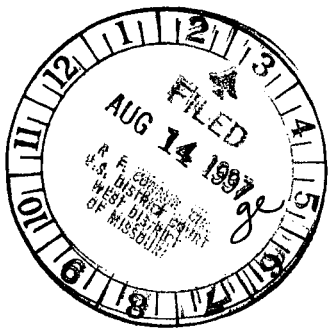
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION



OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., and HOWARD JENKINS, MARSHALL JOHNSON, SUSAN JOHNSON, and JERRY VANBOETZELAER, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,	**97-3408-CV-S-RGC**
Plaintiffs,	**Civil Action No. _____**
v.	
NEW PRIME, INC., d/b/a PRIME, INC., and SUCCESS LEASING, INC.,	
Defendants.	

CLASS ACTION COMPLAINT FOR DAMAGES AND FOR DECLARATORY AND INJUNCTIVE RELIEF; DEMAND FOR JURY TRIAL

The Owner-Operator Independent Drivers Association, Inc., and Howard Jenkins, Marshall Johnson, Susan Johnson, and Jerry Vanboetzelaer, individually and on behalf of all others similarly situated (collectively, "Plaintiffs" or "class members"), sue New Prime, Inc., d/b/a Prime, Inc. ("Prime"), and Success Leasing, Inc. ("Success Leasing"), and allege as follows:

NATURE OF THE ACTION

1. This is a class action against Defendants pursuant to which Plaintiffs named herein, as class representatives on behalf of themselves and all others similarly situated, all of whom are independent truck owner-operators, challenge the lawfulness of Defendants' Service Contracts and/or Lease-Purchase Agreements as applied to the class members. Plaintiffs maintain that

ORIGINAL

Document # 1

Defendants' Service Contracts and Lease-Purchase Agreements contain terms that violate federal commercial transportation laws and regulations as set forth under the United States Code and the Code of Federal Regulations. More specifically, Plaintiffs assert that Defendants' Service Contracts and Lease-Purchase Agreements, *inter alia*, unlawfully require the class members to forfeit, and unlawfully permit Defendants to possess and retain, escrow and other funds to which only the class members are entitled, and are so prejudicial and unfair as to be unconscionable in their application to and effect upon the class members.

Accordingly, Plaintiffs seek declaratory and injunctive relief; an immediate accounting of escrow and other funds deposited with Defendants by the various class members during their respective periods of association with Defendants; the return of such escrow and other funds to the class members with interest as calculated under applicable law; rescission, at the option of each class member, of the respective lease-purchase agreements entered into between Prime or Success Leasing and each of the class members on the ground that such agreements are unconscionable in their application to and effect upon the class members; attorneys' fees and costs incurred by Plaintiffs in this action; and such other relief as may be deemed proper and just by the Court. Plaintiffs also request an order enjoining and restraining Defendants from transferring, diverting, or otherwise concealing the class members' funds at issue and from destroying records relating in any way to the escrow funds or other amounts owed by Defendants to the class members.

JURISDICTION AND VENUE

2. This action arises under 49 U.S.C. §§ 14102 and 14704(a)(1) and (2), and 49 C.F.R. Part 376 *et seq.*, for violation of the statutes and regulations governing the terms and conditions pursuant to which truck owner-operators lease equipment to authorized motor carriers for the transport of property.

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (Federal Question), because the claims asserted herein arise under the laws of the United States.

4. This Court has supplemental jurisdiction over all other claims made in this action pursuant to 28 U.S.C. § 1367(a) (Supplemental Jurisdiction), because any such claims are so related to claims within the Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and 49 U.S.C. § 14704(d)(1), because Defendants' principal place(s) of business and principal operating office(s) are located in this judicial district and in this division of that judicial district.

PARTIES

6. Plaintiff Owner-Operator Independent Drivers Association, Inc. ("OOIDA"), is a business association of persons and entities, commonly known as "owner-operators," who own and operate motor carrier equipment. OOIDA is a not-for-profit corporation incorporated in Missouri, with its headquarters at 311 R.D. Mize Road, P.O. Box L, Grain Valley, Missouri 64029. OOIDA was founded in 1973 and now has over 36,000 members in all fifty (50) States of the United States and in Canada. A number of OOIDA's members are owner-operators who operate motor vehicles in and through the State of Missouri and are, or are likely to be, employed by or otherwise associated with Prime and/or Success Leasing under the terms set forth in Defendants' Service Contracts and Lease-Purchase Agreements. OOIDA seeks to have Defendants' leasing and business practices declared unlawful and in violation of federal motor carrier leasing regulations (49 C.F.R. § 376 *et seq.*), and to have the continuation of said practices permanently enjoined, and thus participates as a Plaintiff herein only in connection with Plaintiffs' prayers for declaratory and injunctive relief.

7. Plaintiff Howard Jenkins ("Plaintiff Jenkins") is a resident of the State of Missouri. Plaintiff Jenkins is an independent truck owner-operator who has provided motor vehicle equipment to Defendant Prime under the terms of the Service Contract entered into between Plaintiff Jenkins and Defendant Prime. In addition, Plaintiff Jenkins is party to a Lease-Purchase Agreement with Success Leasing under which Plaintiff Jenkins leases from Success Leasing, with the option to purchase, the motor vehicle equipment that is the subject of the Service Contract between Plaintiff Jenkins and Defendant Prime. The terms of the Service Contract entered into between Plaintiff Jenkins and Defendant Prime are the same or substantially the same as the terms of the Service Contracts entered into between Defendant Prime and each of the class members herein. Plaintiff Jenkins maintains his contractual relationship with Defendant Prime, but has been and continues to be professionally, financially, and personally damaged because of the onerous conditions imposed upon him by the terms of the Service Contract and the Lease-Purchase Agreement. Specifically, *inter alia*, Defendant Prime has persisted in unjustifiably depriving Plaintiff Jenkins of escrow and other funds deposited with Defendant Prime by Plaintiff Jenkins during the term of the Service Contract. In addition, the Success Leasing Lease-Purchase Agreement to which Plaintiff Jenkins is a party is so prejudicial and unfair as to be unconscionable in its application to and effect upon Plaintiff Jenkins. In light of these circumstances, Plaintiff Jenkins seeks monetary damages and declaratory, injunctive, and other equitable relief on behalf of himself and all other similarly situated independent truck owner-operators.

8. Plaintiffs Marshall Johnson and Susan Johnson (collectively, "Plaintiffs Johnson") are residents of the State of Georgia. Plaintiffs Johnson are independent truck owner-operators who have provided motor vehicle equipment to Defendant Prime under the terms of the Service Contract entered into between Plaintiffs Johnson and Defendant Prime. In addition, Plaintiffs Johnson were

party to a Lease-Purchase Agreement with Success Leasing under which Plaintiffs Johnson leased from Success Leasing, with the option to purchase, the motor vehicle equipment that was the subject of the Service Contract between Plaintiffs Johnson and Defendant Prime. The terms of the Service Contract entered into between Plaintiffs Johnson and Defendant Prime are the same or substantially the same as the terms of the Service Contracts entered into between Defendant Prime and each of the class members herein. Plaintiffs Johnson were forced to terminate their contractual relationship with Defendant Prime because of the onerous conditions imposed upon them by the terms of the Service Contract and the Lease-Purchase Agreement. Specifically, *inter alia*, Defendant Prime has persisted in unjustifiably depriving Plaintiffs Johnson of escrow and other funds deposited with Defendant Prime by Plaintiffs Johnson during the term of the Service Contract. In addition, the Success Leasing Lease-Purchase Agreement to which Plaintiffs Johnson were party was so prejudicial and unfair as to be unconscionable in its application to and effect upon Plaintiffs Johnson. In light of these circumstances, Plaintiffs Johnson seek monetary damages and declaratory, injunctive, and other equitable relief on behalf of themselves and all other similarly situated independent truck owner-operators.

9. Plaintiff Jerry Vanboetzelaer ("Plaintiff Vanboetzelaer") is a resident of the State of New York. Plaintiff Vanboetzelaer is an independent truck owner-operator who has provided motor vehicle equipment to Defendant Prime under the terms of the Service Contract entered into between Plaintiff Vanboetzelaer and Defendant Prime. In addition, Plaintiff Vanboetzelaer was party to a Lease-Purchase Agreement with Prime under which Plaintiff Vanboetzelaer leased from Prime, with the option to purchase, the motor vehicle equipment that was the subject of the Service Contract between Plaintiff Vanboetzelaer and Defendant Prime. The terms of the Service Contract entered into between Plaintiff Vanboetzelaer and Defendant Prime are the same or substantially the

same as the terms of the Service Contracts entered into between Defendant Prime and each of the class members herein. Plaintiff Vanboetzelaer has completed his term under the Service Contract with Defendant Prime. However, despite the fact that the Service Contract is no longer in effect, Defendant Prime has persisted in unjustifiably depriving Plaintiff Vanboetzelaer of escrow and other funds deposited with Defendant Prime by Plaintiff Vanboetzelaer during the term of the Service Contract. In addition, the Prime Lease-Purchase Agreement to which Plaintiff Vanboetzelaer was a party was so prejudicial and unfair as to be unconscionable in its application to and effect upon Plaintiff Vanboetzelaer. In light of these circumstances, Plaintiff Vanboetzelaer seeks monetary damages and declaratory, injunctive, and other equitable relief on behalf of himself and all other similarly situated independent truck owner-operators.

10. Plaintiff owner-operators are "owners" within the meaning of 49 C.F.R. § 376.2(d).

11. Plaintiff owner-operators are "lessors" within the meaning of 49 C.F.R. § 376.2(f).

12. The equipment provided for use by Plaintiff owner-operators to Defendant Prime constitute "equipment" within the meaning of 49 C.F.R. § 376.2(b).

13. Defendant Prime is a corporation incorporated under the laws of the State of Nebraska, authorized to do business in Missouri, and having its principal place of business at 1340 E. Woodhurst, Springfield, Missouri 65804. Defendant is a regulated motor carrier, primarily engaged in the enterprise of providing transportation services to the shipping public under authority granted by the United States Department of Transportation (the "DOT"). In addition, it is Plaintiffs' understanding, upon information and belief, that Defendant Prime, *inter alia*, engages in the business of leasing truck tractor units, with the option to purchase, to independent truck owner-operators.

14. Defendant Prime is an "authorized carrier" within the meaning of 49 C.F.R. § 376.2(a).

15. Defendant Prime is a "lessee" within the meaning of 49 C.F.R. § 376.2(g).

16. Defendant Success Leasing is a corporation incorporated under the laws of the State of Nebraska, authorized to do business in Missouri, and having its principal place of business at 2740 North Mayfair, Springfield, Missouri 65803. It is Plaintiffs' understanding, upon information and belief, that Defendant Success Leasing, *inter alia*, engages in the business of leasing truck tractor units, with the option to purchase, to independent truck owner-operators.

17. Upon information and belief, Plaintiffs maintain that Defendant Success Leasing is owned and controlled by Defendant Prime, or Defendants Prime and Success Leasing are under common ownership and control and said Defendants act as a single entity and do not engage in arm's-length transactions between one and the other. Thus, Plaintiffs maintain, upon information and belief, that the Lease-Purchase Agreements entered into between Success Leasing and the various class members herein effectively were entered into between those various class members and Defendant Prime or an alter ego or an agent of Prime, and that Defendant Prime consequently is liable under each of Plaintiffs' claims arising from the unlawfulness of the Lease-Purchase Agreements entered into between Defendant Success Leasing and the various class members herein.

CLASS

18. **Class Description**: Pursuant to Federal Rule of Civil Procedure 23, the individual owner-operators who are Plaintiffs and class members bring this action on behalf of themselves and all other similarly situated independent truck owner-operators. Each class member has, *inter alia*, entered into a Service Contract with Defendant Prime and a Lease-Purchase Agreement with either

Defendant Prime or Defendant Success Leasing. Under the respective terms of these Service Contracts and Lease-Purchase Agreements, each class member has leased trucking equipment from either Prime or Success Leasing, and, in turn, leased their trucking equipment and services to Prime. In connection with these leasing transactions, each class member has been required to provide Prime and/or Success Leasing with various escrow and other funds, ostensibly to cover various trucking-related expenses arising in the course of the class members' work. Under federal law, the contractual terms under which such escrow funds are collected by a motor carrier must be specified in a regulated lease agreement, and must be returned to the truck owner-operator upon termination of the leasing relationship. However, Prime and/or Success Leasing have not specified in a regulated lease agreement the contractual terms under which Prime and/or Success Leasing have collected escrow funds, and have not returned the escrow funds rightfully belonging to the class members following the terminations of the leasing relationships at issue. Consequently, each of the class members is, *inter alia*, entitled to a return of the escrow and other funds held by Defendants Prime and/or Success Leasing.

