CONTRACT PERTAINING THERETO; PATENT INFRINGEMENT; OR LATENT DEFECTS, LESSEE DISCLAIMING

ANY AND ALL LIABILITY OF LESSOR WITH RESPECT THERETO. LESSOR SHALL NOT BE LIABLE TO LESSEE OR TO ANY OTHER PERSON OR ENTITY FOR LOSS OF USE OF THE EQUIPMENT, LOSS OF TIME, INCONVENIENCE OR OTHER CONSEQUENTIAL DAMAGES RESULTING FROM THE CONDITION OF THE EQUIPMENT. THE EQUIPMENT IS BEING LEASED TO LESSEE "AS IS". Lessor shall not be liable or responsible to Lessee for any damage, defects, failure to meet specifications, late delivery, or failure to deliver with respect to Equipment. Lessee shall make claim on account thereof only against the manufacturer or supplier and shall nevertheless pay Lessor all lease payments under this Agreement. Lessor, to the extent assignable, hereby assigns to Lessee solely for the purpose of making and prosecuting any such claim against the manufacturer or supplier all of the rights which Lessor has against the manufacturer or supplier for breach of warranty or other representation respecting the Equipment. Lessor shall not be liable or responsible to Lessee for any claim, loss, damage, liability, or expense of any kind or nature including, but not limited to, direct, actual, indirect, special or consequential damages, caused directly or indirectly, by the Equipment or any part thereof, or the inadequacy thereof, for any purpose, or any defect or deficiency therein, or the use, operation, or storage thereof, or the interruption or loss of service or use thereof, or arising from any other reason or cause whatsoever relating to or concerning the Equipment, or any part thereof. All proceeds of any such warranty recovery from the manufacturer or supplier of the Equipment shall first be used to repair the Equipment.

18. **Risk of Loss.** As between Lessor and Lessee, Lessee assumes all risks and liability, whether or not covered by insurance, for loss or damage to the Equipment and for injuries or deaths of persons and damage to property, howsoever arising from or incident to the use, operation, or storage of the Equipment leased hereunder, whether such injury or death to persons be agents or employees of the Lessee or third parties, and whether such damage to property be of Lessee or others. If the Equipment is damaged but is capable of repair, Lessee shall repair the same at Lessee's expense as quickly as the circumstances permit. In such event, if Lessor is indemnified for such damage pursuant to any insurance policy covering such repair, Lessor upon adequate assurances that the applicable Equipment is repaired or will be repaired, will pay the insurance proceeds to the Lessee or the repair vendor, in Lessor's discretion, to assist Lessee in defraying the cost of repair. Lessee shall continue to pay the lease payments due hereunder regardless of whether the Equipment is damaged and/or is undergoing repair or overhaul. If the Equipment is lost, stolen, destroyed or damaged beyond repair by any cause whatsoever, then Lessee shall pay Lessor the fair market value of the Equipment less the amount of the indemnification, if any, received by Lessor pursuant to any insurance policy covering such loss. The Lessee's payment of the aforesaid amount shall be made to Lessor within five (5) days after Lessor's receipt of indemnification, or a notice of denial of liability, if any, from an insurance carrier or within twenty (20) days from the date of loss, theft, destruction, or damage of the Equipment, whichever date shall first occur. Should Lessee pay Lessor the aforesaid amount prior to receipt from Lessor's insurance carrier of any indemnification under an applicable policy, Lessor shall subrogate Lessee in writing to all Lessor's rights under such policy as they relate to the lost, stolen, destroyed, or damaged Equipment. Lessee also acknowledges and agrees that Lessor does not assume any liability for loss or damage to any contents or personal property contained in the Equipment regardless of the circumstances under which said loss or damage may occur and whether or not the Equipment is in the possession or under the control of Lessor.

19. **Insurance.** Lessee shall obtain and maintain, or cause to be obtained and maintained through an authorized motor carrier, insurance coverage for the protection of the public in connection with operation of the Equipment, as required by applicable law. In addition, Lessee shall carry non-trucking liability ("NTL" or "bobtail/deadhead") insurance coverage with respect to public liability and property damage arising out of operation of the Equipment, with minimum aggregate coverage of \$500,000 bodily injury and \$300,000 property damage per occurrence. In all instances, Lessor shall be named as an additional insured. Lessee shall give Lessor at least thirty (30) days' prior written notice of alteration or cancellation of such insurance, in whole or in part, and shall cause the insurer to do the same. Lessee shall furnish to Lessor copies of policies or certificates of insurance evidencing compliance with this insurance requirement, as requested by Lessor. Lessor shall maintain collision, fire and theft (physical damage) insurance coverage on the Equipment, subject to exclusions typically contained in such policies. Such insurance coverage shall be for the fair market value of the Equipment. If there are any deductibles applicable to such physical damage insurance, then Lessee shall pay up to and including the sum of One Thousand Dollars (\$1,000) of any loss for which Lessor is not indemnified by the insurer because of the operation of such deductibles. Lessee shall pay to Lessor the sum of \$125.00 per week for its maintenance of such physical damage insurance, which amount represents Lessor's cost for maintaining such insurance coverage plus an administrative fee. The parties acknowledge and agree that such weekly charge may be increased or decreased by Lessor from time to time upon notice thereof to Lessee.

20. **Cooperation.** Lessee agrees to keep Lessor informed of any major problems, attachments, liens or encumbrances which arise in connection with the operation of the Equipment and to promptly report information relating to any accident or lawsuit which occurs. Lessee shall cooperate with Lessor and with the insurers in the investigation, prosecution and defense of any claims or suits arising from the operation of the Equipment.

21. **Indemnification.** Lessee shall assume liability for, and shall defend, indemnify, and hold harmless Lessor, its agents, employees, officers, directors, successors and assigns from and against, any and all liabilities, obligations, losses, damages, injuries, claims, demands, fines, penalties, punitive damages, actions, costs, and expenses, including reasonable attorneys' fees, of whatsoever kind and nature, arising out of the use, condition (including, but not limited to, latent and other defects and whether or not discoverable by Lessee or Lessor), operation, ownership, selection, delivery, leasing or return of the Equipment, regardless of where, how, and by whom operated, and/or any acts or omissions of Lessee, its agents, employees, officers, directors, successors and assigns, and/or any failure on the part of Lessee to perform or comply with any terms or conditions of this Agreement. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the expiration or other termination of this Agreement. Nothing contained in this Agreement shall authorize Lessee or any other person to operate the Equipment so as to incur or impose any liability or obligation for or on behalf of Lessor. Lessee's obligations hereunder are in addition to and shall not be construed to negate, abridge, or reduce other rights to indemnity that Lessor may possess. If Lessor demands performance by Lessee of obligations under this paragraph 21 or other provisions of this Agreement and if Lessee refuses to assume or perform, or delays in assuming or performing Lessee's obligations, then Lessee shall pay Lessor its attorneys' fees, costs and other expenses incurred in enforcing the provisions of this paragraph 21. The obligations of defense and indemnity required herein shall, however, be a binding obligation upon Lessee whether or not Lessor has made such demand. In claims against Lessor by an employee or statutory employee of Lessee, the indemnification obligations under this paragraph 21 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Lessee under workers' or workmen's compensation acts, disability acts or other employee benefits laws.

22. **Default.** Time is of the essence with respect to Lessee's obligations hereunder. Lessee shall be in default under this Agreement upon the happening of any of the following events or conditions ("Events of Default"): (a) if Lessee shall fail to pay, when due, the lease payments or any other payment required to be paid hereunder by Lessee; (b) if any driver of the Equipment during the term hereof engages in conduct prohibited by the Federal Motor Carrier Safety Administration rules, including, without limitation, the rules regarding controlled substances and alcohol use and testing; (c) if Lessee shall fail to perform any other obligation hereunder and such failure shall continue for a period of five (5) days after Lessor gives notice thereof to Lessee; (d) if Lessee shall become insolvent or make an assignment for the benefit of creditors; (e) if Lessee applies for or consents to the appointment of a receiver, trustee, or liquidator of Lessee, or for all or a substantial part of Lessee's property, or if such receiver, trustee, or liquidator is appointed without the application or consent of Lessee; (f) abandonment of the Equipment by Lessee (including, without limitation, attempting to abandon, quit, cancel, rescind, revoke or terminate Lessee's obligations hereunder and voluntarily returning possession of the Equipment to Lessor prior to expiration of the term hereof); or (g) impoundment, attachment or any other taking of possession of the Equipment through legal process resulting from any act or omission of Lessee or Lessee's agents or employees.

23. **Bankruptcy and Insolvency.** Neither this Agreement nor any interest herein is assignable by Lessee or transferable by operation of law. Notwithstanding anything in this Agreement to the contrary, if any proceeding under the United States Bankruptcy Code is commenced by or against Lessee, or if Lessee is adjudged insolvent, or makes any assignment for the benefit of creditors, or if a writ of attachment or execution is levied on the Equipment and may not be released or satisfied within five (5) days thereafter, or if a receiver is appointed in any proceeding or action to which Lessee is a party with authority to take possession or control of the Equipment, Lessor may exercise any one or more of the remedies set forth herein; and this Agreement shall, at the option of Lessor, immediately terminate without notice and shall not be an asset of Lessee after the exercise of said option.

24. **Remedies.** Upon the occurrence of any Event of Default, Lessor may in its discretion do one or more of the following: (a) terminate this Agreement upon written notice to the Lessee; (b) whether or not this Agreement is terminated, take possession of the Equipment, wherever situated and, for such purpose, enter upon any premises without liability for so doing; (c) sell, dispose of, hold, use, or lease the Equipment as Lessor in its sole discretion may decide, without any duty to account to Lessee with respect to such action or any proceeds thereof; and (d) pursue any other remedy at law or in equity. In addition, after default Lessee shall be liable to Lessor for all loss, costs, and expenses incurred by Lessor by reason of the default including, without limitation, reasonable attorneys' fees and expenses of repossession and sale, as well as a recovery charge in the amount of one dollar (\$1.00) per mile for the mileage between

the recovery location and Lessor's facilities in Olathe, Kansas. Further, in the event Lessee abandons the Equipment, or attempts to abandon, quit, cancel, rescind, revoke or terminate Lessee's obligations hereunder and relinquishes possession of the Equipment prior to expiration of the term hereof, then, to compensate Lessor for such Event of Default, Lessee shall pay to Lessor a sum equal to the weekly Base Lease Payments set forth on **EXHIBIT B** attached hereto for a period of four (4) weeks. All such remedies set forth herein are cumulative and may be exercised concurrently or separately.

25. **Return of Equipment.** Upon termination of this Agreement, Lessee shall return the Equipment to the Lessor's facilities in Olathe, Kansas (or to a closer alternative location if Lessor so elects) at Lessee's expense, in good condition, inside and outside, and mechanically sound, reasonable wear and tear excepted. The Equipment shall be returned in at least the condition set forth in **EXHIBIT E** attached hereto. If the Equipment is not returned in such condition, Lessor may perform all repairs and work necessary to restore the Equipment to the required condition, and Lessee shall reimburse Lessor the cost thereof upon demand. In addition, Lessee shall pay to Lessor all costs incurred in securing possession of the Equipment, including reasonable attorneys' fees, in the event Lessor does not voluntarily return the Equipment to Lessor, as well as a recovery charge in the amount of one dollar (\$1.00) per mile for the mileage between the recovery location and Lessor's facilities in Olathe, Kansas. Lessor will assume no liability for loss or damage to personal property remaining in the Equipment at the time Lessor regains possession of the Equipment.

26. **Offset for Payment Deficiencies Upon Termination.** Upon termination of this Agreement, Lessee shall require any motor carrier to which Lessee leases the Equipment to offset against any amounts due Lessee from such carrier an amount sufficient to cure any deficiencies in Lessee's payment obligations hereunder, and to pay those amounts directly to Lessor. Further, upon termination hereof, Lessee grants to Lessor the right to offset against any amounts due Lessee from the Maintenance/Tire Replacement Reserve, the Performance Escrow Fund, the Lease Completion Bonus and/or the pet deposit described in paragraph 9 hereof, as may be applicable, any unpaid amounts due Lessor under the terms of this Agreement.

27. **Assignment.** Without Lessor's prior written consent, Lessee shall not: (i) assign Lessee's rights or delegate Lessee's duties and obligations under this Agreement; (ii) assign, transfer, pledge, hypothecate, grant a security interest in or otherwise dispose of the Equipment or any interest therein; or (iii) sublet or lend the Equipment or permit it to be used by anyone other than Lessee or Lessee's employees. Lessor may assign this Agreement and/or may mortgage or otherwise create a security interest in the Equipment, in whole or in part, without notice to Lessee, and its assignee, mortgage, and/or secured party may assign this Agreement and/or mortgage or other security interest, without notice to Lessee. Each such assignee, mortgagee, and/or secured party shall have all of the rights but none of the obligations of Lessor under this Agreement. Lessee shall recognize each such assignment, mortgage and/or security interest and shall not assert against the assignee, mortgagee, and/or secured party any defense, counterclaim, or setoff that Lessee may have against Lessor. Subject to the foregoing, this Agreement inures to the benefit of and is binding upon the heirs, legatees, personal representatives, survivors, successors, and assigns of the parties hereto. If the Equipment is purchased by Lessee pursuant to paragraph 11 hereof, notice is hereby given that the rights under the sales contract to sell the Equipment will be assigned to TransAm Trucking Exchange LLC.

28. **Waiver.** No action or failure to act by Lessor shall constitute a waiver of a right or duty afforded to Lessor under this Agreement, nor will such action or failure to act constitute approval of or acquiescence in a breach hereunder, except as may be specifically agreed to in writing. Any waiver by Lessor of any provision of this Agreement does not constitute a permanent waiver of the provision, nor does the forgiveness by Lessor of a violation or breach of any provision of the Agreement constitute a forgiveness of any subsequent violation or breach.

29. **Performance.** If Lessee shall fail to perform any of its obligations hereunder, Lessor shall have the right, but not the obligation, to immediately or at any time thereafter, perform such obligation for Lessee's account without thereby waiving such default, and, in such event, Lessee shall, upon demand, reimburse Lessor for all its expenses incurred in connection with the performance of such obligation.

30. **Governing Law; Jurisdiction.** This Agreement shall be interpreted, construed, enforced and regulated under and by the laws of the State of Kansas. Whenever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable federal, state or local laws, statutes, ordinances, regulations or orders ("Laws"). If, however, any provision of this Agreement, or a portion thereof, is prohibited by or found invalid under any Laws, only such provision or portion thereof shall be ineffective, without invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable. Lessee and Lessor further agree that in the event any provision of this Agreement, or a portion thereof, is

prohibited by Laws or found invalid under any Laws, this Agreement shall be reformed to replace such prohibited or invalid provision or portion thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the prohibited or invalid provision. Lessee and Lessor each agree that the District Court of Johnson County, Kansas or the United States District Court for the District of Kansas shall have jurisdiction to resolve all claims and any issues and disputes between Lessee and Lessor. Lessee agrees that it shall not file any petition, complaint, lawsuit or legal proceeding against Lessor in any other courts.

31. **Headings.** All headings, titles and paragraph captions are inserted in this Agreement for convenience of reference only, are descriptive only and shall not be deemed or construed to add to, detract from or otherwise modify the meaning of the paragraphs.

32. **No Limitation.** Duties and obligations imposed by this Agreement and rights and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

33. **Further Acts.** Lessee and Lessor agree to do all acts and things, and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement.

34. **Survival.** The terms of any and all representations, indemnifications, warranties and guarantees provided in favor of Lessor made in, required by or given in accordance with this Agreement, as well as all continuing obligations indicated in this Agreement, will survive termination of this Agreement, and shall remain in effect so long as Lessor is entitled to protection of its rights under applicable law.

35. **Third Parties.** Nothing contained in this Agreement shall create any contractual relationship with a third party nor create any cause of action in favor of a third party against Lessor.

36. **Entire Agreement.** This Agreement, including any exhibits attached hereto, constitutes the exclusive statement of the agreement of the parties with respect to the subject matter hereof, and this Agreement supersedes and replaces all prior agreements, discussions and representations, whether written or oral, relating to the subject matter hereof. The terms and provisions of this Agreement can only be amended, altered, changed, modified, supplemented or waived pursuant to a writing signed by Lessor and Lessee. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year first above written:

"Lessor":

TRANSAM LEASING, INC.

By Heather Sybesma
 Name Heather Sybesma
 Title Director of TransAm Leasing, Inc.

"Lessee":

ANTHONY GILLESPIE

Anthony B. Gillespie
 ANTHONY GILLESPIE

EXHIBIT A

LEASED EQUIPMENT

NAME OF LESSEE ANTHONY GILLESPIE

ADDRESS OF LESSEE 816 PLEASANT GROVE CHURCH CHERAW SC 29520

PHONE # OF LESSEE (843) 337-8112

TRACTOR UNIT # 84411

MAKE KENWORTH

MODEL T 700

YEAR 2012

DESCRIPTION _____


SERIAL # 1XKFDP9X0CJ296762

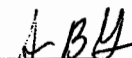
MOTOR CARRIER LEASED TO: TransAm Trucking, Inc.

Address: 15910 S. 169 Highway, Olathe, Kansas 66062

TERM OF LEASE

The term of this Agreement shall commence as of the 19TH day of AUGUST, 2011
(the "Effective Date"), for a period of TWO HUNDRED FIFTY SIX WEEKS (##) months, expiring as of
JULY 19TH, 2016.

Lessor: 
Initialed

Lessee: 
Initialed

Date: 8/19/11

Date: 8/19/11

EXHIBIT B

LEASE PAYMENTS

Base Lease Payments: (a) \$580.00 per week for 256 weeks (charged for any partial weeks at 1/7th per day);


plus

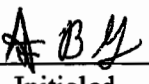
(b) FIVE cents (\$0.05) per mile (based on the Equipment's odometer reading – adjusted/reconciled on a periodic basis and/or at the end of the lease).

Excess Mileage Charge: Six cents (\$0.06) per mile (based on odometer reading) if average miles exceed 3000 miles per week.

This excess mileage charge is based on the accumulated average weekly miles traveled by the Equipment, adjusted and paid on a monthly basis.

If Lessee exercises the option to purchase the Equipment pursuant to paragraph 11 of this Agreement, then the aggregate excess mileage charges paid by Lessee hereunder shall be refunded to Lessee, less any amounts payable by Lessee under this Agreement.