19. **Impracticability of Joinder**: On information and belief, there are several thousands of independent truck owner-operators who have entered into Service Contracts and Lease-Purchase Agreements with Defendants Prime and/or Success Leasing during the past several (exceeding one) years. Each of these owner-operators is entitled to a refund of escrow and other funds held by Defendants Prime and/or Success Leasing, each has been prejudiced as a result of entry into a Service Contract and a Lease-Purchase Agreement with Defendants Prime and/or Success Leasing, and each qualifies as a class member. Individual joinder of all potential class members is impracticable.

20. **Commonality**: Pursuant to identical, or substantially identical, Service Contracts and Lease-Purchase Agreements, Defendants Prime and Success Leasing have acted and failed to act with regard to Plaintiffs' escrow and other funds in a way that affects all class members similarly and, accordingly, any questions of fact are common to the class as a whole. Defendants' actions and failures to act with regard to Plaintiffs' escrow and other funds also have caused substantially the same harm to each of the class members and, accordingly, any questions regarding Defendants' liability to individual Plaintiff class members are common to the class as a whole. Further, Defendants have acted and failed to act with regard to Plaintiffs' escrow and other funds in a manner generally applicable to the class, therefore making injunctive relief appropriate with respect to the class as a whole.

21. **Typicality**: Plaintiffs' claims are typical of the claims of the class members as a whole, and Plaintiffs are capable of fairly and adequately protecting the interests of the class.

22. **Class Action Superior**: Defendants' actions in failing to provide either an accounting or a return of the class members' escrow and other funds, and questions relating to Defendants' actions, predominate over any questions affecting only individual members of the class. Accordingly, a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

23. **Other Factors**:

In addition:

A. the prosecution of separate actions by individual members of the class would substantially impair or impede the individual members' abilities to protect their interests, in part because individual class members do not have the ability to promptly bring and prosecute these claims;

B. there is no litigation already commenced by class members concerning this controversy that will protect the interests of the class members as a whole;

C. the class action will be efficient because it will concentrate the litigation of numerous substantially identical claims in one forum; and

D. a class action is fair and efficient because no substantial difficulties are likely to be encountered in the management of the class action.

FACTUAL ASSERTIONS COMMON TO ALL COUNTS

24. Owner-operators are small business men and women who own or control truck tractors, and sometimes truck trailers, used to transport property over the nation' s highways. They comprise one of the primary sectors of the interstate motor carrier industry. It has been estimated that owner-operators account for approximately forty percent (40%) of all inter-city truck traffic in the United States. Nationwide, the number of owner-operators totals in the hundreds of thousands.

25. Owner-operators engage in the transportation of commodities exempt from DOT regulations, or, acting as independent contractors, they lease or otherwise provide their equipment and services to motor carriers who possess the requisite legal operating authority under DOT regulations to enter into contracts with shippers for the transport of property. The relationship between independent truck owner-operators and regulated carriers is set forth in an agreement between the parties which is regulated by the DOT under, *inter alia*, 49 U.S.C. § 14102 *et seq.* and under 49 C.F.R. Part 376 *et seq.*

26. The class members herein are all independent truck owner-operators who, like each of the named individual Plaintiffs, have entered into two separate and distinct contracts—the first solely with Defendant Prime, and the second with Defendant Prime **or** with Defendant Success Leasing, a wholly-owned affiliate or alter ego or agent of Defendant Prime (*see infra*).

The Part 376 Service Contract (between Each Class Member and Prime)

27. The first contract, entitled the "Service Contract" and referred to herein as the "Part 376 Service Contract" (*see infra*), is a standard agreement pursuant to which each class member has leased a truck tractor unit and the services of a qualified driver to Defendant Prime for use by Defendant Prime as a carrier in the transport of property over the nation's highways. The Service Contract is **directly regulated** under 49 C.F.R. Part 376 *et seq.* A model of the Part 376 Service Contract entered into by and between Defendant Prime and each of the Plaintiff owner-operators, which is typical of each class member's Part 376 Service Contract with Defendant Prime, is attached hereto as Exhibit "A."

28. The Part 376 Service Contract constitutes a "lease" within the meaning of 49 C.F.R. § 376.2(e) because it is a "contract or arrangement in which the owner [each class member] grants the use of equipment, with or without driver, for a specified period to an authorized carrier [Defendant Prime] for use in the regulated transportation of property, in exchange for compensation."

29. Pursuant to the Part 376 Service Contract, Plaintiff owner-operators, on behalf of and at the direction of Defendant Prime, transport and deliver property from pick-up points to points of delivery. Owner-operators generally are compensated for their services on a per-load basis, and are entitled to a percentage share of the revenues paid to Defendant Prime by shippers. The owner-operator receives his or her sole payment in the form of "settlement checks" issued to the owner-operator by Defendant Prime, usually on a weekly basis.

30. Pursuant to the Part 376 Service Contract, Defendant Prime has required each class member to, *inter alia*, furnish Defendant Prime with "Security Deposit" funds in the sum of $1,000.00 "as security for the full performance by [class member owner-operators] of all . . .

obligations under the Service Contract." Under the Security Deposit provision, Defendant Prime may "set off against this deposit any reserve claims which [Prime] has reason to believe should be rightfully charged to the [Plaintiff owner-operators]." The Part 376 Service Contract requires class member owner-operators to deposit security deposit funds directly with Defendant Prime, and such funds are maintained in Defendant Prime's sole possession and control.

31. The Service Contract provides as to the terms of the "Security Deposit," in pertinent part, that:

> The security deposit provided for herein shall be forfeited should contractor not comply with the provisions of [the] paragraph . . . of this service contract [requiring the return of licenses, placards, and other authorizations within seven days of termination].

The Lease-Purchase Agreement (between Each Class Member and *either* Prime *or* Success Leasing)

32. The second contract, entitled the "Lease Agreement" and referred to herein as the "Lease-Purchase Agreement," is a commercial lease-purchase agreement pursuant to which each class member has leased from Prime or Success Leasing, with the option to purchase, one or more truck tractor units of the type employed by motor carriers in the transport of property over the nation's highways. The Lease-Purchase Agreement is **not regulated** under 49 C.F.R. Part 376 *et seq.* A model of the Lease-Purchase Agreement entered into by and between Defendant Prime or Defendant Success Leasing and each of the Plaintiff owner-operators, which is typical of each class member's Lease-Purchase Agreement with Defendant Prime or Defendant Success Leasing, is attached hereto as Exhibit "B."

33. The Lease-Purchase Agreement does **not** constitute a "lease" within the meaning of 49 C.F.R. § 376.2(e) because it is **not** a "contract or arrangement in which the owner [*i.e.*, the class member as lessor] grants the use of equipment . . . to an authorized carrier [*i.e.*, Defendant Prime as

lessee]," but rather is an "equipment purchase or rental contract" (under 49 C.F.R. § 376.12(i)), under which an individual entity (*i.e.*, Defendant Prime or Defendant Success Leasing) grants the use of equipment to Plaintiff owner-operators, who are not authorized carriers.

34. Pursuant to the Lease-Purchase Agreement, Defendant Prime or Defendant Success Leasing leases to an individual truck owner-operator a truck tractor for use by the owner-operator in providing services as an independent contractor to "a trucking company approved by [Prime or Success Leasing]" under a separate Part 376 agreement (*i.e.*, the Service Contract). In each instance, the trucking company approved by Prime or Success Leasing is Defendant Prime itself.

35. Each Lease-Purchase Agreement between Defendant Prime or Defendant Success Leasing and an individual class member specifies the weekly truck rental payments to be made to the Defendant by the class member. Defendant Prime or Defendant Success Leasing deducts these rental payments directly from each class member's compensation on a weekly basis, as reflected in weekly "Operator Settlement" statements provided to class members by Defendant Prime and/or Defendant Success Leasing.

36. Pursuant to the Lease-Purchase Agreement, Defendant Prime or Defendant Success Leasing has required each class member to, *inter alia*, furnish Defendant with "Excess Mileage Rental Account" funds, "Repair Reserve" funds, and "Tire Replacement Reserve" funds for the ostensible purpose of covering maintenance of and repairs to leased vehicles. These funds are deducted by Defendant Prime and/or Defendant Success Leasing directly from respective Plaintiffs' compensation and are maintained in Defendant Prime's and/or Defendant Success Leasing's possession and control.

37. The Lease-Purchase Agreement provides as to the terms of the "Excess Mileage Rental Account," "Repair Reserve," and "Tire Replacement Reserve," in pertinent part, that:

> [I]n the event (i) this Lease shall be terminated prior to expiration of its initial term, (ii) the option to extend is not exercised by Lessee [*i.e.*, the owner-operator], or (iii) this Lease is terminated during the extension period and before its expiration, the excess mileage rental account, repair reserve and tire maintenance reserve shall become the sole property of Lessor [*i.e.*, Defendant Prime or Defendant Success Leasing] as provided in [other applicable paragraphs] hereof.

The Lease-Purchase Agreement further provides that:

> In the event Lessee shall purchase the equipment or sell it to a third party, or shall complete the full term of this Lease, the unused funds retained as a repair reserve shall be divided equally between the Lessor and Lessee.

The Lease-Purchase Agreement further provides that:

> In the event Lessee shall purchase the equipment or sell it to a third party, or shall complete the full term of this Lease, the unused funds retained as a tire replacement reserve shall be divided equally between the Lessor and Lessee.

Funds at Issue under the Part 376 Service Contract and the Lease-Purchase Agreement

38. Pursuant to 49 C.F.R. § 376.2(l), the "Excess Mileage Rental Account," "Repair Reserve," "Tire Replacement Reserve," and "Security Deposit" constitute regulated escrow funds because they are monies "deposited . . . to guarantee performance, to repay advances, to recover repair expenses, to handle claims, to handle license and state permit costs, and for any other purposes mutually agreed upon."

39. Pursuant to their respective Lease-Purchase Agreements and Part 376 Service Contracts, each class member has deposited with Defendant Prime and/or Defendant Success Leasing between approximately $1,000.00 and $20,000.00 per vehicle leased to Defendant Prime.

Applicable Federal Motor Carrier Law

40. DOT regulations expressly provide for the disclosure in lease contracts of certain terms set forth in equipment purchase or rental contracts such as the ones entered into between the

class member owner-operators and Defendant Prime or Defendant Success Leasing. Specifically, 49 C.F.R. § 376.12 provides:

> (i) *Products, equipment, or services from authorized carrier* -- The 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. **The lease shall specify the terms of any agreement in which the lessor is a party to an equipment purchase or rental contract which gives the authorized carrier the right to make deductions from the lessor's compensation for purchase or rental payments.**

49 C.F.R. § 376.12(i) (emphasis added).

41. DOT regulations specifically provide for the manner in which regulated motor carriers, such as Defendant Prime, are required to maintain escrow funds, including providing for an immediate accounting and the return of escrow funds to the lessor owner-operator following lease agreement termination. Specifically, 49 C.F.R. § 376.12 provides as follows:

> (k) *Escrow funds* -- If escrow funds are required, the lease shall specify:
>
> (1) The amount of any escrow fund or performance bond required to be paid by the lessor to the authorized carrier or to a third party.
>
> (2) The specific items to which the escrow fund can be applied.
>
> (3) That while the escrow fund is under the control of the authorized carrier, the authorized carrier shall provide an accounting to the lessor of any transactions involving such fund. The carrier shall perform this accounting in one of the following ways:
>
> (i) By clearly indicating in individual settlement sheets the amount and description of any deduction or addition made to the escrow fund; or
>
> (ii) By providing a separate account to the lessor of any transactions involving the escrow fund. This separate accounting shall be done on a monthly basis.