Lessor: 
Initialed

Lessee: 
Initialed

Date: 8/19/11

Date: 8/19/11

EXHIBIT C**PREVENTATIVE MAINTENANCE / REPAIRS / TIRE WEAR**

CHARGEABLE ITEM	METHOD OF DEDUCTION
Tire wear	Prorated charge per 32 nd based on Beginning and ending 32 nd readings
Preventative Maintenance (PM)	Prorated charge per mile since last PM - 30,000 mile interval
Alignment	Prorated charge per mile since last Alignment - 90,000 mile interval
Overhead PM (Cat engines only)	Prorated charge per mile to 30,000 miles
Batteries (4)	Prorated per day charge up to 36 months
Fumes Disposal Filter Element (Crankcase Filter) 2008 engines	Prorated per mile charge since last filter replacement - 90,000 mile interval
Company provided inverter (does not apply to KWs)	Prorated per day charge up to 48 months
Maintenance or repairs required but not performed/repared during lease	Cost of service or repair
Physical Damage to Equipment body or interior	Cost of repair and/or replacement
Mattress	Cost of new or rebuilt mattress at current price
APU Preventative Maintenance	Prorated charge per mile since last APU Service - 30,000 mile interval
Diesel Particulate Filter (DPF) Cleaning if applicable	Prorated charge per mile since last DPF service - 200,000 mile interval

Lessor: HA
Initialed

Lessee: ABM
Initialed

Date: 8/19/11

Date: 8/19/11


EXHIBIT D

PURCHASE OPTION

Option Date: JULY 18TH, 2016

Option Price: \$28,750.00

Lessor: 
Initialed

Lessee: 
Initialed

Date: 8/19/11


Date: 8/19/11

EXHIBIT E

EQUIPMENT CONDITION PARAMETERS

1. TIRES: Shall be free of cuts and cracks, in alignment, of the same size, and have matched tread design.
2. BODY: Shall have no dented or punctured panels (including fuel tanks), minor scratches and scrapes permissible if total repairs will not exceed \$200.00.
3. INTERIORS: Shall be clean, have no tears, burns, damage to seats, seat backs, dashes, headliners, door panels or carpeting. Original radio and other original equipment to be in place and in working order. Gauges, etc., shall be in working order.
4. ENGINES: Shall be mechanically sound with no cracked heads or blocks. Shall perform to rated horsepower and pass dyno test per engine manufacturer specs, including no excessive engine crankcase blowby pressure or oil leaks.
5. DRIVE TRAIN COMPONENTS: Transmission and differentials shall be operable as originally provided and without excessive gear noise. Wheel seals shall not have excessive leakage.
6. GLASS: Windshield shall not be pitted, chipped or cracked and must pass DOT inspection requirements. Windows and mirrors shall not be broken or cracked and all window operating mechanisms will be operable.
7. ELECTRICAL: Batteries, starters, alternator, etc., shall be operable. Lights and wiring will be operable with no broken sealed beams, lenses, etc. Heaters and air conditioning systems shall be operable.
8. FACTORY EQUIPMENT AND IN SERVICE EQUIPMENT: Factory installed equipment and any equipment installed in unit prior to Lease shall be intact and operable, and free of damage. Includes fifth wheel, mudflaps, air fairings, safety equipment, chain boxes, etc.
9. CHROME AND BRIGHT METAL TRIM: Bumpers, grab handles, wheel hub caps, grills, etc. originally on unit at the time the lease commenced shall be free from damage and scrapes.
10. BRAKES: Shoes shall have a maximum of 50% wear. Wear beyond that point will be charged on a prorated basis.

Lessor: 
Initialed

Lessee: 
Initialed

Date: 8/19/11

Date: 8/19/11

TRANSAM LEASING, INC.

ADDENDUM TO EQUIPMENT LEASE AGREEMENT

THIS ADDENDUM is made and entered into by and between **TRANSAM LEASING, INC.**, a Kansas corporation ("Lessor"), and the undersigned lessee ("Lessee").

WITNESSETH:

WHEREAS, Lessor and Lessee are parties to that certain Equipment Lease Agreement effective as of the 19th day of August, 2011 (the "Agreement"), pursuant to which Lessee rents from Lessor and Lessor leases to Lessee certain motor vehicle equipment for use in Lessee's freight transportation business (the "Equipment"); and

WHEREAS, the parties desire to amend the Agreement as set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, it is hereby agreed as follows:

1. **Lease of APU.** During the term of the Agreement, Lessor shall lease to Lessee and Lessee shall rent from Lessor a TRI-PAC Brand Alternate Power Unit ("APU") for use in the Equipment. Lessee shall pay to Lessor lease payments in the amount of \$45.00 per week for the cost of the APU. Such lease payments shall be due and payable contemporaneously with the lease payments for the Equipment pursuant to the Agreement.

2. **Option to Purchase.** If Lessee is current on all of Lessee's obligations under the Agreement (including, but not limited to, Lessee's obligations hereunder), then Lessee will have the option to purchase the APU for the amount of \$750.00 on the option date set forth on **EXHIBIT D** attached to the Agreement; provided, however, that such option is contingent upon Lessee's exercise of the option to purchase the Equipment pursuant to paragraph 11 of the Agreement. Lessee must give Lessor at least thirty (30) days' prior written notice of Lessee's intent to exercise such option to purchase. This option is personal to Lessee, and is not transferable or assignable by Lessee under any circumstances. **LESSOR SHALL MAKE NO WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, WITH RESPECT TO THE APU OR LESSEE'S INTENDED USE OF THE APU. IF LESSEE DOES PURCHASE THE APU, THEN IT WILL BE SOLD BY LESSOR ON AN "AS-IS" BASIS.** Lessor will transfer to Lessee any manufacturer's warranties on the APU that are then in force and effect and which are properly transferable and assignable by Lessor; provided, however, that Lessee shall be solely responsible for the payment of any charges, fees or costs relating to such transfer.

3. **Maintenance of APU.** Lessee will be responsible for all routine and non-routine maintenance for the APU.

EXHIBIT

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C

4. **Disclaimer of Warranties.** LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE APU, INCLUDING BUT NOT LIMITED TO: MERCHANTABILITY OF THE APU OR ITS FITNESS, QUALITY, DURABILITY OR SUITABILITY FOR LESSEE'S PURPOSES, THE DESIGN OR CONDITION OF THE APU; THE QUALITY OF THE APU; THE WORKMANSHIP IN THE APU; COMPLIANCE OF THE APU WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION, OR CONTRACT PERTAINING THERETO; PATENT INFRINGEMENT; OR LATENT DEFECTS, LESSEE DISCLAIMING ANY AND ALL LIABILITY OF LESSOR WITH RESPECT THERETO. LESSOR SHALL NOT BE LIABLE TO LESSEE OR TO ANY OTHER PERSON OR ENTITY FOR LOSS OF USE OF THE APU, LOSS OF TIME, INCONVENIENCE OR OTHER CONSEQUENTIAL DAMAGES RESULTING FROM THE CONDITION OF THE APU. THE APU IS BEING LEASED TO LESSEE "AS IS".

IN WITNESS WHEREOF, the parties hereto have executed this Addendum on the date indicated under their respective signatures below.

"Lessor":

TRANSAM LEASING, INC.

"Lessee":

ANTHONY GILLESPIE

By

Heather Sybesma

Name

Heather Sybesma

Title

Director of TransAm Leasing, Inc.

Date

8/19/11

By

Anthony B. Gillespie

Name

ANTHONY GILLESPIE

Date

8/19/11



INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT (this "Agreement") is made and entered into effective as of the 19TH DAY OF AUGUST 2011, by and between **TRANSAM TRUCKING, INC.**, a Missouri corporation ("Carrier"), and **ANTHONY GILLESPIE** ("Contractor").

WITNESSETH:

WHEREAS, Carrier is an interstate and intrastate for-hire motor carrier, US DOT No. 315503, Docket No. MC-197897, which leases motor vehicle equipment from independent contractors; and

WHEREAS, Contractor owns and/or leases motor vehicle equipment and is engaged in the business of transporting freight by motor vehicle pursuant to long term arrangements with for-hire motor carriers; and

WHEREAS, subject to the terms and conditions herein contained, Carrier desires to lease Contractor's motor vehicle equipment and to obtain certain personnel services from Contractor from time to time, and Contractor desires to lease such motor vehicle equipment to Carrier and to make available such personnel services from time to time;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, it is hereby agreed as follows:

1. **Equipment and Other Property.**

(a) **Lease of Equipment.** During the term hereof, Contractor will furnish to Carrier the motor vehicle equipment (the "Equipment") described on **EXHIBIT A** attached hereto and incorporated herein for the purpose of hauling freight from time to time pursuant to the terms and conditions of this Agreement. Such Equipment shall be furnished to Carrier on a schedule to be determined by Contractor. Contractor represents and warrants that Contractor holds full legal title to the Equipment or has the legal right to lease the Equipment to Carrier for the purpose of hauling freight. The Contractor may substitute other motor vehicle equipment for the Equipment only upon prior approval of Carrier and written amendment to this Agreement. When possession of the Equipment is taken by Carrier hereunder, Carrier will give Contractor a copy of **EXHIBIT A**, by mail, telegraph, facsimile, or similar means of communication.

(b) **Satellite Communications Unit.** The Equipment must contain a satellite communications unit which is compatible with Carrier's satellite communications system. If the Equipment does not have a compatible satellite communications unit, then Contractor may borrow a compatible unit from Carrier during the term hereof. Upon termination of this Agreement, Contractor shall immediately have Carrier's unit removed from the Equipment at Contractor's expense, and shall return the unit to Carrier within seven (7) days following such termination of this Agreement. If Contractor fails to return the borrowed unit to Carrier in the same condition as when received by Contractor within such seven (7)-day period, then Contractor shall be held financially responsible for the full replacement cost thereof, which charge shall be set forth on **EXHIBIT B** attached hereto and incorporated herein. Further, regardless of whether the Contractor furnishes a compatible satellite communications unit in the Equipment or borrows a compatible unit from Carrier hereunder, Contractor shall pay to Carrier a satellite communications system usage fee in the amount of fifteen dollars (\$15.00) per week. Carrier may deduct any and all such amounts payable by Contractor under this subparagraph 1(b) from the compensation otherwise payable to Contractor hereunder.

(c) **Equipment Inspection.** The Contractor warrants that as of the date of execution of this Agreement, the Equipment has been inspected and found to be in compliance with the U.S. Department of Transportation ("DOT") Federal Motor Carrier Safety Regulations. The Contractor acknowledges and agrees

that during the term hereof, the Equipment shall be subject to the inspection and approval of Carrier so as to be in compliance with the requirements of the federal government and the appropriate states. Contractor further agrees to maintain the Equipment in proper operating condition so as to satisfy any federal, state or Carrier safety inspection at any time, to have the Equipment inspected as required by applicable law at any authorized inspection stations, and to promptly make such repairs as may be found necessary.

(d) Operating and Maintenance Expenses. Carrier shall have no responsibility for operating and maintenance expenses in connection with the Equipment. Contractor shall be responsible for all costs and expenses in connection with the operation and maintenance of the Equipment, including, but not limited to, fuel, oil, lubrication, routine tractor maintenance and repairs, and tractor washes.

(e) Optional Maintenance Savings Account. At Contractor's discretion, Contractor may fund into a voluntary Maintenance Savings Account to cover costs and expenses related to maintenance and repair of the Equipment, based on either a fixed dollar amount per week or a specific amount of cents per mile, not to exceed an aggregate amount of \$15,000.00. Interest will not accrue on any Maintenance Savings Account funds. If Contractor incurs a large repair expense which exceeds the balance of the Maintenance Savings Account, then, at Contractor's option, Carrier may provide Contractor with a matching loan of up to \$3,000.00 to help cover such expense (not to exceed the then current balance of the Maintenance Savings Account). This loan will be evidenced by a separate written agreement, which shall be incorporated herein by reference. Contractor shall be required to repay such loan to Carrier on a weekly basis, with minimum weekly payments of principal and interest in the amount of \$250.00 until paid in full. Interest shall accrue on such loan at a rate equal to the average yield or equivalent coupon issue yield on Ninety-One (91)-Day, Thirteen (13)-Week Treasury Bills as established in the weekly auction by the Department of Treasury. **For purposes of this Agreement, such interest rate shall be referred to hereinafter as the "Applicable Rate".** Carrier may deduct such loan payments from the compensation otherwise payable to Contractor pursuant to paragraph 3 below. Within fifteen (15) days following termination of this Agreement, Carrier shall remit to Contractor the balance of Contractor's Maintenance Savings Account, if any, less any outstanding loan balance owed to Carrier pursuant to this subparagraph 1(e). **PLEASE NOTE THAT THE MAINTENANCE SAVINGS ACCOUNT IS A COMPLETELY VOLUNTARY OPTION FOR CONTRACTOR. IT IS NOT A MANDATORY MAINTENANCE ESCROW.**

(f) Fuel Discounts. Contractor is not required to use the Comdata card or TCH card to purchase fuel. Contractor may, however, take advantage of Carrier's fuel network and receive the benefit of any at-pump discounts by using the Comdata card and/or TCH card. Contractor will not receive the benefit of any other discounts or rebates Carrier receives on fuel purchases made through Carrier's fuel network using the Comdata card and/or TCH card. Any additional fuel discounts or rebates shall accrue solely to the benefit of Carrier. Upon Contractor's request, Carrier shall provide to Contractor documentation of the difference between the discounted fuel price paid by Contractor using the Comdata card and/or TCH card and the discounted price paid by Carrier for the fuel, if any. Such documentation shall be incorporated herein by reference.

(g) Identification. Contractor agrees to affix to the Equipment the identification provided by Carrier as required by federal and state agencies. Upon termination of this Agreement, Contractor shall immediately remove all such identification from the Equipment at Contractor's expense. Contractor shall return all such identification (other than identification painted directly on the Equipment, if any) to the Carrier within seven (7) days following termination of this Agreement, either in person, by mail or via delivery service at Contractor's expense. If a particular identification device has been lost or stolen, a letter from Contractor certifying its removal will satisfy this requirement if received by Carrier within such seven (7)-day period.

(h) Compliance with Federal Law. In accordance with and only to the extent required by the ICC Termination Act of 1995 and corresponding DOT regulations, Carrier shall have exclusive possession, control and use of the Equipment and shall assume complete responsibility for the operation of the Equipment for the duration of the lease created by this Agreement, subject to the provisions of this Agreement. Further, Carrier may be considered the owner of the Equipment for the purpose of subleasing it under the applicable DOT regulations to other authorized carriers during the term hereof.

(i) Carrier's Trailers. Carrier will furnish Contractor with the use of trailers for the purpose of hauling freight for Carrier pursuant to this Agreement. Contractor shall make a visual inspection of each such trailer prior to taking possession and shall immediately report to Carrier in writing any and all existing damage or defects. Unless Contractor has given written notice to Carrier specifying any damage or defects to a trailer prior to taking possession, it shall be conclusively presumed as between Contractor and Carrier that Contractor has fully inspected the trailer and that it was free from damage and defects at the time Contractor took possession.

In addition, Contractor shall promptly report to Carrier any damage to such trailers that occurs while the trailers are under Contractor's control. Contractor agrees to immediately return all such trailers to Carrier at Carrier's home terminal in Olathe, Kansas, or to such other location as authorized and directed by Carrier, when not using them on Carrier's behalf or under contract with Carrier. Contractor agrees that for each day Contractor fails to return a trailer to Carrier as required herein, Contractor shall pay to Carrier the sum of five hundred dollars (\$500.00), regardless of whether the trailer is used by Contractor for other business. Such amounts may be deducted from the compensation payable to Contractor pursuant to paragraph 3 below.

Contractor agrees that it will not place any claim or cause of action against any trailer furnished by Carrier. Contractor further agrees to pay for all trailer tire repairs or replacements resulting from abuse or negligence by Contractor or its drivers when Contractor is pulling a trailer furnished by Carrier. If Contractor fails to return any such trailer to Carrier within seven (7) days following termination of this Agreement, then Contractor shall be held financially responsible for the trailer, and shall be responsible for all expenses incurred by Carrier in securing the proper return of said trailer, including attorneys' fees and any court costs, as well as mileage and personnel costs incurred in recovering the trailer, in addition to payment of the amounts described above.

(j) Other Property of Carrier. Carrier may furnish Contractor with certain other property needed for performing services hereunder, including, but not limited to, padlocks, load locks, king pin locks, pallets and permit book. If Contractor fails to return any such property to Carrier within seven (7) days following termination of this Agreement, then Contractor shall be held financially responsible for such property, the charges for which shall be specified on **EXHIBIT B** and incorporated herein. Carrier may deduct the applicable amounts from the compensation otherwise payable to Contractor hereunder.

(k) Detention and Accessorial Services. Carrier shall not be responsible for, or compensate or reimburse Contractor for, any detention or accessorial services, except as specifically provided herein.

2. Personnel Services.

(a) Drivers; Loading and Unloading. During the term hereof, Contractor agrees to make available and furnish to Carrier the services of qualified drivers for the Equipment and all other necessary manpower to load, transport and unload such freight using the Equipment as Carrier provides for in its tariffs, schedules and contracts; provided, however, that Contractor may refuse to haul any load offered to Contractor by Carrier, for any reason, with no penalty for refusal. Carrier will reimburse Contractor for the reasonable cost of loading and unloading services (lumper) upon presentation of valid receipts – subject to prior approval of Carrier. There is no guarantee by Carrier to Contractor of a minimum number of miles available pursuant to this Agreement.

(b) Driver Qualifications. All driver personnel made available and furnished by Contractor to perform services hereunder must meet and satisfy the driver qualifications of Carrier, the DOT and the appropriate states, and only such duly qualified drivers may operate the Equipment during the term hereof. It is expressly understood that drivers of the Equipment must at all times be in compliance with all applicable federal, state and local laws, statutes, ordinances, regulations and orders as presently in force or enacted in the future, and that drivers will perform all services hereunder and operate the Equipment in compliance with all applicable federal, state and local laws, statutes, ordinances, regulations and orders and the provisions of this Agreement.

(c) Employment of Personnel. All personnel furnished or used by Contractor to perform the personnel services hereunder, including drivers, driver's helpers and laborers, are and shall be at all times the

employees or agents of Contractor and not the employees or agents of Carrier. Accordingly, Contractor shall be solely and totally responsible for payment of their wages, employment benefits, including, but not limited to workers compensation benefits, and all other amounts required by government agencies to be paid by employers on behalf of or to employees. Contractor understands and agrees that Carrier will not be responsible for withholding or paying on behalf of Contractor, or any personnel furnished or used by Contractor to perform the personnel services hereunder, any sums for income tax, unemployment insurance, social security, workers compensation insurance, or any other withholding or payment pursuant to any law or requirement of any governmental body relating to the Contractor or such personnel, all such obligations being the sole responsibility of Contractor. Carrier shall neither have nor exercise control, direction or supervision over the personnel furnished or used by Contractor to perform the personnel services hereunder. Specifically, the Contractor shall be solely and totally responsible for selecting, hiring, firing, supervising, directing, training, and setting wages, hours and working conditions for its employees.

(d) Indemnification for Personnel Obligations. To the fullest extent permitted by law, Contractor shall assume responsibility for, and shall indemnify, defend and hold harmless Carrier and its agents, employees, officers, directors, successors and assigns from and against any and all claims for wages, salaries, benefits, taxes and all other withholdings and charges payable to, or with respect to, the personnel furnished or used by Contractor to perform the personnel services hereunder, and any and all damages, penalties and civil fines (unless expressly prohibited by law), losses and expenses, including, but not limited to attorneys' fees, arising or resulting from any such claims.

Additionally, Contractor shall assume responsibility for, and shall indemnify, defend and hold harmless Carrier and its agents, employees, officers, directors, successors and assigns from and against any and all liability and claims arising or resulting from Contractor's relationship with the personnel furnished or used by Contractor to perform the personnel services hereunder, whether under industrial accident laws, workers compensation laws, or any other state, federal or common law or precedent applicable to the relationship between employers and employees. Contractor's obligations under this subparagraph 2(d) shall survive termination of this Agreement, and are in addition to and shall not be construed to negate, abridge, or reduce other rights to indemnity that Carrier may possess.

If Carrier demands performance by Contractor of obligations under this subparagraph 2(d) and if Contractor refuses to assume or perform, or delays in assuming or performing Contractor's obligations, then Contractor shall pay Carrier its attorneys' fees, costs and other expenses related thereto and incurred in enforcing the provisions of this subparagraph 2(d). The obligations of defense and indemnity required herein shall, however, be a binding obligation upon Contractor whether or not Carrier has made such demand. Even if a defense is successful to a claim or demand for which Contractor is obligated to defend and indemnify Carrier from under this subparagraph 2(d), Contractor shall remain liable for all costs of defense. In claims against Carrier by an employee or statutory employee of Contractor, Contractor's indemnification obligations under this subparagraph 2(d) shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for Contractor under workers compensation acts, disability acts or any other employee benefit laws.