(4) The right of the lessor to demand to have an accounting for transactions involving the escrow fund at any time.

(5) That while the escrow fund is under the control of the carrier, the carrier shall pay interest on the escrow fund on at least a quarterly basis. For purposes of calculating the balance of the escrow fund on which interest must be paid, the carrier may deduct a sum equal to the average advance made to the individual lessor 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 at least equal to the average yield or equivalent coupon issue yield on 91-day, 13-week Treasury bills as established in the weekly auction by the Department of Treasury.

(6) The conditions the lessor must fulfill in order to have the escrow fund returned. At the time of the return of the escrow fund, the authorized carrier may deduct monies for those obligations incurred by the lessor which have been previously specified in the lease, and shall provide a final accounting to the lessor of all such final deductions made to the escrow fund. The lease shall further specify that in no event shall the escrow fund be returned later than 45 days from the date of termination.

42. Violations of DOT regulations are privately actionable. Specifically, 49 U.S.C. § 14704(a)(2) provides as follows:

Rights and remedies of persons injured by carriers or brokers

***

A carrier or broker providing transportation or service subject to jurisdiction under [applicable federal motor carrier transportation law] is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.

Further, 49 U.S.C. § 14704(c) provides as follows:

A person may . . . bring a civil action under [this section] to enforce liability against a carrier or broker providing transportation or service subject to jurisdiction under [applicable federal motor carrier transportation law].

43. Parties asserting a private right of action under 49 U.S.C. § 14704 may seek and are entitled to reasonable attorneys' fees and costs incurred in the prosecution of such an action. Federal law expressly provides that:

> The district court shall award a reasonable attorney's fee under [Section 14704]. The district court shall tax and collect that fee as part of the costs of the action.

49 U.S.C. § 14704(e).

44. Defendants are liable for violations of federal commercial transportation laws and regulations as described herein, and Defendants' acts and omissions have caused Plaintiffs to bring this action.

45. All conditions precedent to the maintenance of this action have been performed, discharged, or otherwise satisfied.

COUNT I
(Violation of 49 C.F.R. § 376.12(i) *et seq.*,
Unauthorized Deduction of Purchase or Rental Payments)

46. Plaintiffs reallege and incorporate herein the allegations set forth in paragraphs 1 through 45 hereof.

47. Defendant Prime's Part 376 Service Contracts do not make reference to, let alone specify, the terms of the rental payment or escrow withholding provisions of the Lease-Purchase Agreements under which Defendant Prime and/or Defendant Success Leasing, as the case may be, makes deductions directly from each owner-operator's compensation. Consequently, Defendant Prime's and/or Defendant Success Leasing's actions in deducting regular purchase or rental payments due under the respective Lease-Purchase Agreements from compensation due the class members under their respective Part 376 Service Contracts with Prime are unlawful and constitute material and continuing violations of 49 C.F.R. § 376.12(i) *et seq.*

48. As a direct and proximate result of Defendants' actions and omissions, individual Plaintiffs and all class members have suffered substantial damages and have been, and will continue to be, irreparably harmed.

COUNT II
(Violation of 49 C.F.R. § 376.12(k) *et seq.*,
Unauthorized Deduction of Escrow Funds)

49. Plaintiffs reallege and incorporate herein the allegations set forth in paragraphs 1 through 48 hereof.

50. Defendants' actions in making direct escrow fund deductions (in the form of "Excess Mileage Rental Account," "Repair Reserve," "Tire Replacement Reserve," and "Security Deposit" funds) from compensation due to owner-operators under Prime's Part 376 Service Contracts, and Defendant Prime's and/or Defendant Success Leasing's subsequent retention and failures to return such escrow funds pursuant to Prime's and/or Success Leasing's respective Lease-Purchase Agreement with owner-operators, are unlawful and constitute material and continuing violations of 49 C.F.R. § 376.12(k) *et seq.* because, *inter alia*:

A. There are no provisions in Prime's Part 376 Service Contracts authorizing such deductions or permitting the retention of all or any portion of such escrow funds following termination or cancellation of said Part 376 Service Contracts, and said Part 376 Service Contracts do not specify or even make reference to the terms of the Lease-Purchase Agreements which give Defendants Prime and/or Defendant Success Leasing the right to make deductions from an owner-operator's compensation for escrow fund deductions. *See* 49 C.F.R. § 376.12(k), *supra*.

B. There are no provisions in Prime's Part 376 Service Contracts which specify the amount of any escrow fund or performance bond required to be paid by the owner-operator to Prime or to a third party.

C. There are no provisions in Prime's Part 376 Service Contracts which identify the specific items to which the escrow fund can be applied.

D. There are no provisions in Prime's Part 376 Service Contracts which specify (i) that while the escrow fund is under Prime's control, Prime shall provide an accounting to the lessor of any transactions involving such fund, and (ii) the means by which Prime shall perform such an accounting.

E. There are no provisions in Prime's Part 376 Service Contracts which specify the right of the lessor owner-operator to demand to have an accounting for transactions involving the escrow fund at any time.

F. There are no provisions in Prime's Part 376 Service Contracts which specify that while the escrow fund is under Prime's control, Prime shall pay interest on the escrow fund on at least a quarterly basis under the calculation methods and at the rate prescribed under 49 C.F.R. § 376.12(k)(5).

G. There are no provisions in Prime's Part 376 Service Contracts which specify (i) the conditions the owner-operator must fulfill in order to have the escrow fund returned, (ii) that Prime, at the time of the return of the escrow fund, may deduct monies for those obligations incurred by the owner-operator which have been previously specified in the lease, and shall provide a final accounting to the owner-operator of all such final deductions made to the escrow fund, and (iii) that in no event shall the escrow fund be returned to the owner-operator later than 45 days from the date of lease termination.

H. The escrow provisions contained in the respective Lease-Purchase Agreements between owner-operators and Defendant Prime or Defendant Success Leasing authorize the unlawful retention of escrow amounts in excess of those needed to offset obligations

incurred by Defendant Prime or Defendant Success Leasing on behalf of the respective owner-operators.

I. The escrow provisions contained in the respective Lease/Purchase Agreements between owner-operators and Defendant Prime or Defendant Success Leasing unlawfully provide for the return of **only half** of the owner-operator's escrow funds under certain narrow conditions (*i.e.*, if the owner-operator completes the full term of the lease, or if the owner-operator purchases the equipment or sells the equipment to a third party).

J. The escrow provisions contained in the respective Lease/Purchase Agreements between owner-operators and Defendant Prime or Defendant Success Leasing unlawfully mandate the owner-operator's **complete forfeiture** of his or her escrow funds if the lease is terminated (presumably by either the owner-operator or Prime) prior to expiration of its initial term, if the owner-operator does not exercise his or her option to extend the lease, or if the lease is terminated (presumably by either the owner-operator or Prime) during an extension period and before the lease's expiration.

K. Defendants Prime and Success Leasing have failed, and continue to fail, to return to the owner-operators the escrow funds (with quarterly interest as calculated under applicable law) to which the owner-operators rightfully are entitled following their respective terminations of their agreements with Prime and/or Success Leasing.

51. In sum, the scheme under which Prime and/or Success Leasing has obtained and maintained possession of escrow and other funds rightfully belonging to class member owner-operators is unlawful because (A) the provisions under which Prime and/or Success Leasing collect and retain such funds are not set forth in Prime's Part 376 Service Contracts **and** (B) the provisions themselves are facially violative of applicable federal regulations.

52. As a direct and proximate result of Defendants' actions and omissions, individual Plaintiffs and all class members have suffered substantial damages and have been, and will continue to be, irreparably harmed.

COUNT III
(Rescission of Lease-Purchase Agreement on Grounds of Unconscionability)

53. Plaintiffs reallege and incorporate herein the allegations set forth in paragraphs 1 through 52 hereof.

54. At all times material to this Complaint, Defendant Prime and/or Defendant Success Leasing, as Defendant Prime's wholly-owned affiliate or alter ego or agent, had and maintained a superior bargaining position over the individual Plaintiffs and class members herein. Specifically:

A. Defendant Prime is a large corporation having assets in 1996 in excess of $194,000,000.00 dollars, lines of credit of $6,000,000.00, annual revenues of $276,672,000.00, and an operating ratio of 13.3 percent, and reported a growth rate in annual revenues of 20 percent in each year since 1986. Defendant Prime is recognized as a leader in international refrigerated and flatbed transportation, and boasts a fleet of over 1,725 tractors, 1,650 refrigerated trailers, and 550 flatbed trailers. Defendant Prime has a large and sophisticated staff with ready access to outside professional assistance in the fields of finance and law.

B. The individual owner-operators who are Plaintiffs and class members are small business men and women who lack sophistication in matters of finance and law and lack the financial resources to retain the services of outside professionals in these disciplines.

C. The Lease-Purchase Agreements executed between individual Plaintiffs and class members and Defendant Prime and/or Defendant Success Leasing were prepared by Defendants' professional staff and outside consultants. Plaintiffs and the vast majority of class

members were not represented by counsel at the time the respective Lease-Purchase Agreements were negotiated and executed. The substantive terms and provisions of the Lease-Purchase Agreements were not the subject of negotiation between the Plaintiffs and Defendant Prime or Defendant Success Leasing, and the terms contained in the Defendants' form contracts were accepted by Plaintiffs without change.

D. Prior to the execution of the respective Lease-Purchase Agreements, Defendant Prime and/or Defendant Success Leasing presented the individual Plaintiffs and class members with documents that understated the actual costs an owner-operator would incur in operating the equipment proposed for lease and that presented an unrealistically optimistic projection of an owner-operator's potential for making a profit under Defendants' Lease-Purchase Agreements and Part 376 Service Contracts. Defendants took advantage of the respective Plaintiffs' and class members' lack of sophistication and inability to analyze Defendants' over-optimistic projections, and used said documents and other inducements to pressure Plaintiffs into entering into Lease-Purchase Agreements and Part 376 Service Contracts.

55. At all times material to this Complaint, Defendant Prime knew and knows that approximately seventy percent (70%) of owner-operators who sign Defendant Prime's Part 376 Service Contracts terminate those contracts within one year. Given this information, Defendant Prime knew and knows that it was statistically improbable that an owner-operator entering into a Lease-Purchase Agreement with Defendant Prime and/or Defendant Success Leasing for a three-year term could avoid defaulting on said contract. Defendants took unfair and unconscionable advantage of this situation by imposing severe forfeiture provisions regarding funds held in escrow pursuant to Defendants' Lease-Purchase Agreements, including, *inter alia*, one hundred percent (100%) forfeiture of funds held in the "Excess Mileage Rental Account," "Repair Reserve

Account," and "Tire Replacement Reserve Account" in the event of default or premature termination of the Lease-Purchase Agreements.

56. In their transactions with individual Plaintiffs and class members, Prime and/or Success Leasing engaged in self-dealing and manipulated class members into executing Service Contracts and Lease-Purchase Agreements with Prime and/or Success Leasing. Specifically:

A. In initiating the leasing relationship with each class member, Prime and/or Success Leasing presented the transactions embodied in the Service Contract and the Lease-Purchase Agreement as a "package" deal of economic and practical benefit to the owner-operator, even though Prime and/or Success Leasing knew that the terms of said agreements would, *inter alia*, deprive the owner-operator of escrow and other funds to which the owner-operator rightfully was entitled.

B. Under the terms of the Lease-Purchase Agreement, an owner-operator's opportunity to enter into a regulated leasing transaction with a motor carrier other than Prime is illusory at best. In practical reality, by stating that the owner-operator shall only lease equipment under the Lease-Purchase Agreement to companies approved by Prime or Success Leasing, as the case may be (*see also infra*), the Lease-Purchase Agreement precludes the owner-operator from entering into Part 376 lease agreements with trucking companies other than Prime.

57. The substantive terms and provisions of Defendants' Lease-Purchase Agreements, which were not the subject of negotiation between the respective individual Plaintiffs and class members and Defendant Prime and/or Defendant Success Leasing, and which were accepted by class members without change, were and are unfair and unconscionable in their application to and effect upon individual Plaintiffs and class members. Examples of the Lease-Purchase Agreement's unconscionability include, but are not limited to, the following:

A. The body of the Lease-Purchase Agreement makes no reference to the appraised value of the vehicle leased by an owner-operator, the basis on which the weekly lease payments paid by the owner-operator are calculated, or the rate of interest applied to such payments, thereby effectively concealing from the owner-operator his true financial obligation to Prime for use of the vehicle. *See* Model Lease-Purchase Agreement (the "Lease-Purchase Agreement"), attached hereto as Exhibit "B," at Paragraph 3. Further, the body of the Lease-Purchase Agreement sets forth an initial lease term that conflicts with the number of weeks cited in the "Purchase Option Schedule," attached as "Schedule 'A'" to the Lease-Purchase Agreement, as the term under which a residual value for the subject vehicle will be determined. Lease-Purchase Agreement at Paragraph 3, and "Purchase Option Schedule," attached as "Schedule 'A'" to the Lease-Purchase Agreement.

B. The Lease-Purchase Agreement provides for the direct deduction of escrow funds by Defendant Prime and/or Defendant Success Leasing from an owner-operators' compensation, at a rate dictated by Prime and/or Success Leasing, ostensibly for repairs to and maintenance of leased vehicles, yet also requires the owner-operator to pay all costs to repair or alter the vehicle and to furnish at his own expense all fuel, parts, tires, and other materials while providing for no offset of such expenses against escrow funds held by Prime and/or Success Leasing. Lease Agreement at Paragraphs 10, 20.

C. The Lease-Purchase Agreement unfairly precludes an owner-operator from holding Defendant Prime and/or Defendant Success Leasing accountable for legitimate vehicle-related claims against Prime and/or Success Leasing in connection with damages suffered by the owner-operator or third parties that may truly be attributable to Prime and/or Success Leasing or their respective agents. Lease Agreement at Paragraph 14.

D. By stating that an owner-operator shall only lease equipment covered under the Lease-Purchase Agreement to trucking companies approved by Prime or Success Leasing, as the case may be, the Lease-Purchase Agreement unfairly precludes the owner-operator from entering into Part 376 lease agreements with trucking companies other than Prime. While the owner-operator may appear under a facial reading of the Lease-Agreement to have discretion as to the trucking companies with which he or she may enter into Part 376 lease agreements, in fact each of the Plaintiffs and class members has entered into a Part 376 lease agreement solely with Prime.

E. Since the Lease-Purchase Agreement grants to Defendant Prime and/or Defendant Success Leasing the right to collect all proceeds from the operation of a vehicle leased by an owner-operator directly from any company to which the vehicle is leased under a Part 376 lease agreement, and since the company to which each of the Plaintiffs and class members has leased the vehicle under Prime's Part 376 Service Contract is Prime itself, the Lease-Purchase Agreement effectively affords Prime an unchecked opportunity to self-deal through its complete and unsupervised control over all funds generated in connection with an owner-operator's use of a leased vehicle. Lease-Purchase Agreement at Paragraph 18. This arrangement has permitted Defendant Prime to enforce in its Part 376 Service Contracts terms and provisions of the respective Lease-Purchase Agreements that are not permitted in Part 376 lease agreements under DOT regulations. Lease-Purchase Agreement at Paragraph 14.

F. The Lease-Purchase Agreement grants Defendant Prime and/or Defendant Success Leasing the right, upon termination or cancellation of the agreement by either party, to retain one hundred percent (100%) of the "Excess Mileage Rental Account" escrow fund deposited with Prime and/or Success Leasing by an owner-operator even if such funds have not been

determined to be necessary for application to their assigned purpose of ensuring the maintenance of the leased vehicle's value. Lease-Purchase Agreement at Paragraph 19.

G. The Lease-Purchase Agreement grants Defendant Prime and/or Defendant Success Leasing the right, upon termination or cancellation of the agreement by either party, to retain one hundred percent (100%) of the "Repair Reserve" escrow fund deposited with Prime and/or Success Leasing by an owner-operator even if such funds have not been determined to be necessary for application to their assigned purpose of covering repairs to the leased vehicle, and yet grants the owner-operator the right to retain only fifty percent (50%) of the unassigned "Repair Reserve" escrow fund if the owner-operator exercises his option to purchase the vehicle or sell it to a third party or if the vehicle is determined to be a total loss. Lease-Purchase Agreement at Paragraph 20.

H. The Lease-Purchase Agreement grants Defendant Prime and/or Defendant Success Leasing the right, upon termination or cancellation of the agreement by either party, to retain one hundred percent (100%) of the "Tire Replacement Reserve" escrow fund deposited with Prime and/or Success Leasing by an owner-operator even if such funds have not been determined to be necessary for application to their assigned purpose of covering replacement tires for the leased vehicle, and yet grants the owner-operator the right to retain only fifty percent (50%) of the unassigned "Tire Replacement Reserve" escrow fund if the owner-operator exercises his option to purchase the vehicle or sell it to a third party or if the vehicle is determined to be a total loss. Lease-Purchase Agreement at Paragraph 21.

I. The Lease-Purchase Agreement sets forth unconscionable termination provisions. Specifically, *inter alia*:

i. The Lease-Purchase Agreement provides for numerous circumstances under which Defendant Prime and/or Defendant Success Leasing may at its sole option terminate the Lease-Purchase Agreement, yet provides for no circumstances under which an owner-operator may terminate the agreement.

ii. The terms and provisions under which Defendant Prime and/or Defendant Success Leasing may terminate the Lease-Purchase Agreement for failure by the owner-operator to perform certain lease provisions do not permit the owner-operator an adequate opportunity to avoid termination by attempting to remedy such alleged failures of performances.

iii. The Lease-Purchase Agreement requires the owner-operator, upon Defendant Prime's and/or Defendant Success Leasing's termination of the agreement, to arrange for the return of the vehicle to Prime and/or Success Leasing and to absorb all expenses incurred in association with such return.

iv. The Lease-Purchase Agreement provides that, upon termination by Defendant Prime and/or Defendant Success Leasing, escrow funds held by the trucking company (*i.e.*, Prime) to which the equipment is leased under a Part 376 leasing agreement (*i.e.*, Prime's Part 376 Service Contract) shall be paid directly to Prime and/or Success Leasing notwithstanding the failure by Prime and/or Success Leasing to disclose such provisions in the Part 376 agreement in violation of 49 C.F.R. §§ 376.12(i) and (k) *et seq.*

Lease-Purchase Agreement at Paragraph 25; *see also* Counts I and II, *supra*.

J. The Lease-Purchase Agreement provides that Defendant Prime and/or Defendant Success Leasing may recover any attorneys' fees it incurs in any effort to vindicate its rights under the Lease-Purchase Agreement, but sets forth no reciprocal provision under which an

owner-operator may recover attorneys' fees incurred in any effort to vindicate his or her own rights under the agreement. Lease-Purchase Agreement at Paragraph 27.

K. The Lease-Purchase Agreement permits Defendant Prime and/or Defendant Success Leasing to assign its rights under the agreement at its own discretion and to shield its assignee from any liabilities arising under the agreement, but does not permit an owner-operator to assign his or her rights under the Lease-Purchase Agreement absent Prime's or Success Leasing's written consent. Lease-Purchase Agreement at Paragraph 28.

L. The Lease-Purchase Agreement entitles Defendant Prime and/or Defendant Success Leasing to reap all tax benefits arising from possession and use of vehicles subject to the Lease-Purchase Agreement, including claims of depreciation, but requires the owner-operator to pay for all repairs to and maintenance of the vehicle and to forfeit all or parts of escrow funds designated for repair and maintenance upon termination, cancellation, or cessation of the Lease-Purchase Agreement by either party. Lease-Purchase Agreement at Paragraphs 10, 19-21, and 29.

M. The Lease-Purchase Agreement permits the owner-operator to cancel the agreement only after a period of weeks from the date of the agreement's execution that exceeds the initial term of the agreement itself. Lease-Purchase Agreement at Paragraphs 3 and 30.

58. As a direct and proximate result of the unfair and unconscionable terms and provisions of Defendant Prime's and/or Defendant Success Leasing's Lease-Purchase Agreements, individual Plaintiffs and all class members have suffered substantial damages and have been, and will continue to be, irreparably harmed.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs Owner-Operator Independent Drivers Association, Inc., and Howard Jenkins, Marshall Johnson, Susan Johnson, and Jerry Vanboetzelaer, individually and on behalf of all others similarly situated, respectfully request this Court:

A. to certify the class as described herein;

B. to enter judgment (i) declaring the practices of Defendants as described herein to be unlawful and in violation of federal motor carrier leasing regulations (49 C.F.R. Part 376 *et seq.*) and (ii) permanently enjoining the continuation of said practices; and

C. to award reasonable attorneys' fees to Plaintiffs pursuant to 49 U.S.C. § 14704(e).

AND WHEREFORE, Plaintiffs Howard Jenkins, Marshall Johnson, Susan Johnson, and Jerry Vanboetzelaer, individually and on behalf of all others similarly-situated, respectfully requests this Court to enter judgment:

A. requiring Defendants immediately to provide an accounting of all transactions and other activity relating to the class members' escrow and other funds;

B. requiring Defendants immediately to return to the class members the escrow and other funds (with quarterly interest as calculated under applicable law) rightfully belonging to the class members;

C. enjoining Defendants from transferring, diverting, or otherwise concealing the class members' escrow and other funds and from destroying records which demonstrate Defendants' liability or relate in any way to the class members' escrow and other funds;

D. rescinding, at the option of each class member, each of the Lease-Purchase Agreements entered into by Defendant Prime and/or Success Leasing and each class member,

either in its entirety or at those portions determined by the Court to have unjustly deprived the respective owner-operator of his or her funds or otherwise to have injured the Plaintiff owner-operator;

E. awarding reasonable attorneys' fees to the class members pursuant to 49 U.S.C. § 14704(e); and

F. awarding such other and further relief as the Court deems proper and just.

DEMAND FOR JURY TRIAL

Pursuant to Rules 38 and 39 of the Federal Rules of Civil Procedure, and to Rule 14.A. of the Rules of the United States District Court for the Western District of Missouri, Plaintiffs Owner-Operator Independent Drivers Association, Inc., and Howard Jenkins, Marshall Johnson, Susan Johnson, and Jerry Vanboetzelaer, individually and on behalf of all others similarly situated, demand a trial by jury of all issues triable of right by a jury.

Respectfully submitted,

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., and HOWARD JENKINS, MARSHALL JOHNSON, SUSAN JOHNSON, and JERRY VANBOETZELAER,
Individually and on Behalf of All Others Similarly Situated

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Counsel for Plaintiffs Named Herein and
All Others Similarly Situated

SEI[illegible] CONTRACT -- FLATBED DIVISION

THIS AGREEMENT made and entered into this 3 day of February, 1994, by and between NEW PRIME, INC., hereinafter referred to as "CARRIER," and Howard A. Jenkins hereinafter referred to as "CONTRACTOR;"

W I T N E S S E T H:

WHEREAS, Carrier is an Interstate Commerce Commission motor carrier engaged in the transportation of commodities under permits and authorizations issued by the Commission; and

WHEREAS, Contractor is engaged in the business of the transporting freight for ICC motor carriers; and

WHEREAS, the parties desire to enter into an agreement whereby Contractor will transport commodities on behalf of Carrier;

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.

Contractor agrees to furnish the following described equipment ("Equipment") for the transportation of commodities on behalf of Carrier:

MAKE	YEAR	SERIAL NUMBER	UNIT #
Freightliner	1994	1FUYDSEB0RH579267	6063

2. OPERATION.

Contractor agrees to furnish the Equipment to Carrier continuously for a period of Fifty-Two (52) weeks beginning on the 3 day of February, 1994. The Contractor agrees to make the Equipment available to Carrier, with qualified drivers, Department of Transportation Certified by Carrier, upon request by Carrier, and to pick up all loads and transport them to destinations designated by various Shippers. By allowing Carrier to have exclusive possession, control, and use of the equipment for the duration of the lease (only to the extent set forth in 49 CFR 1057.12), Contractor agrees not to transport commodities nor to allow the Equipment to be used in transportation of commodities for anyone other than Carrier, at anytime while Contractor is using Carrier's operating authority, licenses, permits, or placards.