(e) Passengers. No passengers shall be permitted in Equipment without the prior written approval of Carrier for each such passenger.

(f) Non-Discrimination. Neither party shall unlawfully discriminate against any person based on factors such as sex, race, religion, creed, color, national origin, ancestry, age, veteran status, disability, or any other status, condition or characteristic protected by applicable law, to the extent the status, condition or characteristic is protected by applicable law.

3. Compensation. In consideration for furnishing the Equipment and the provision of the personnel services as specified herein, Carrier shall pay to Contractor the compensation described in **EXHIBIT C** attached hereto and incorporated herein by reference. Such compensation shall be due and payable to Contractor within fifteen (15) days after Contractor submits to Carrier properly completed DOT logs and all documents necessary for Carrier to secure payment from the shippers of loads hauled by Contractor using the Equipment, including, but not limited to, delivery receipts or bills of lading, detention reports and loading/unloading certificates, all of which must be signed by the appropriate representatives of the consignor and consignee. All such payments to Contractor and any applicable deductions shall be reflected in an operator's settlement which Carrier shall produce both on a weekly basis and as a

final statement following termination of this Agreement ("Settlement"). If the required paperwork for trips completed through the previous Thursday is received by Wednesday at noon (Central time) at Carrier's Olathe, Kansas office, then the Settlement will be processed on Friday of that week. Contractor may, at any reasonable time, examine copies of Carrier's tariff, schedule or other documents from which rates and charges are computed, subject to the limitations described in 49 CFR §376.12. Carrier shall furnish Contractor and the Internal Revenue Service with an annual report indicating the total amount of compensation paid to Contractor by Carrier during the year. Notwithstanding anything herein to the contrary, upon termination of this Agreement, as a condition precedent to final payment pursuant to this paragraph 3, Contractor must comply with the requirements regarding removal and return of Carrier identification as set forth in subparagraph 1(g) above.

4. **Performance Escrow Fund.** Carrier will establish a performance escrow fund to be paid by Contractor to Carrier in the aggregate amount of five hundred dollars (\$500.00). Carrier shall escrow and deduct such funds from Contractor's compensation hereunder at a rate of fifty dollars (\$50.00) per Settlement for the first ten (10) Settlements; provided, however, that Contractor must pay, and Carrier may deduct, the aggregate escrow amount of \$500.00 within the first ninety (90) days of the term hereof, regardless of the total number of Settlements hereunder or the amounts thereof. The specific items to which the performance escrow fund can be applied by Carrier are any and all amounts owed or payable by Contractor pursuant to subparagraphs 1(b), 1(e), 1(i), 1(j) or 2(d) hereof, paragraphs 5 through 13 or paragraph 17 hereof, or any amounts which Carrier could deduct from the compensation otherwise payable to Contractor hereunder for Contractor's payment obligations in accordance with paragraph 15 hereof. Carrier shall not apply the performance escrow fund to any items not specified in this Agreement.

Carrier will provide an accounting to Contractor of any transactions involving the performance escrow fund while the fund is under the control of the Carrier in one of the following ways: (a) by indicating in the individual Settlement sheets the amount and description of any deduction or addition made to the performance escrow fund; or (b) by providing a separate accounting to Contractor of any transactions involving the performance escrow fund on a monthly basis. Notwithstanding the foregoing, Contractor has the right to demand to have an accounting for transactions involving the performance escrow fund at any time. Carrier will pay interest on the performance escrow fund on at least a quarterly basis. For purposes of calculating the balance of the escrow fund on which interest must be paid, Carrier may deduct a sum equal to the average advance made to Contractor during the period of time for which interest is paid. The interest rate shall be established on the date the interest period begins and shall be equal to the Applicable Rate.

Contractor must satisfy all of Contractor's obligations specified under this Agreement in order to have the performance escrow fund returned following termination of this Agreement. At the time of the return of the performance escrow fund, Carrier may deduct monies for those obligations incurred by Contractor as specified herein, and shall provide a final accounting to Contractor of all such final deductions made to the performance escrow fund. Subject to the foregoing, in no event shall the performance escrow fund be returned later than forty-five (45) days from the date of termination of this Agreement.

5. **Term and Termination.** Subject to the provisions for early termination set forth herein, the term of this Agreement shall commence as of the day and year first above written and continue for a period of one (1) year, and thereafter shall automatically renew for additional consecutive one (1)-year terms. Either party may terminate this Agreement without cause by giving the other party at least fourteen (14) days' prior written notice thereof. In the event either party breaches its obligations pursuant to this Agreement, the other party shall have the right to immediately terminate or indefinitely suspend this Agreement by giving at least five (5) days' prior written notice thereof to the breaching party. Termination of this Agreement following proper notice thereof shall become effective whether or not Contractor has removed all signs, placards, licenses and permits relating to Carrier. Contractor shall defend, indemnify and hold harmless Carrier and its directors, shareholders, officers, employees and agents from and against any and all claims, damages, costs, liabilities, judgments and expenses (including attorneys' fees) which may arise from Contractor's actions and operations following termination of this Agreement. Contractor expressly acknowledges and agrees that operations of the Equipment beyond the scope and authority of this Agreement or in violation of the law and without both the knowledge and authority of Carrier automatically voids this Agreement and constitutes operations solely of Contractor, and Contractor shall defend, indemnify and hold harmless Carrier and its directors, shareholders, officers, employees and agents from and against any and all claims, damages, costs, liabilities, judgments and expenses (including attorneys' fees) which may arise from such unauthorized actions and operations. Carrier's possession, control and use of and responsibility for the Equipment as described in subparagraph 1(h) above shall not exist when Contractor operates contrary to and in violation of the law and/or any provision(s) of this Agreement, as Carrier requires

absolute compliance therewith and failure to adhere thereto evidences that Carrier no longer has such possession, control, use and responsibility.

6. **Base Plates, Licenses and Permits.** Carrier shall pay all fees relating to the use of Carrier's base plates, vehicle licenses and permits of all types required for Contractor to haul freight for Carrier utilizing the Equipment pursuant to this Agreement.

7. **Taxes and Levies.** It is agreed and understood that Contractor shall be solely responsible for all fuel taxes, mileage taxes, highway use taxes, road taxes, and all other levies or similar assessments based upon the operation of the Equipment hereunder. Carrier will report and pay all fuel and mileage taxes to the various states. Contractor shall pay \$0.01 per mile to cover all such fuel and mileage taxes. Carrier may deduct such charges from Contractor's compensation hereunder. The amounts deducted shall be based upon the individual trips of Contractor as accrued upon the operation of the Equipment. Carrier reserves the right to pay such sums to any government agencies in consolidated reporting and payment, and need not report separately for Contractor. The actual amount of fuel and mileage taxes attributable to Contractor will be reconciled by Carrier on a quarterly basis during the term hereof, and upon termination of this Agreement. In the event the allocated amount actually paid by Contractor hereunder for such taxes is less than the amount payable to the applicable taxing authorities which is attributable to Contractor, then Carrier shall deduct the deficiency from Contractor's compensation hereunder. In the event the allocated amount actually paid by Contractor hereunder for such taxes exceeds the amount payable to the applicable taxing authorities which is attributable to Contractor, then Carrier shall pay such excess to Contractor, together with interest accrued thereon at the Applicable Rate. Contractor will be responsible for reporting and paying all highway use taxes (Form 2290) based upon the operation of the Equipment hereunder, and must provide Carrier with evidence of payment thereof. Contractor may, at its option, elect to have Carrier report and pay such highway use taxes on Contractor's behalf, in which event Carrier will withhold from Contractor's compensation the amount payable for such taxes in equal installments prior to the due date to lessen the financial impact thereof on Contractor when such payment becomes due. **PLEASE NOTE THAT ANY SUCH WITHHOLDINGS FOR HIGHWAY USE TAXES ARE COMPLETELY VOLUNTARY. SUCH FUNDS ARE NOT CONSIDERED ESCROW FUNDS UNDER FEDERAL REGULATIONS AND WILL NOT ACCRUE INTEREST.**

8. **Fuel Surcharge Program.** In an effort to minimize the impact of fluctuations in the price of diesel fuel, Contractor will be paid a Fuel Surcharge in accordance with **EXHIBIT E** attached hereto and incorporated herein. The Fuel Surcharge will be paid on each dispatched miles (loaded and empty). Contractor shall not be paid for any miles driven when not performing services for Carrier hereunder. Empty miles under dispatch will be paid from the point of Contractor's last delivery hereunder to point where next reload occurs. The amount of Fuel Surcharge per mile will be based on the Department of Energy's (DOE) Weekly National Average Price of Diesel Fuel and will be adjusted every Tuesday. The Fuel Surcharge applicable to a given load will be based on the date that the load is picked up by Contractor. The Fuel Surcharge for any dispatched empty miles will be based on the date that the driver is dispatched on the empty move. For example: If the DOE Weekly National Average is \$2.50, drivers will be paid \$.192 per dispatched loaded and empty mile traveled on loads picked up or empty moves dispatched between Tuesday and the following Monday. Contractor will be notified of the amount of the Fuel Surcharge each Tuesday via satellite.