2.1 Renewal. Either party may give the other written notice of their intent to renew This Contract for an additional fifty-two (52) week period. Such notice must be given in writing at least thirty (30) days, but not more than sixty (60) days, before the expiration of the initial term or any renewal period. If the party receiving such notice shall desire not to

renew his Contract, he shall, within twenty (20) days of receiving the notice to renew, give written notice to the other party of his unwillingness to so renew this Contract. If the notice of unwillingness to renew is not given as herein provided, this Contract shall renew for an additional fifty-two (52) week period.

3. PAYMENT.

3.1 Carrier Agrees to manage and administer all motor carrier business in support of the Contractor/Carrier business relationship under the following terms:

a. Procurement and offer freight to Contractor for the following compensation, to be paid every week, within 15 days of receiving all correct completed documents:

1. When pulling Prime, Inc. trailer, seventy-two (72) percent of Carrier's net freight revenue per load.

Guarantee that revenue paid to Contractor shall equal at least 82¢ per mile for loaded miles for each 10,000 miles ran under Carrier's authority.

(a) 20¢ per empty authorized miles.

(b) Tarp loads that are delivered by Contractor will be paid a $35 fee.

2. When pulling Contractor's trailer, eighty (80) percent of Carrier's net freight revenue per load.

(a) A bonus of two percent (2%) of Carrier's net freight revenue when Contractor operates a minimum of 10,000 authorized miles (loaded and empty) within any calendar month. The empty miles must preceed all trips delivered within the month.

(b) Tarp loads that are delivered by Contractor will be paid either by his normal split of tarping accessorial charges or a $35 fee, whichever is greater.

3.2 Mileage. Mileage as specified herein shall be derived from that shown in the current edition of HGB 100 Mileage Guide, issued by the Household Goods Carriers' Bureau Agent, and shall include specifically authorized deadhead mileages.

4. CONTRACTOR'S EMPLOYEES.

Contractor shall employ, on his own behalf, all drivers for the Equipment and shall be solely responsible for payment of their wages, benefits, social security taxes, withholding taxes, unemployment insurance fees, and all other amounts required by Government agencies to be paid by employers on behalf of or to employees. Contractor shall likewise employ on his own behalf and at his own expense all driver's helpers and other laborers required to carry out the purpose of this Service Contract.

4.1 Leased Drivers. Not withstanding the provisions of paragraph 4 above, Contractor may lease the services of Drivers from New , Inc., and in that event, New Pri..., Inc. shall be responsible for payment of such Driver's wages, benefits, Social Security taxes, withholding taxes, unemployment insurance fees and all other amounts required by government agencies to be paid by employers on behalf of employees or because of employment.

5. CONTRACTOR'S AND CONTRACTOR'S EMPLOYEE'S QUALIFICATIONS.

5.1. DOT Qualified. All persons employed by Contractor to operate the Equipment under the terms of this Service Contract, and Contractor himself if he is at anytime to operate the Equipment, shall be qualified so as to meet requirements of all federal, state and local laws and the rules and regulations of the Department of Transportation and Interstate Commerce Commission. Carrier shall have the responsibility to certify or de-certify Contractor and anyone employed by Contractor who shall be operating the Equipment in accordance with Department of Transportation Regulations.

5.2 Driver Qualification File. To assist Carrier in making such determinations, Contractor shall physically present all such proposed employees at Carrier's offices in Springfield, Missouri. After the necessary testing of Contractor and his proposed employees, Carrier shall compile a Driver Qualification File which shall contain all necessary documentation to be used by Carrier in certifying or de-certifying Contractor and his employees as drivers of the Equipment.

6. EXPENSES.

In performance of his responsibilities under this Service Contract, it is hereby agreed that Contractor shall pay all operating and maintenance expenses incurred in connection with the operation of the Equipment, except as listed in 6.1 below, including all bonds, insurance, fines, penalties, tolls, ferries, detention, accessorial services, and empty mileage, Federal Highway Use Taxes, State Mileage and Fuel Taxes, Seventy-Two percent (72%) of any agent or broker fees connected with the freight hauled by the Contractor, and shall furnish all fuel for both tractor and reefer unit.

6.1 Provide specialized equipment, as necessary, to transport freight, including, but not limited to, a minimum of: 8 chains, 8 binders, 12 4" nylon ratchet straps, 12 winches, 2 tarps, minimum size 24' x 26', and 6 coil racks.

6.2 Weigh and measure each loaded tractor/trailer unit prior to a trip and report immediately to Carrier all potential violations, prior to departure.

7. LICENSES, PERMITS, AND AUTHORIZATIONS.

7.1 Purchase. Carrier shall obtain on behalf of Contractor, but at Contractor's expense, all licenses, permits, base plates, and authorizations required for operation of Equipment. Contractor shall reimburse Carrier for such expenses.

(a) Carrier shall provide all permits to operate in the various states. In the event this Agreement expires, terminates or is voided prior to 180 days of service, Contractor agrees to reimburse Carrier for all permits.

7.2 Return. During the t this Service Contract, as well as termination, all licenses, permits and authorizations, as well as placards, issued hereunder, shall be the property of Carrier, and upon termination of this Service Contract, for any reason, Contractor shall, within seven (7) days following cancellation, return all such licenses, permits, plates, placards (or evidence of obliteration of placards), and authorizations to Carrier. Any unused portion of the base plate will be credited to Contractor upon transfer of the base plate to any other vehicle in the Carrier's fleet.

8. SECURITY DEPOSIT.

8.1 Deposit. Contractor herewith deposits with Carrier the sum of One Thousand Dollars ($1,000.00) as security for the full performance by Contractor of all his obligations under this Service Contract. At any time during the term of this Service Contract, Carrier may set off all or a part of said security deposit against expenses and advancements provided for herein, including expenses incurred by Carrier in making such advancements and paying such expenses. Carrier may set off against this deposit any reserve claims which Carrier has reason to believe should be rightfully charged to the Contractor. In the event any such security deposit funds are set off by Carrier as authorized by this Service Contract, Carrier may require, and the Contractor shall deposit additional funds so that the security deposit equals the original amount provided for herein. In the event there are not sufficient funds remaining in such security deposit to defray expenses advanced by Carrier or, in the event Contractor shall fail to make these additional deposits when required by Carrier, Carrier may withhold funds from gross revenues due Contractor, as provided in paragraph 3, in amounts sufficient to meet such requirements.

8.2 Interest to Contractor. Carrier shall pay to Contractor as interest on the security deposit an amount which is equal to the average yield on 91-day U.S. Treasury bills on a monthly basis. The average will be computed by adding the yield as of he first Friday of the month to the yield as of the last Friday of the month and dividing by two. This yield then will be applied to the security deposit. Such payments shall be computed and payable weekly as a part of Carrier's settlements with Contractor.

Likewise, if any amounts shall be owing to Carrier on the required security deposit, Contractor shall pay to Carrier interest on such amounts calculated in exactly the same manner.

8.3 Accounting and Refund. Carrier shall provide Contractor with an accounting of the security deposit at all reasonable times requested by Contractor. Upon termination of this Service Contract, and after Carrier has made all appropriations authorized herein, Carrier shall provide Contractor with a final accounting and shall, not later than Forty-Five (45) days after termination, return the balance of the security deposit to Contractor.

8.4 Forfeit of Deposit. The security deposit provided for herein shall be forfeited should Contractor not comply with the provisions of Paragraph 7.2 of this Service Contract.

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8.5 Interest to Carrier. Carrier may require a Promissory Note and security for full and proper performance of this Service Contract. Carrier may require Contractor to pay to Carrier, as interest on any outstanding Balance Forward owed Carrier on Contractor's account, an amount equal to but not more than the average yield on 91-day U.S. Treasury bills computed on a monthly basis, to be computed by adding the yield as of the first Friday of the month to the yield as of the last Friday of the month and dividing by two. This yield will then be applied to the security deposit. Such payments shall be computed and payable weekly.

9. ADVANCEMENTS.

In the event Contractor shall fail to perform any of his obligations set forth herein, Carrier shall have the right to advance funds for the payment of the same and to thereafter deduct sums equal to those advancements from Contractor's security deposit, or if depleted, from Contractor's weekly settlement.

$1,899.50

10. INSURANCE.

10.1 Carrier's Liability. Carrier shall provide and maintain at its own expense liability insurance, insuring the Carrier against loss. Said liability insurance may not necessarily insure Contractor against loss.

10.2 Non-Trucking Use Auto Liability Coverage. Contractor shall provide and maintain at its own expense non-trucking use auto liability insurance coverage. Said insurance shall become effective no later than 12:01 a.m. on the date of the execution of this Service Contract. Carrier and its subsidiaries and affiliates shall be named as additional insureds. Limits of liability for said insurance shall be a minimum of $1 million per occurrence, Combined Single Limit. Insurance provided for herein shall be primary to any and all other collectible insurance available to Carrier.

10.3 Cargo Insurance. Carrier shall provide and maintain at its own expense cargo legal liability insurance.

10.4 Physical Damage Insurance. Carrier shall provide and maintain at its own expense physical damage insurance on its trailers.

10.5 Workers' Compensation Insurance. Contractor shall provide and maintain at is own expense workers' compensation insurance (or a suitable alternative approved by Carrier in writing) on himself. Additionally, Contractor shall provide and maintain at his own expense workers' compensation insurance (or a suitable alternative approved by Carrier in writing) on all of his employee drivers.

10.6 Procuring of Insurance by Carrier. Upon written request by Contractor, Carrier will obtain all or any of the insurance coverages required of Contractor by this Service Contract. Contractor hereby agrees to pay to Carrier, by means of settlement deductions, cost of said coverages including reasonable administrative fees for administration of such insurance and for risk management services. Such amounts to be charged for insurance procured shall be specified by the coversheet to the service contract. Thereafter, Contractor may elect to obtain his own insurance coverage and cancel the insurance coverage obtained by Carrier, but only after written

notice of such intent l. ~~~ delivered by Certified Mail to C hirty (30) days in advance of the effective date of su. ..v coverage. Such notice shall specify the full intent of Contractor, including but not limited to the specific date and time of such change and shall in all other ways be in conformance with Contractor's obligations under this Service Contract.

Such amounts to be charged for insurance procured shall be specified by the coversheet to the Service Contract, but are subject to change if market conditions dictate such a change.

10.7 Proof of Insurance by Carrier. Carrier shall provide Contractor with certificates of insurance of all insurance coverages which Carrier procures on behalf of Contractor.

10.8 Proof of Insurance by Contractor and Approval by Carrier. All insurance coverage provided by Contractor as required in this Service Contract shall be in form and substance, and issued by a company satisfactory to Carrier. Contractor shall continuously provide Carrier with proof of such insurance either by current binders or certificates of insurance from the date of the execution of this Service Contract until its termination. With regard to insurance coverages required of Contractor, which Contractor procures on his own behalf, Carrier shall have the right to pay on behalf of Contractor all premiums as they come due on paid policies of insurance and Contractor agrees to repay the same to Carrier by means of weekly settlement deductions.

11. ACCIDENTS, CLAIMS, LOSSES, AND EXPENSES.

11.1 Auto Liability. Carrier and its Auto Liability insurer may settle any claim against Carrier arising out of the maintenance, use or control of the Equipment. Contractor shall pay to Carrier Five Hundred Dollars ($500.00) per occurrence toward the settlement of any such claim and related expenses.

11.2 Cargo. Contractor shall pay to Carrier Five Hundred Dollars ($500.00) per occurrence toward the settlement of cargo losses directly caused by collision, i.e., accidental collision of the vehicle with any other vehicle or object; overturning of the vehicle; fire, including self ignition or internal explosion of the vehicle and lightning; collapse of bridges or docks; rising navigable waters or river floods; perils of the seas, lakes, rivers or inland water while on ferries only; and cyclone, tornado or windstorm, excluding loss or damage caused by hail, rain, sleet or snow, whether or not driven by wind.

11.3 Damage to Trailers. Contractor shall pay to Carrier Five Hundred Dollars ($500.00) per occurrence toward the cost for theft, damage, claims and liens for storage, including expenses and attorney's fees, with respect to Carrier's trailers which are assigned to him by Carrier.

11.4 Carrier shall provide Contractor with a written explanation and itemization of any and all such deductions provided for in sections 11.1, 11.2 and 11.3.

11.5 Minimizing Losses. Contractor agrees that in the event of any loss or accident he shall exercise due diligence, cooperate fully with Carrier and take all actions prudent and necessary at his own risk and expense to minimize any loss and to protect all property from further loss. Expenses so incurred shall be borne by the Carrier only to the extent that such expenses are covered by Carrier's insurance.

11.6 Hold Harmless and Indemnification. Contractor agrees to hold Carrier harmless and to indemnify it against all claims, loss, damage and expenses, including attorneys fees (i) arising out of the acts or omissions of Contractor, his agents and employees (including drivers leased from Carrier), and (ii) all claims against Carrier by Contractor and his agents and employees for which Carrier is not indemnified by Carrier's insurance, and (iii) any cargo claims which are not specifically listed in paragraph 11.2 hereof.

12. LOCATION OF EQUIPMENT.

Contractor agrees to notify Carrier by telephone the geographical location of the Equipment each day this Service Contract is in effect. Carrier shall provide a WATS line to facilitate this obligation. Knowledge of the location of the Equipment is of vital importance to operation of Carrier's business. Therefore, if Contractor violates the provisions of this paragraph, Contractor agrees to pay to Carrier as a penalty the sum of Twenty-Five Dollars ($25.00) for each such violation.

13. TERMINATION.

Either party may terminate this Service Contract for cause.

14. REMEDIES.

14.1 Actions. Upon the occurrence of an event of default, Carrier, at its option, may, (i) proceed by appropriate court action to enforce performance by the Contractor or to recover from Contractor any and all damages and expenses which Carrier shall have sustained by reason of Contractor's default or on account of Carrier's enforcement of its remedies hereunder, and/or (ii) terminate Contractor's rights hereunder. All rights and remedies of Carrier conferred on Carrier by this Service Contract or by law shall be cumulative and in addition to every other right and remedy available to Carrier. No failure on the part of Carrier to exercise and no delay in exercising any right or remedy hereunder shall operate as a waiver thereof unless specifically waived by Carrier in writing, nor shall any single or partial exercise by Carrier of any right or remedy hereunder preclude any or further exercise thereof or the exercise of any other right or remedy.

14.2 Expenses. If Carrier incurs any expenses including attorney fees in enforcing any of its rights hereunder without having brought any action, proceeding or suit to enforce any such right, or if Carrier shall bring any action, proceeding or suit, or shall defend any suit by Contractor, and shall be entitled to judgment, then Carrier may recover from Contractor such reasonable expenses so incurred.

15. WORK AND SAFETY RULES.

Contractor agrees to abide by, and to cause his employees and leased drivers to abide by safety rules as set forth by Department of Transportation.

16. CARRIER'S SERVICES, PRODUCTS, AND EQUIPMENT.

Contractor shall not be required to purchase any of Carrier's services, products or equipment as a condition of this Service Contract.

17. FREIGHT BILLS AND TARIFFS.

Carrier shall provide Contractor with a copy of Carrier's rated freight bill or facsimile thereof, and, upon request, Contractor shall have the right to examine copies of Carrier's rate tariffs at all reasonable times.

18. DESIGNATION OF PAYEE.

Contractor agrees that in the event there is more than one individual named as the Contractor on the face page of this Service Contract, that those persons so named will designate in writing which one of them shall be entitled to receive the weekly settlement check due under the terms of this Service Contract. Any change in such designation must be in writing and must be executed by all individuals names as Contractor herein. The purpose of this paragraph is to allow Carrier to make one settlement check payable to one of the individuals named as Contractor without retaining any exposure whatsoever for payment to the other named Contractors.

The following named Co-Contractor is hereby designated as the individual to receive all weekly settlement checks in his name only:

_____

Approved: _____ _____

19. RENEGOTIATION.

If, at any time during the term of this Service Contract, Carrier shall incur increased costs of operation or Carrier's average freight rate shall decline, Carrier may request that the guarantees provided for in paragraph 3.2 hereof be reduced. In the event Contractor is unwilling to make such reductions, then this Service Contract shall be immediately terminated.

20. NOTICES.

All notices provided for herein shall be made by mailing same in the United States Mail, postage prepaid, duly addressed as follows:

TO CARRIER: MANAGER, CONTRACTOR RELATIONS
PO BOX 4208
SPRINGFIELD MO 65808

TO CONTRACTOR: 815 N. Kansas Expwy
Springfield MO 65802

21. ASSIGNMENT.

Contractor shall not assign this Service Contract or any rights or obligations hereunder to anyone without the written consent of Carrier.

22. ENTIRE AGREEMENT.

This Service Contract constitutes the entire agreement between the parties hereto and may not be modified, amended, altered or changed, except by written agreement executed by both parties.

23. LAW GOVERNING--JURISDICTION/VENUE.

Contractor agrees that this Service Contract, regardless of situs of final signature shall be deemed to be executed in Greene County, Missouri, that it is a Missouri contract, entered into under the laws of the State of Missouri and, as such, Contractor submits to the service of process pursuant to 506.510 R.S.Mo. Further, in the event legal action is required to enforce the provisions of this contract, Contractor agrees to submit to venue of any cause to be vested in the respective courts of Greene County, Missouri.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first written herein.

NEW PRIME, INC.

By: Don Walcher

Fleet Manager: Don Walcher

"CARRIER"

By: Howard A. Jenkins

Howard A. Jenkins
(Typed Name)

"CONTRACTOR"

" CO-CONTRACTOR"

ADDENDUM TO SERVICE CONTRACT

THIS AGREEMENT made and entered into this 3 day of February, 1994, by and between PRIME, INC., hereinafter referred to as "CARRIER", and Howard A. Jenkins, hereinafter referred to as "CONTRACTOR";

W I T N E S S E T H:

WHEREAS, Carrier and Contractor entered into a Service Contract dated the 3 day of February, 1994; and

WHEREAS, said Service Contract contains provisions specifying the contractual legal liability of Contractor to Carrier, as regards liability claims, losses or damages to or regarding trailers, cargo claims, losses and expenses and that, from any one occurrence, Contractor should not be required to pay more than Contractor's thereby stated Limit of Liability of Five Thousand Dollars ($5,000.00); and

WHEREAS, Contractor and Carrier desire to enter into an agreement in the form of an Addendum to the Service Contract, whereby the contractual legal liability of Contractor to Carrier may be reduced;

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

1. Public Liability Claims. Carrier agrees to limit Contractor's liability to Carrier to a maximum of the first Five Hundred Dollars ($500.00) of such claims and attendant expenses.

2. Trailers Assigned to Contractor by Carrier. Carrier agrees to limit the liability of Contractor to Carrier to a maximum of the first Five Hundred Dollars ($500.00) of damage to, loss and/or destruction of trailers and attendant expenses.

3. Cargo in the Care, Custody and Control of Contractor. Carrier agrees to limit Contractor's liability to Carrier to a maximum of the first Five Hundred Dollars ($500.00) of claim loss, damage and/or expense directly caused by:

   a. collision, i.e., accidental collision of the vehicle with any other vehicle or object;

   b. overturning of the vehicle;

   c. fire, including self-ignition or internal explosion of the vehicle and lightning;

   d. collapse of bridges or docks;

   e. rising navigable waters or river floods;

   f. perils of the seas, lakes, rivers or inland waters while on ferries only; and

   g. cyclone, tornado or windstorm, excluding loss or damage caused by hail, rain, sleet, or snow, whether or not driven by wind.

For and in consideration of these amendments to the Service Contract between Contractor and Carrier, Contractor agrees to pay to Carrier weekly, during the term of said original Service Contract, the sum of [redacted] Dollars and Fifty Cents ($14.50).

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first written herein.

PRIME, INC.

By: Don Walcher

Fleet Manager: Don Walcher

"CARRIER"

By: Howard A. Jenkins

Howard A. Jenkins

(Title)

"CONTRACTOR"

SC

DENDUM TO SERVICE CONT

Pursuant to Section 22 of the Service Contract between Carrier and Contractor, the Carrier having suffered increased costs of operation, is amending the Service Contract between the Carrier and Contractor by deducting $30.00 per week per vehicle leased to the Carrier effective upon commencement of the Service Contract.

PRIME, INC.

By: Don Walcher

Fleet Manager: Don Walcher

"CARRIER"

By: Howard A Jenkins

Howard A .Jenkins
(Typed Name)

"CONTRACTOR"

(Rev. December 1988)
Department of the Treasury
Internal Revenue Service

Identification Number and Certification

to the requester. Do NOT send to IRS.

Please print or type

Name (If joint names, list first and circle the name of the person or entity whose number you enter in Part I below. See instructions under "Name" if your name has changed.)
HOWARD A. JENKINS

Address (number and street)
815 N. KS EXPWY

City, state, and ZIP code
SPRINGFIELD, MO. 65802

List account number(s) here (optional)

Part I Taxpayer Identification Number

Enter your taxpayer identification number in the appropriate box. For individuals and sole proprietors, this is your social security number. For other entities, it is your employer identification number. If you do not have a number, see *How To Obtain a TIN*, below.

Note: *If the account is in more than one name, see the chart on page 2 for guidelines on whose number to enter.*

Social security number
416-12-9121-3152

OR

Employer identification number
| | | | | | | | | |

Part II For Payees Exempt From Backup Withholding (See Instructions)

Requester's name and address (optional)

Certification.—Under penalties of perjury, I certify that:

(1) The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and

(2) I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding (does not apply to real estate transactions, mortgage interest paid, the acquisition or abandonment of secured property, contributions to an individual retirement arrangement (IRA), and payments other than interest and dividends).

Certification Instructions.—You must cross out item (2) above if you have been notified by IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return. (Also see Signing the Certification under Specific Instructions, on page 2.)

Please Sign Here

Signature ► H. Jenkins

Date ► 2-3-94

Instructions

(Section references are to the Internal Revenue Code.)

Purpose of Form.—A person who is required to file an information return with IRS must obtain your correct taxpayer identification number (TIN) to report income paid to you, real estate transactions, mortgage interest you paid, the acquisition or abandonment of secured property, or contributions you made to an individual retirement arrangement (IRA). Use Form W-9 to furnish your correct TIN to the requester (the person asking you to furnish your TIN), and, when applicable, (1) to certify that the TIN you are furnishing is correct (or that you are waiting for a number to be issued), (2) to certify that you are not subject to backup withholding, and (3) to claim exemption from backup withholding if you are an exempt payee. Furnishing your correct TIN and making the appropriate certifications will prevent certain payments from being subject to the 20% backup withholding.

Note: *If a requester gives you a form other than a W-9 to request your TIN, you must use the requester's form.*

How To Obtain a TIN.—If you do not have a TIN, apply for one immediately. To apply, get Form SS-5, Application for a Social Security Number Card (for individuals) from your local office of the Social Security Administration, or Form SS-4, Application for Employer Identification Number (for businesses and all other entities), from your local Internal Revenue Service office.

To complete Form W-9 if you do not have a TIN, write "Applied For" in the space for the TIN in Part I, sign and date the form, and give it to the requester. Generally, you will then have 60 days to obtain a TIN and furnish it to the requester. If the requester does not receive your TIN within 60 days, backup withholding, if applicable, will begin and continue until you furnish your TIN to the requester. For reportable interest or dividend payments, the payer must exercise one of the following options concerning backup withholding during this 60-day period. Under option (1), a payer must backup withhold on any withdrawals you make from your account after 7 business days after the requester receives this form back from you. Under option (2), the payer must backup withhold on any reportable interest or dividend payments made to your account, regardless of whether you make any withdrawals. The backup withholding under option (2) must begin no later than 7 business days after the requester receives this form back. Under option (2) the payer is required to refund the amounts withheld if your certified TIN is received within the 60-day period and you were not subject to backup withholding during that period.

Note: *Writing "Applied For" on the form means that you have already applied for a TIN OR that you intend to apply for one in the near future.*

As soon as you receive your TIN, complete another Form W-9, include your TIN, sign and date the form, and give it to the requester.

What Is Backup Withholding?—Persons making certain payments to you are required to withhold and pay to IRS 20% of such payments under certain conditions. This is called "backup withholding." Payments that could be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee compensation, and certain payments from fishing boat operators, but do not include real estate transactions.