9. **Insurance.** Pursuant to FMCSA regulations under 49 U.S.C. 13906, Carrier shall maintain, at its own expense, public liability and property damage insurance coverage or self-insurance for the protection of the public. Contractor acknowledges and agrees that if Contractor (or any agent or employee of Contractor) is responsible for an accident resulting in loss or damage to third parties and/or their property (i.e., public liability) while operating the Equipment under this Agreement, then Contractor shall pay up to and including the sum of Two Thousand Dollars (\$2,000) for such public liability, including property damage, bodily injury and/or environmental restoration. Contractor further agrees to maintain, or cause to be maintained on Contractor's behalf, the following types of insurance coverage at all times during the term hereof:

(a) Bobtail and deadhead insurance coverage with respect to public liability and property damage with minimum aggregate coverage of \$500,000 bodily injury and \$300,000 property damage per occurrence as concerns the Equipment when not in use under this Agreement. Carrier shall be endorsed as an additional insured under such policy, and Contractor will cause the insurer to agree (either by endorsement upon such policy or by letter addressed to Carrier) to give Carrier at least ten (10) days' prior written notice of any alteration in the terms of such policy or of the cancellation thereof in whole or in part. Contractor shall provide Carrier with copies of all such policies or certificates with respect to such policies or with other evidence satisfactory to Carrier of compliance by Contractor with the requirements of this subparagraph 9(a).

In the event Contractor fails to maintain the insurance as required by this subparagraph 9(a), Carrier shall have the right, but not the obligation, to procure such insurance and, in such event, Contractor shall, upon demand, reimburse Carrier for the expense thereof.

(b) Collision, fire and theft insurance (physical damage) coverage for the Equipment. Contractor expressly understands that Carrier shall not be responsible for providing such coverage.

(c) Occupational accident/workers' compensation insurance coverage which shall protect Contractor from all claims for injury, sickness, disease or death of Contractor's employees or statutory employees, to the extent required by and in compliance with applicable law. Upon request, Contractor shall furnish to Carrier proper evidence of such insurance coverage.

Contractor shall have the option of either independently contracting for the insurance required under this paragraph 9, or requesting Carrier to obtain such coverage in Contractor's name and charge such costs to Contractor. In the event Contractor chooses the latter option, Carrier will provide Contractor with a certificate of insurance for each such policy, as required by 49 CFR §376.12. Carrier will also provide Contractor with a copy of each such policy upon request of Contractor. If applicable, the specific amount to be charged for such insurance coverage will be attached hereto as **EXHIBIT B** and incorporated herein by reference, and Carrier may deduct such amounts from the compensation otherwise payable to Contractor hereunder.

10. **Fines and Penalties.** Contractor shall be financially responsible for all fines and penalties arising from operation of the Equipment. Contractor shall be responsible for ensuring that each load is legal from a weight and size standpoint before commencing each trip and during the conduct thereof, and will pay for all scales. If Contractor fails to do so, or transports a load which exceeds state weight or size limitations without the express approval of Carrier, then Contractor shall be responsible for any resulting fines. Except when the violation results from the acts or omissions of the Contractor, the Carrier shall assume the risks and costs of fines for overweight and oversize trailers when the trailers are pre-loaded, sealed, or the load is containerized, or when the trailer or lading is otherwise outside of Contractor's control, and for improperly permitted over-dimension and overweight loads, and shall reimburse Contractor for any fines paid by Contractor which are the obligation of Carrier under this paragraph 10.

11. **Claims for Loss and Damages.**

(a) Cargo. Contractor shall be responsible and liable for the entire amount of any claim for pilferage, theft, spoilage, shortage or other loss or damage to cargo transported by Contractor, except as provided below: In the event any loss or damage to cargo transported by Contractor was not caused by, or contributed to by, Contractor or Contractor's agents or employees or the Equipment, Contractor will not be responsible and liable for any amount of any such claim. If, however, such loss or damage was caused by, or contributed to by, Contractor or Contractor's agents or employees or the Equipment, then Contractor shall pay up to and including the sum of Two Thousand Dollars (\$2,000) of any such loss or damage. Contractor shall bear the burden of proving that Contractor or Contractor's agents or employees or the Equipment did not cause or contribute to such loss.

(b) Trailers. Contractor shall be responsible and liable for the entire amount of any loss or damage to trailers or equipment furnished to Contractor by Carrier hereunder, except as provided below: In the event any loss or damage to trailers or equipment furnished to Contractor by Carrier hereunder was not caused by, or contributed to by, Contractor or Contractor's agents or employees or the Equipment, Contractor will not be responsible and liable for any amount of any such loss or damage. If, however, such loss or damage was caused by, or contributed to by, Contractor or Contractor's agents or employees or the Equipment, then Contractor shall pay up to and including the sum of Two Thousand Dollars (\$2,000) of any such loss or damage. Contractor shall bear the burden of proving that Contractor or Contractor's agents or employees or the Equipment did not cause or contribute to such loss.

(c) Equipment. Carrier shall in no way be responsible or liable for any damages that may occur to the Equipment.

12. **Trip Interruption.** In the event Contractor violates this Agreement in such a manner as to fail to complete transportation of cargo intransit, abandons a shipment, has a breakdown, or otherwise interferes with the

expeditious and safe delivery of cargo and thereby subjects Carrier to potential liability to shippers, Contractor expressly acknowledges and agrees that Carrier shall have the right to complete the trip in any manner Carrier deems appropriate. Contractor hereby waives any recourse against Carrier for such action and agrees to reimburse Carrier for any costs and expenses arising out of such trip completion. Contractor expressly acknowledges and agrees that any such amounts may be deducted from the compensation otherwise payable to Contractor by Carrier hereunder. In addition, Contractor shall assume responsibility for any damages to a shipper arising out of a violation of this Agreement by Contractor, and shall defend, indemnify and hold harmless Carrier and its agents, employees, officers, directors successors and assigns from and against any and all liability and claims arising from any such violation, in accordance with the provisions of paragraph 13 below.

13. **Risk of Loss; General Indemnification.** As between Contractor and Carrier, unless otherwise expressly provided for herein, Contractor assumes all risks and liability, whether or not covered by insurance, for any and all loss or damage to the Equipment, to cargo hauled by Contractor and to trailers or other equipment or property furnished by Carrier to Contractor, and for injuries or deaths of persons and damage to property, howsoever arising from or incident to the use, operation, or storage of the Equipment, whether such persons are agents or employees of Contractor or third parties, and whether such damaged property is owned by Contractor or third parties. Further, to the fullest extent permitted by law, Contractor shall assume responsibility for, and shall defend, indemnify and hold harmless Carrier and Carrier's agents, employees, officers, shareholders, directors, successors and assigns from and against any and all claims, damages, penalties and civil fines (unless expressly prohibited by law), losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from: (i) Contractor's acts or omissions and/or acts or omissions of Contractor's agents or employees; (ii) use or operation of the Equipment, regardless of where, how, and by whom used or operated; and/or (iii) failure on the part of Contractor to perform or comply with any terms or conditions of this Agreement. Contractor's obligations under this paragraph 13 shall survive termination of this Agreement, and are in addition to and shall not be construed to negate, abridge, or reduce other rights to indemnity that Carrier may possess. If Carrier demands performance by Contractor of obligations under this paragraph 13 and if Contractor refuses to assume or perform, or delays in assuming or performing Contractor's obligations, then Contractor shall pay Carrier its attorneys' fees, costs and other expenses related thereto and incurred in enforcing the provisions of this paragraph 13. The obligations of defense and indemnity required herein shall, however, be a binding obligation upon Contractor whether or not Carrier has made such demand. Even if a defense is successful to a claim or demand for which Contractor is obligated to defend and indemnify Carrier from under this paragraph 13, Contractor shall remain liable for all costs of defense. In claims against Carrier by an employee or statutory employee of Contractor, Contractor's indemnification obligations under this paragraph 13 shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for Contractor under workers compensation acts, disability acts or any other employee benefit acts.

14. **Advances for Certain Business Expenses.** Carrier will make advances to Contractor each week Contractor hauls freight for Carrier utilizing the Equipment pursuant to this Agreement to cover certain reimbursable business expenses incurred by Contractor in connection therewith. Such expenses include tolls, loading and unloading (lumper) services, ferry costs, trailer washouts and trailer shags, DOT-mandated driver physical examination and test costs, and any other reimbursable business expenses or costs specified in this Agreement. Advances may be made to Contractor's driver(s) by Carrier, unless Contractor, by signed addendum to this Agreement, directs that there shall be no advances made to its driver(s). Contractor expressly authorizes Carrier to deduct from Contractor's compensation any and all amounts advanced pursuant to this paragraph 14 which are not reimbursable expenses evidenced by valid receipts provided to Carrier or are otherwise not reimbursable by Carrier under the terms of this Agreement.

15. **Deductions.** Contractor expressly acknowledges and agrees that Carrier may deduct from the compensation otherwise payable to Contractor pursuant to paragraph 3 hereof amounts sufficient to cover Contractor's payment obligations as specified in this Agreement, as well as any other amounts specifically directed and authorized by Contractor. Carrier will not make any deductions from Contractor's compensation hereunder for any charge-back item unless the item is clearly specified in this Agreement (including separate documents which are incorporated herein by reference). Contractor specifically authorizes Carrier to make deductions for the following items:

- (a) any and all Comdata and/or TCH card charges and transaction fees attributable to Contractor;
- (b) charges related to Carrier's satellite communications unit, if applicable, and the satellite communications system usage fee described in subparagraph 1(b);
- (c) charges related to Carrier's trailers or other property pursuant to subparagraphs 1(i) and 1(j);
- (d) the Performance Escrow Fund described in paragraph 4;
- (e) tax obligations and charges under paragraph 7;

- (f) any fuel credit under paragraph 8;
- (g) applicable amounts of any claims for loss or damage to cargo transported by Contractor as set forth in subparagraph 11(a), any liability of Contractor under subparagraph 11(b) for damage to trailers or equipment furnished by Carrier, or any charges for trailer tire repairs or replacements resulting from abuse or negligence by Contractor or its drivers;
- (h) reimbursement to Carrier for any costs and expenses arising out of trip completions pursuant to paragraph 12 above, and any damages to shippers arising out of violations of this Agreement by Contractor;
- (i) any amounts advanced by Carrier pursuant to paragraph 14 for expenses which are not reimbursable under the terms hereof;
- (j) interest charges on any negative Settlement balances per paragraph 17;
- (k) Contractor's obligations for purchase or rental payments, related expenses or charges and/or escrow fund obligations to a third party lender or lessor pursuant to an equipment purchase or rental contract concerning the Equipment, in accordance with the provisions of paragraph 19 below;
- (l) any fines, penalties, interest, taxes, fees and/or assessments levied against Carrier as a result of Contractor's operations for which Contractor is responsible or liable hereunder; and
- (m) any other payment obligations or liabilities of Contractor specified in this Agreement, or any other amounts as specifically directed and authorized by Contractor in accordance herewith, including, without limitation, any funds for the Optional Maintenance Savings Account described in subparagraph 1(e), if applicable, including any loan repayment thereunder, and any charges for insurance pursuant to paragraph 9.

For any and all items that may initially be paid for by Carrier but ultimately deducted from Contractor's compensation hereunder, unless already specified herein, Carrier shall provide Contractor with a written recitation as to how the amount of each item is computed, and such statement shall be incorporated herein by reference. Carrier shall provide to Contractor, upon Contractor's request, copies of those documents which are necessary to determine the validity all such charges. Carrier will also provide Contractor with a written explanation and itemization of any deductions for cargo or property damage claims prior to making any such deductions. If Contractor does not object in writing to any deductions made hereunder within fifteen (15) days from the date of the applicable Settlement, all such deductions shall be deemed ratified by Contractor.

16. **Settlement Dispute.** Contractor acknowledges and agrees that if Contractor does not object in writing to a Settlement within fifteen (15) days from the date Carrier produces the Settlement, the Settlement shall be final and Contractor shall not make any claim or bring any cause of action against Carrier relating to the payments and/or deductions reflected therein.

17. **Negative Settlement Balance.** In the event Contractor has a negative Settlement balance after calculation of all payments due Contractor pursuant to paragraph 3 above, less all deductions authorized in paragraph 15 above, Contractor agrees to pay to Carrier interest on such negative balance at the Applicable Rate. Interest shall be paid on the average weekly amount of Contractor's negative balance, and may be deducted from future compensation otherwise payable to Contractor pursuant to paragraph 3 above.

18. **Products, Equipment and Services of Carrier.** Contractor is not required to purchase or rent any products, equipment or services from Carrier or Carrier's affiliates as a condition of this Agreement. All requests by Contractor or its drivers for Carrier to furnish products, equipment or services will be complied with at the sole discretion of Carrier, and Contractor acknowledges and agrees that Contractor will not assume any such products, equipment or services have been furnished by Carrier until Carrier provides Contractor with written confirmation thereof.

19. **Equipment Purchase or Rental Contracts.** If Contractor is purchasing or leasing the Equipment from a third party lender or lessor, and Contractor desires Carrier to make deductions from Contractor's compensation hereunder and to remit such deducted sums to the lender or lessor on Contractor's behalf for purchase or rental payments, related expenses or charges and/or escrow fund obligations, then Contractor must complete and execute the request form attached hereto as **EXHIBIT D** and must provide Carrier with a copy of the applicable equipment purchase or rental contract. If such purchase or rental contract complies with applicable DOT regulations and other applicable laws, then Carrier will comply with Contractor's request and the terms thereof shall be incorporated herein by reference.

20. **Relationship of Parties.** The parties intend to create by this Agreement an independent contractor relationship and not an employment or master/servant relationship between Carrier and Contractor. Neither Contractor nor any personnel furnished by Contractor to perform services hereunder shall be considered employees of Carrier at any time, under any circumstances or for any purpose. Contractor shall determine the method, means and the manner of performing Contractor's obligations pursuant to this Agreement and shall be responsible to Carrier for the performance of this Agreement in accordance with the rules and regulations of appropriate regulatory agencies. Contractor shall have the right to reject any load assignment and further has the right to choose the route of travel of the Equipment and at what points Contractor's drivers shall take rest stops and refuel the Equipment, all of which shall be the sole obligation and responsibility of Contractor. The parties hereto are not the agent of the other and neither party shall have the right to bind the other by contract or otherwise except as specifically provided herein. The parties acknowledge that the provisions contained in subparagraph 1(h) above regarding Carrier's exclusive possession, control and use of and responsibility for the operation Equipment are required by DOT regulations and, in accordance with 49 CFR § 376.12(c)(4), are not intended to affect whether Contractor or any driver provided by Contractor is an independent contractor or an employee of Carrier. Carrier shall neither have nor exercise any control or direction over the specific methods by which the Contractor (or Contractor's employees or agents) shall perform services hereunder. Contractor understands and agrees that Carrier shall not withhold on behalf of Contractor (or Contractor's employees or agents) pursuant to this Agreement any sums for income tax, unemployment insurance, Social Security or any other withholding pursuant to any law or requirement of any governmental body relating to them, or make available to Contractor (or Contractor's employees or agents) any of the benefits afforded to employees of Carrier. Contractor is not and shall not be subject to the policies and procedures applicable only to employees of Carrier. Neither Contractor nor any of Contractor's employees or agents shall have any claim under this Agreement or otherwise against Carrier for workers compensation, unemployment compensation, vacation pay, sick leave, retirement benefits, Social Security benefits, disability insurance benefits, or any other employee benefits, all of which shall be the sole responsibility of Contractor.

21. **Advertising.** During the term hereof, Contractor has the right to advertise Contractor's services to the general public. Names, telephone numbers or any other desired advertising may be placed on the Equipment, as Contractor deems appropriate, provided that any such advertising does not interfere with the identification required by Carrier pursuant to subparagraph 1(g) above.

22. **Unauthorized Material.** Contractor agrees and warrants that Contractor and Contractor's drivers, personnel and agents will not place in or on, or carry onto any equipment owned by or under lease to Carrier, including the Equipment, any alcoholic beverages, controlled substances, illegal drugs, explosives or firearms. Any violation of this provision will permit Carrier to terminate this Agreement immediately, without prior notice to Contractor. If a violation of this provision subjects Carrier to any expenditures, Contractor agrees to reimburse Carrier for same.

23. **Waiver.** No action or failure to act by Carrier shall constitute a waiver of a right or duty afforded to Carrier under this Agreement, nor will such action or failure to act constitute approval of or acquiescence in a breach hereunder, except as may be specifically agreed to in writing. Any waiver by Carrier of any provision of this Agreement does not constitute a permanent waiver of the provision, nor does the forgiveness by Carrier of a violation or breach of any provision of the Agreement constitute a forgiveness of any subsequent violation or breach.

24. **Assignment.** Contractor may not assign Contractor's rights or delegate Contractor's duties and obligations under this Agreement without the prior written consent of Carrier. Carrier may assign this Agreement without the consent of Contractor.

25. **Governing Law.** This Agreement shall be interpreted, construed, enforced and regulated under and by the laws of the State of Kansas. Whenever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable federal, state or local laws, statutes, ordinances, regulations or orders ("Laws"). If, however, any provision of this Agreement, or a portion thereof, is prohibited by or found invalid under any Laws, only such provision or portion thereof shall be ineffective, without invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable. Contractor and Carrier further agree that in the event any provision of this Agreement, or a portion thereof, is prohibited by Laws or found invalid under any Laws, this Agreement shall be reformed to replace such prohibited or invalid provision or portion thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the prohibited or invalid provision.

26. **Headings.** All headings, titles and paragraph captions are inserted in this Agreement for convenience of reference only, are descriptive only and shall not be deemed or construed to add to, detract from or otherwise modify the meaning of the paragraphs.

27. **No Limitation.** Duties and obligations imposed by this Agreement and rights and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

28. **Performance.** Contractor acknowledges and agrees that time and exact performance are of the essence of this Agreement.

29. **Further Acts.** Contractor and Carrier agree to do all acts and things, and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement.

30. **Third Parties.** Nothing contained in this Agreement shall create any contractual relationship with a third party nor create any cause of action in favor of a third party against Carrier.

31. **Entire Agreement.** This Agreement, including any exhibits attached hereto and documents incorporated herein by reference, any subsequent addendums hereto signed by both parties, and any trip records used pursuant to this Agreement, constitutes the entire agreement and understanding between the parties and shall not be modified, altered, changed or amended in any respect unless in writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed one (1) original and two (2) copies of this Agreement. Carrier shall retain the original of this Agreement, one copy shall remain in the Equipment during the term of this Agreement, and the other copy shall be retained by Contractor.

"Contractor":

ANTHONY GILLESPIE

By Anthony B. Gillespie

Name ANTHONY GILLESPIE

Title Independent Contractor

"Carrier":

TRANSAM TRUCKING, INC.

By Murray Droscher

Name Murray Droscher

Title Chief Financial Officer



EXHIBIT A

Description of Equipment

Make: KENWORTH Model: T 700

Year: 2012 VIN: 1XKFDP9X0CJ296762

Base License: P 746606

Unit Number: 84411

RECEIPT

Date and time of day possession is transferred, per 49 CFR §376.11(b):

Date: 8/19, 2011.

Time: _____ a.m./p.m.

Contractor's contact information:

ANTHONY GILLESPIE

816 PLEASANT GROVE CHURCH

CHERAW SC 29520

A copy of this receipt form shall be given to Contractor upon commencement of services under this Agreement, by mail, telegraph, facsimile, or similar means of communication.