If you give the requester your correct TIN, make the appropriate certifications, and report all your taxable interest and dividends on your tax return, your payments will not be subject to backup withholding. Payments you receive will be subject to backup withholding if:

(1) You do not furnish your TIN to the requester, or

(2) IRS notifies the requester that you furnished an incorrect TIN, or

(3) You are notified by IRS that you are subject to backup withholding because you failed to report all your interest and dividends on your tax return (for interest and dividend accounts only), or

(4) You fail to certify to the requester that you are not subject to backup withholding under (3) above (for interest and dividend accounts opened after 1983 only), or

(5) You fail to certify your TIN. This applies only to interest, dividend, broker, or barter exchange accounts opened after 1983, or broker accounts considered inactive in 1983.

For other payments, you are subject to backup withholding only if (1) or (2) above applies.

Certain payees and payments are exempt from backup withholding and information reporting. See *Payees and Payments Exempt From Backup Withholding*, below, and *Exempt Payees and Payments* under *Specific Instructions*, on page 2, if you are an exempt payee.

Payees and Payments Exempt From Backup Withholding.—The following is a list of payees exempt from backup withholding and for which no information reporting is required. For interest and dividends, all listed payees are exempt except item (9). For broker transactions, payees listed in (1) through (13), and a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker are exempt. Payments subject to reporting under sections 6041 and 6041A are generally exempt from backup withholding only if made to payees described in items (1) through (7), except that a corporation that provides medical and health care services or bills and collects payments for such services is not exempt from backup withholding for

information reporting. Only payees described in items (2) through (6) are exempt from backup withholding for barter exchange transactions, patronage dividends, and payments by certain fishing boat operators.

(1) A corporation.

(2) An organization exempt from tax under section 501(a), or an individual retirement plan (IRA), or a custodial account under 403(b)(7).

(3) The United States or any of its agencies or instrumentalities.

(4) A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities.

(5) A foreign government or any of its political subdivisions, agencies or instrumentalities.

(6) An international organization or any of its agencies or instrumentalities.

(7) A foreign central bank of issue.

(8) A dealer in securities or commodities required to register in the U.S. or a possession of the U.S.

(9) A futures commission merchant registered with the Commodity Futures Trading Commission.

(10) A real estate investment trust.

(11) An entity registered at all times during the tax year under the Investment Company Act of 1940.

(12) A common trust fund operated by a bank under section 584(a).

(13) A financial institution.

(14) A middleman known in the investment community as a nominee or listed in the most recent publication of the American Society of Corporate Secretaries, Inc., Nominee List.

(15) A trust exempt from tax under section 664 or described in section 4947.

Payments of dividends and patronage dividends generally not subject to backup withholding also include the following:

- Payments to nonresident aliens subject to withholding under section 1441.
- Payments to partnerships not engaged in a trade or business in the U.S. and that have at least one nonresident partner.
- Payments of patronage dividends not paid in money.
- Payments made by certain foreign organizations.

Payments of interest generally not subject to backup withholding include the following:

- Payments of interest on obligations issued by individuals. Note: *You may be subject to backup withholding if this interest is $600 or more and is paid in the course of the payer's trade or business and you have not provided your correct TIN to the payer.*
- Payments of tax-exempt interest (including exempt-interest dividends under section 852).
- Payments described in section 6049(b)(5) to nonresident aliens.
- Payments on tax-free covenant bonds under section 1451.
- Payments made by certain foreign organizations.
- Mortgage interest paid by you.

Payments that are not subject to information reporting are also not subject to backup withholding. For details, see sections 6041, 6041A(a), 6042, 6044, 6045, 6049, 6050A, and 6050N, and the regulations under such sections.

Penalties

Failure To Furnish TIN.—If you fail to furnish your correct TIN to a requester, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Failure To Include Certain Items on Your Tax Return.—If you fail to properly include on your tax return certain items reported to IRS, such failure will be treated as being due to negligence, and you will be subject to a penalty of 5% on any part of an underpayment of tax attributable to that failure unless there is clear and convincing evidence to the contrary.

Civil Penalty for False Information With Respect to Withholding.—If you make a false statement with no reasonable basis that results in no imposition of backup withholding, you are subject to a penalty of $500.

Criminal Penalty for Falsifying Information.—Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Specific Instructions

Name.—If you are an individual, generally provide the name shown on your social security card. However, if you have changed your last name, for instance, due to marriage, without informing the Social Security Administration of the name change, please enter your first name and both the last name shown on your social security card and your new last name.

Signing the Certification.—

(1) **Interest, Dividend, and Barter Exchange Accounts Opened Before 1984 and Broker Accounts That Were Considered Active During 1983.**—You are not required to sign the certification; however, you may do so. You are required to provide your correct TIN.

(2) **Interest, Dividend, Broker and Barter Exchange Accounts Opened After 1983 and Broker Accounts That Were Considered Inactive During 1983.**—You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item (2) in the certification before signing the form.

(3) **Real Estate Transactions.**—You must sign the certification. You may cross out item (2) of the certification if you wish.

(4) **Other Payments.**—You are required to furnish your correct TIN, but you are not required to sign the certification unless you have been notified of an incorrect TIN. Other payments include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services, payments to a nonemployee for services (including attorney and accounting fees), and payments to certain fishing boat crew members.

(5) **Mortgage Interest Paid by You, Acquisition or Abandonment of Secured Property, or IRA Contributions.**—You are required to furnish your correct TIN, but you are not required to sign the certification.

(6) **Exempt Payees and Payments.**—If you are exempt from backup withholding, you should complete this form to avoid possible erroneous backup withholding. Enter your correct TIN in Part I, write "EXEMPT" in the block in Part II, sign and date the form. If you are a nonresident alien or foreign entity not subject to backup withholding, give the requester a completed Form W-8, Certificate of Foreign Status.

(7) **TIN "Applied For."**—Follow the instructions under *How To Obtain a TIN*, on page 1, sign and date this form.

Signature.—For a joint account, only the person whose TIN is shown in Part I should sign the form.

Privacy Act Notice.—Section 6109 requires you to furnish your correct taxpayer identification number (TIN) to persons who must file information returns with IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, or contributions you made to an individual retirement arrangement (IRA). IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 20% of taxable interest, dividend, and certain other payments to a payee who does not furnish a TIN to a payer. Certain penalties may also apply.

What Name and Number To Give the Requester

For this type of account:	Give the name and SOCIAL SECURITY number of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account[1]
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor[2]
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee[1]
b. So-called trust account that is not a legal or valid trust under state law	The actual owner[1]
5. Sole proprietorship	The owner[3]

For this type of account:	Give the name and EMPLOYER IDENTIFICATION number of:
6. A valid trust, estate, or pension trust	Legal entity (Do not furnish the identification number of the personal representative or trustee unless the legal entity itself is not designated in the account title.)[4]
7. Corporate	The corporation
8. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
9. Partnership	The partnership
10. A broker or registered nominee	The broker or nominee
11. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

[1] List first and circle the name of the person whose number you furnish.

[2] Circle the minor's name and furnish the minor's social security number.

[3] Show the name of the owner.

[4] List first and circle the name of the legal trust, estate, or pension trust.

Note: If no name is circled when there is more than one name, the number will be considered to be that of the first name listed.

MC EASE AGREEMENT

Unit No. 6063

THIS AGREEMENT made and entered into this 3 day of February, 1994, by and between New Prime, Inc. ("PRIME") and Howard A. Jenkins ("LESSEE")

WITNESSETH:

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

1. LEASE OF EQUIPMENT. Prime hereby leases to Lessee, subject to the terms and conditions of this Lease, the following described property:

1 Communications Unit
1 Display Unit
1 Outdoor Unit

(hereinafter collectively referred to as "MCT")

2. TERM. This Lease shall be from week to week.

3. RENTALS. The base rental for the MCT shall be Eighteen Dollars and Thirty-Four Cents ($18.34) per week. Lessee hereby authorizes Prime to deduct said rental amount automatically from Lessee's weekly statement resulting from the parties' Service Contract.

4. ADDITIONAL CHARGE. Prime shall provide Lessee with a base message service through the MCT at no cost to Lessee. However, such free service is conditioned expressly upon Lessee's "Reasonable Use" of the message service. Reasonable Use is defined as Lessee not exceeding each month the following in either messages or characters transmitted to or from the MCT:

180 messages per month
18,000 characters per month

In the event Lessee shall exceed the Reasonable Use in any calendar month, he shall pay to Prime for excess messaging the following: Five Cents ($0.05) per message in excess of 180 messages and $0.002 per character in excess of 18,000 characters during any calendar month. Lessee authorizes Prime to deduct these additional charges from Lessee's settlement at the end of each month.

5. NO WARRANTIES BY PRIME. PRIME, NOT BEING THE MANUFACTURER OF THE LEASED EQUIPMENT, NOR MANUFACTURER'S AGENT, MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OR CAPACITY OF THE MATERIAL, EQUIPMENT, OR WORKMANSHIP IN THE LEASED EQUIPMENT, NOR ANY WARRANTY THAT THE LEASED EQUIPMENT WILL SATISFY THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT WHICH PROVIDES FOR SPECIFIC MACHINERY OR OPERATIONS, OR SPECIAL METHODS, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN PRIME AND THE LESSEE ARE TO BE BORNE BY THE LESSEE AT ITS SOLE RISK AND EXPENSE.

6. INDEMNIFICATION OF PRIME. Lessee shall and does hereby agree to protect and save Prime harmless against any and all losses or damage to the MCT except those covered by Qualcomm Incorporated's (hereinafter "Qualcomm") warranties and extended maintenance.

Lessee acknowledges that the use of the MCT while the vehicle is in motion is dangerous. Accordingly, Lessee shall instruct his drivers not to use the MCT when the vehicle is in motion. If, and only if, the vehicle is being driven by a team, the non-driver may operate the MCT while the vehicle is in motion, provided the non-driver insures such operations do not distract the driver. The driver is not authorized to use the equipment when the vehicle is in motion. Lessee shall indemnify, defend and save harmless Prime from any and all accidents, losses, expenses (including attorney fees), claims, damages or liabilities arising in favor of any person, firm or corporation on account of injury to persons or damage to property in any way resulting from the use of the equipment.

7. MAINTENANCE. All maintenance will be accomplished at either a Qualcomm facility or other Qualcomm designated site. Lessee shall be responsible for maintenance not covered by Qualcomm's warranties and extended maintenance. Lessee acknowledges that the Outdoor Unit and the Communications Unit of the MCT have been sealed and that if the seal is broken on any of these units, the Qualcomm warranty is voided for the MCT. Accordingly, Lessee shall not, nor permit other people to, effect adjustments or repairs to the MCT other than Qualcomm's authorized representatives.

PERSONNEL SERVICE AGREEMENT

THIS AGREEMENT made and entered into this 3 day of February, 1994, by and between NEW PRIME, INC. ("NPI"), and Howard A. Jenkins ("LESSEE"):

W I T N E S S E T H:

WHEREAS, Lessee is engaged in the business of transporting freight for ICC motor carriers; and

WHEREAS, NPI utilizes Federal Highway Administration and Department of Transportation qualified drivers of motor vehicles for transporting freight and Lessee is desirous of utilizing the services of such drivers.

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

1. DRIVERS.

1.1 Supplying Drivers. NPI shall, upon request of Lessee, lease personnel to Lessee who are employees of NPI ("Drivers") to operate motor vehicles transporting freight which are owned or leased by Lessee.

1.2 Status of Drivers. Drivers shall at all times be deemed to be and shall be employed by NPI only.

1.3 Qualification of Drivers. All Drivers shall be duly licensed and legally qualified under all state and federal regulations to drive vehicles owned or leased by Lessee in interstate or intra-state commerce.

1.4 Employment of Drivers. NPI shall have the sole authority to hire and fire the Drivers. If Lessee becomes dissatisfied with the performance of a Driver, Lessee may request NPI to substitute another Driver in his place, and NPI shall endeavor to provide a substitute Driver as soon as practical. Any expense incurred in relieving a Driver and replacing him with another Driver, including the transportation of both Drivers to and from Springfield, Missouri shall be borne solely by Lessee.

2. COMPENSATION OF DRIVERS.

2.1 Wages and Deductions. NPI shall be solely responsible for the payment of the Drivers' wages and shall have the responsibility of making all deductions from such wages as are required by law, and forwarding such deductions and reports of the same to the proper state and federal authority.