EXHIBIT B

Charges/Deductions

A. Satellite Communications Equipment	\$1650.00*
B. Padlock	\$ 58.00*
C. Padlock Key	\$ 5.00*
D. Permit Book Recovered	\$ 90.00*
E. Permit Book Unrecoverable	\$ 306.00*
F. Load Lock (2)	\$ 11.92*
G. Seal Stamp	\$ 15.00*
H. King Pin Lock	\$ 90.00*
I. King Pin Lock Key	\$ 5.00*
J. Pallets	Units multiplied by fair market value
K. Other Property Assigned to Contractor by Carrier	Current cost
L. Bobtail and Deadhead Insurance	\$ 6.00/Week**
M. Occupational Accident/Workers' Compensation Insurance	\$ 22.85/Week**
N. Tuition Reimbursement	Terms defined in <i>Tuition Repayment Income Withholding Authorization</i>

*Or current cost to replace unreturned item

**Weekly premium subject to change at annual renewal



EXHIBIT C

Compensation

Rate per mile:	\$.84 per mile (dispatched – loaded and empty). Contractor shall not be paid for any miles driven when not performing services for Carrier hereunder. Empty miles under dispatch will be paid from the point of Contractor's last delivery hereunder to point where next reload occurs. At each anniversary date of this Agreement, the rate per mile will be increased by \$0.01, up to a maximum of \$0.88 per mile, subject to Contractor's attendance at Carrier's Ethics and Technique class each calendar year and at least two quarterly safety sessions, per Contractor's Owner-Operator's Information Handbook. In addition, Contractor may qualify for a Quarterly Bonus equal to \$0.01 per mile, per Contractor's Owner-Operator's Information Handbook.
Stop Pay:	\$40.00 for each scheduled stop other than the original pickup and final delivery stops.
Fuel Surcharge Program:	Contractor will be paid a Fuel Surcharge in accordance with paragraph 8.
Loading/ Unloading:	TransAm will reimburse Contractor for the reasonable cost of loading and unloading services (lumper) upon presentment of valid receipts – subject to prior approval.
Trailers:	TransAm will pay for trailer washouts, trailer shags and trailer spotting charges.
Tolls:	TransAm will reimburse Contractor for tolls (and ferry charges, if applicable) upon presentment of valid receipts.
Fuel Discounts:	Contractor may take advantage of TransAm's fuel network and receive the benefit of any at-pump discounts through use of the Comdata card and/or TCH card – per subparagraph 1(f).
Reefer Fuel:	TransAm pays for all reefer fuel when purchased with Comdata and/or TCH cards or reimbursed when purchased with cash, upon presentment of valid receipts.
Base Plates and Permits:	Paid by TransAm for term of Agreement – per paragraph 6.
TripPack:	TransAm offers free TripPack services.

**EXHIBIT D****CONTRACTOR SETTLEMENT DEDUCTION AND REMITTANCE REQUEST FORM**

The undersigned ("Contractor") is a party to that certain equipment purchase or rental contract ("Contract") with TransAm Leasing, Inc. ("Lendor/Lessor") dated as of the 19th day of AUGUST 2011 to the terms of the Contract, Contractor is required to make certain purchase or rental payments to Lendor/Lessor, and is also responsible for other expenses related to the Equipment. Accordingly, Contractor hereby authorizes and requests **TRANSAM TRUCKING, INC.** ("Carrier") to make deductions from Contractor's compensation pursuant to the foregoing Agreement in the following amounts:

Purchase/Rental Payment: See attached agreement

Additional Deductions for Expenses: See attached agreement

Contractor further authorizes and requests Carrier to remit such deducted amounts to Lendor/Lessor on behalf of Contractor on a weekly basis. Remittance shall be sent to the following address:

TransAm Trucking

15910 S 169 Hwy

Olathe, KS 66062

Contractor:

Anthony B. Gillespie

8/19/11
Date

Request approved by:

Murray Droescher
Carrier's representative: Murray Droescher

Date



EXHIBIT E

Fuel Surcharge Program

The fuel surcharge applicable to a load is determined based on the date the load is picked up – for dispatched empty miles the date of dispatch is used. The DOE fuel price will be updated every Tuesday. The fuel surcharge is paid on all dispatched (loaded and empty) miles and runs from Tuesday through Monday.

DOE Fuel Price	FSC Per Loaded Mile	DOE Fuel Price	FSC Per Loaded Mile	DOE Fuel Price	FSC Per Loaded Mile	DOE Fuel Price	FSC Per Loaded Mile
1.200	-	3.723	0.401	6.190	0.799	8.658	1.191
1.255	0.009	3.775	0.409	6.243	0.808	8.710	1.200
1.310	0.017	3.828	0.418	6.295	0.816	8.763	1.208
1.365	0.026	3.880	0.426	6.348	0.824	8.815	1.217
1.420	0.034	3.933	0.434	6.400	0.833	8.868	1.225
1.475	0.042	3.985	0.443	6.453	0.841	8.920	1.233
1.530	0.051	4.038	0.451	6.505	0.849	8.973	1.242
1.585	0.059	4.090	0.459	6.558	0.858	9.025	1.250
1.640	0.067	4.143	0.468	6.610	0.866	9.078	1.258
1.695	0.076	4.195	0.476	6.663	0.874	9.130	1.267
1.750	0.084	4.248	0.485	6.715	0.883	9.183	1.275
1.805	0.092	4.300	0.493	6.768	0.891	9.235	1.283
1.860	0.101	4.353	0.501	6.820	0.899	9.288	1.292
1.915	0.109	4.405	0.510	6.873	0.908	9.340	1.300
1.970	0.117	4.458	0.518	6.925	0.916	9.393	1.308
2.025	0.126	4.510	0.526	6.978	0.924	9.445	1.317
2.080	0.134	4.563	0.535	7.030	0.933	9.498	1.325
2.135	0.142	4.615	0.543	7.083	0.941	9.550	1.333
2.190	0.151	4.668	0.551	7.135	0.949	9.603	1.342
2.245	0.159	4.720	0.560	7.188	0.958	9.655	1.350
2.300	0.167	4.773	0.568	7.240	0.966	9.708	1.358
2.355	0.176	4.825	0.576	7.293	0.975	9.760	1.367
2.410	0.184	4.878	0.585	7.345	0.983	9.813	1.375
2.463	0.192	4.930	0.593	7.398	0.991	9.865	1.383
2.515	0.209	4.983	0.601	7.450	0.999	9.918	1.392
2.568	0.217	5.035	0.610	7.503	1.008	9.970	1.400
2.620	0.226	5.088	0.618	7.555	1.016	10.023	1.408
2.673	0.234	5.140	0.626	7.608	1.025		
2.725	0.243	5.193	0.635	7.660	1.033		
2.778	0.251	5.245	0.643	7.713	1.041		
2.830	0.259	5.298	0.651	7.765	1.050		
2.883	0.268	5.350	0.660	7.818	1.058		
2.935	0.276	5.403	0.669	7.870	1.066		
2.988	0.284	5.455	0.678	7.923	1.075		

3.040	0.293	5.508	0.688	7.975	1.083
3.093	0.301	5.560	0.697	8.028	1.091
3.145	0.309	5.613	0.706	8.080	1.100
3.198	0.318	5.665	0.715	8.133	1.108
3.250	0.326	5.718	0.724	8.185	1.116
3.303	0.334	5.770	0.733	8.238	1.125
3.355	0.343	5.823	0.741	8.290	1.133
3.408	0.351	5.875	0.749	8.343	1.141
3.460	0.359	5.928	0.758	8.395	1.150
3.513	0.368	5.980	0.766	8.448	1.158
3.565	0.376	6.033	0.774	8.500	1.166
3.618	0.384	6.085	0.783	8.553	1.175
3.670	0.393	6.138	0.791	8.605	1.183

If fuel prices rise higher than \$10.075, a revised fuel surcharge schedule will be supplied.



AMENDMENT TO INDEPENDENT CONTRACTOR AGREEMENT

THIS AMENDMENT is made and entered into by and between **TRANSAM TRUCKING, INC.**, a Missouri corporation ("Carrier"), and the undersigned Contractor.

WHEREAS, Contractor is engaged in the business of transporting freight by motor vehicle pursuant to long-term arrangements with for-hire motor carriers, and Carrier and Contractor are parties to that certain Independent Contractor Agreement (the "Agreement") pursuant to which Carrier leases Contractor's motor vehicle equipment and obtains certain personnel services from Contractor;

WHEREAS, Contractor and TransAm Leasing, Inc. (the "Leasing Company") are parties to that certain Equipment Lease Agreement (the "Equipment Lease Agreement") pursuant to which Contractor rents from the Leasing Company certain motor vehicle equipment for use in Contractor's freight transportation business;

WHEREAS, pursuant to paragraph 26 of the Equipment Lease Agreement, Contractor is obligated to require any motor carrier to which Contractor leases such equipment to offset against any amounts due Contractor from such carrier an amount sufficient to cure any deficiencies in Contractor's payment obligations under the Equipment Lease Agreement, and to pay those amounts directly to the Leasing Company; and

WHEREAS, the parties desire to amend the Agreement consistent with such obligation, as set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, it is hereby agreed as follows:

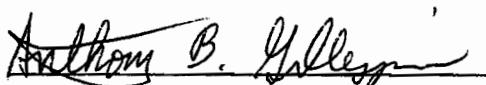
1. Paragraph 4 of the Agreement is hereby amended to specifically provide that following termination of the Agreement, after satisfaction of all of Contractor's obligations specified under the Agreement, the balance of the performance escrow fund, if any, shall be applied by Carrier to any and all amounts owed or payable by Contractor to the Leasing Company pursuant to the Equipment Lease Agreement. Carrier agrees to pay such amounts, if any, directly to the Leasing Company, consistent with paragraph 26 of the Equipment Lease Agreement. Carrier will provide a final accounting to Contractor of all such final deductions made to the performance escrow fund. If any of the performance escrow fund remains after application thereof to satisfy Contractor's obligations under both the Agreement and the Equipment Lease Agreement, then Carrier will return such balance to Contractor within forty-five (45) days from the date of termination of the Agreement.

2. Except as modified by this Amendment, the parties hereby ratify, reaffirm and reapprove all of the terms, covenants and conditions of the Agreement. Any further alteration or modification of the provisions of the Agreement shall not be effective unless and until reduced to writing and executed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the date indicated under their respective signatures below.

"Contractor":

ANTHONY GILLESPIE

By 

Name ANTHONY GILLESPIE 8/19/11

Title Contractor

"Carrier":

TRANSAM TRUCKING, INC.

By 

Name Murray Droscher

Title Chief Financial Officer