3. INSURANCE.

3.1 Workers Compensation. NPI shall provide workers compensation coverage on all Drivers as required by applicable law.

4. SERVICE FEES.

4.1 Payment by Lessee. Lessee shall pay NPI for services rendered by Drivers amounts as calculated in accordance with provisions of Schedule "A" of this Agreement ("Fees").

4.2 Time of Payment. Lessee shall pay all Fees immediately upon being billed by NPI.

4.3 Method of Payment. NPI shall be entitled to deduct an amount equal to the Fees from any weekly settlement on equipment furnished to NPI for transporting freight under the terms of a Service Agreement entered into between the parties. In the event the Fees shall exceed the amounts due Lessee from the weekly settlement, NPI shall have the option to demand payment of any such deficiency and Lessee agrees to immediately pay the same.

4.4 Failure to Pay. In the event Lessee shall fail to pay any Fees when demanded by NPI, Lessee shall pay to NPI an additional amount equal to Two Percent (2%) per month of the unpaid Fees, plus a reasonable attorney's fee for collection if placed in the hands of an attorney for collection. Further, upon Lessee's failure to pay such Fees, NPI may withhold the services of Drivers until the same are paid.

4.5 No Waiver. The failure by NPI to demand payment of any Fees when due shall not constitute a waiver of their right to demand and collect Fees at any future time

5. LESSEE'S RESPONSIBILITIES WITH RESPECT TO DRIVERS.

5.1 Supervision of Drivers. On those occasions when the equipment to be operated by Drivers is being furnished to NPI by Lessee to haul freight, NPI shall dispatch Drivers. In all other respects, however, during the term of this Agreement, Lessee shall be responsible for the supervision and conduct of the Driver, including causing the Driver to abide by all work and safety rules of the Department of Transportation and NPI.

5.2 Regulatory Compliance. Lessee shall require the Driver to keep and maintain proper daily logs, daily vehicle inspections, on-the-road inspections by law enforcement officers, trip reports and all other records and data necessary to comply with all applicable regulations of the Department of Transportation and such other state and federal agencies having authority over the operation of Lessee's motor equipment. Copies and original of such reports and records shall be furnished to NPI. Lessee shall indemnify and hold NPI harmless for losses or expenses which NPI may incur by reason of any violation of the aforementioned regulations.

6. HOLD HARMLESS AND INDEMNIFICATION.

6.1 Damage to Lessee and Equipment. Less agrees not to hold NPI responsible for any damage or injuries suffered by Lessee or to Lessee's equipment as a result of any action by Driver and hereby releases NPI from any such claim.

6.2 Other Damage and Claims. Because Lessee is responsible for the supervision and conduct of the Driver, Lessee, notwithstanding the fact that the Driver is the employee of NPI, shall pay to NPI all amounts required by paragraphs 11.1 -11.3 and 11.5 contained in the separate service contract entered into between the parties.

6.3 Business Interruption. Lessee agrees not to hold NPI responsible for any damage or loss of business suffered by Lessee caused by any interruption of services by the Driver furnished to Lessee hereunder and hereby releases NPI from any such claim.

7. TERMINATION.

This Agreement may be canceled by either party upon five (5) days' written notice to the other. However, in the event a Driver is operating Lessee's equipment at the time that such notice of termination is given, Lessee agrees to i) continue the payment of Fees until such time as the Driver is returned to Springfield, Missouri on Lessee's equipment, or ii) pay the cost of returning the Driver to Springfield, Missouri.

8. ASSIGNMENT.

NPI may assign this Agreement or any interest therein at the will of NPI. Lessee may not assign this Agreement or any interest herein without the prior written consent of NPI.

9. MISCELLANEOUS.

9.1 Headings. Headings used in this Agreement are for the convenience of reference only and shall not constitute a part of this Agreement for any other purpose or affect the construction of this Agreement.

9.2 Execution and Counterpart. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which counterpart, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto.

9.3 Binding Effect. This Agreement shall be binding upon, and inure to the benefit of NPI and Lessee, and their respective successors and assigns' provided, however, that Lessee may not assign its rights hereunder or any interest herein without the prior written consent of NPI.

9.4 Severability of Provisions. Any provision of this Agreement which is illegal, invalid, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity, prohibition or unenforceability without invalidating or impairing the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

9.5 Complete Agreement. This Agreement, together with the exhibits and schedules to this Agreement, is intended by the parties as a final expression of their Agreement and it is intended as a complete statement of the terms and conditions of their agreement.

9.6 Choice of Law. The validity of this Agreement, its construction, interpretation and enforcement and the rights of these parties hereto shall be determined under, governed by and construed in accordance with the internal laws of the State of Missouri, without regard to principles of conflict of law.

9.7 Venue and Jurisdiction. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated only in the courts of the State of Missouri and the United States for the Western District of Missouri, Southern Division. Lessee hereby irrevocably accepts for itself and respect of its property, generally and unconditionally, the jurisdiction of such courts. Lessee irrevocably consents to the service of process out of any such courts in such action or proceedings by the mailing of copies thereof to the Lessee or in such other manner as permitted by the rules of such courts. Lessee irrevocably waives any right it may have to assert the doctrine of forum non conveniens or to object to venue to the extent any proceedings is brought in accordance with this section.

9.8 Notices. All notices, demands, instructions and other communications required or permitted to be given to or made upon any party hereto shall be in writing and shall be personally delivered or sent by first class mail, postage prepaid, or sent by telecopier, charges prepaid, and shall be deemed to be received for purposes of this Agreement, if mailed three (3) business days after mailing by sender, and if sent by telecopier, when transmitted. Unless otherwise specified and a notice sent or delivered in accordance with the foregoing provisions of this section, notices, demands, instructions and other communications in writing shall be given to or made upon the parties hereto at the following addresses:

If to NPI:

CONTRACTOR RELATIONS DEPT
NEW PRIME INC
PO BOX 4208
SPRINGFIELD MO 65808

If to Lessee:

815 N. Kansas Expwy.

Springfield MO 65802

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the date first written herein.

NEW PRIME INC

By: Don Walcher

Fleet Manager: Don Walcher

"CARRIER"

By: Howard A Jenkins

Howard A. Jenkins
(Typed Name)

"CONTRACTOR"

SCHEDULE "A" TO PERSONNEL SERVICE AGREEMENT

Date of Agreement: February 3, 1994

Name of Lessee of Personnel: Howard A. Jenkins

Tractor Unit Number: 6063

Lessee shall pay to NPI for the use of its Drivers the following:

(a) The amount of actual wages earned by the Driver (including but not limited to such things as layover pay, loading and unloading pay, equalization pay and extra drop pay), together with all FICA, FUTA, and SUTA tax liability incurred in the connection with such wages.

(b) Travel Expense Allowance.

(c) The cost of Driver's Workers' Compensation coverage and NPI's proportionate share of the cost of group health and life insurance of the Driver.

(d) All increases in (a), (b), or (c) above which shall occur during the term of the Personnel Service Agreement.

(e) Ten Dollars ($10.00) per week.

NEW PRIME INC

Date: February 3, 1994 By: Don Walcher

Fleet Manager: Don Walcher

LESSEE:

Date: February 3, 1994 By: Howard A. Jenkins

Howard A. Jenkins
(Typed Name)

SC

RE: FLEET 02 - FLATBED LEASE OPERATOR CONTRACT UNIT CODE: JENKH

TRACTOR UNIT # 6063 TRAILER UNIT #N/A DATE IN SERVICE: February 3, 1994

573

1140

REVENUE: TRACTOR 72%/GUARANTEED PER MILE RATE: 82¢ LOADED

LESSOR'S NAME: Howard A. Jenkins

BUS. ADDRESS: 815 N. Kansas Expwy.
(See below*) Springfield MO 65802

PHONE NUMBER: (417) 869-3351

FEDERAL TAX or SOC. SEC. NO. 462-92-7352

DRIVER INFORMATION:

DRIVER NAME: Howard Jenkins

BIRTH DATE: 11/1/52

OPERATOR LICENSE STATE: MO

LICENSE NO: 462-92-7352

TRACTOR MAKE: Freightliner

YEAR/COLOR/MODEL: 1994 / Blue / Seascape Conv

TIRE SIZE: 285/75R 24.5 LP

SERIAL NO.: 1FUYDSEB0RH579267

TRAILER MAKE: _____

YEAR/COLOR/MODEL: ____/____/____

TIRE SIZE: _____

SERIAL NO.: _____

1) PERFORMANCE BOND TO BE PAID: $ 1,000.00 SETTLEMENT DEDUCTION: 50 WEEKS @ $20.00/WK
2) TRUCK IS BEING LEASED, COMMENCING 2/3/94 PAYMENT IS: $470.00 FOR 208 WEEKS TO 2/3/98
3) FUEL & ROAD USE TAX -- PER MILE: 2.0 ¢
F.H.U.T.: X O.K. (Otherwise List Settlement Deduction to be made $_____.)
4) LICENSE AND PERMITS: $1,300.00, SETTLEMENT DEDUCTION: 52 WEEKS @ $25.00/WK
5) STATEMENT CHARGES: $15.00/WEEK
6) INSURANCE COVERAGE: Contractor requests New Prime, Inc. to secure:

a. Phys. Dam. Ins. Tractor Weekly Charge $ 71.52 X
Phys. Dam. Ins. Trailer Weekly Charge $ _____ ___
b. Non Trucking Use Auto Liability Insurance for Tractor ($5.56) X
* c. Workers' Compensation Insurance (Only for Independent Contractor, (with or without employees), who is a Missouri Resident) ___
* d. Occupational Accident Insurance (Only for Independent Contractor) (CANNOT COVER EMPLOYEES) ___

*Contractor agrees to be responsible for any required down payment(s) and exit cost(s), for such insurance, plus administrative fees in connection therewith. Contractor understands above cost(s) may increase if New Prime, Inc.'s costs increase.

Date February 3, 1994 Signed Howard A. Jenkins

*If mailing address is different for settlements, etc. list here)

LIENHOLDER:
Tractor: _____
Trailer: _____

LEASE AGREEMENT

THIS AGREEMENT made and entered into this 3 day of February, 1994, by and between Success Leasing, Inc., hereinafter referred to as "LESSOR", and Howard A. Jenkins, hereinafter referred to as "LESSEE".

1. Lease Agreement. Lessor hereby leases to Lessee, and Lessee hereby leases and hires from Lessor the following described personal property, hereinafter referred to as "Equipment":

MAKE	YEAR	SERIAL NUMBER	UNIT #
Freightliner	1994	1FUYDSEB0RH579267	6063

2. Term of Lease Agreement. The Equipment is hereby leased for a period of Two Hundred & Eight (208) weeks beginning on the 3 day of February, 1994, and ending on the 3 day of February, 1998.

3. Payments.

a. Lessee hereby promises to pay Lessor as rental for Equipment as follows: Four Hundred and Seventy Dollars ($470.00) on the 18 day of February, 1994, Two Hundred & Seven (207) equal successive installments of Four Hundred Seventy Dollars ($470.00) on the same day of each week thereafter beginning on the 25 day of February, 1994.

b. Lessee shall pay all personal property, excise, rental, road, sales or use taxes, license fees, and all other taxes, now or hereinafter in effect during the period of this lease, assessed or imposed by any governmental authority by reason of the use, operation or maintenance of the Equipment.

c. In the event any rental or any other payment due Lessor hereunder is not timely paid, such arrearage shall, on demand of Lessor be subject to interest as calculated in Section 22.

4. Option to Extend. At the option of Lessee this lease may be extended for an additional Fifty-two (52) weeks; subject, however, to all of the terms and conditions herein contained.

5. Option of Purchase. Lessee shall have the option to purchase the Equipment after the expiration of the initial term of this lease, and thereafter, for an amount as set forth in Schedule "A" attached hereto.

6. Ownership of Equipment. No title or ownership interest in the Equipment shall pass to the Lessee except rights herein expressly granted. This agreement is a lease and not a security agreement and Lessee has no right, title or interest in the leased vehicle except as Lessee. In the event this lease is construed by a court of competent jurisdiction to be a financing arrangement, then Lessee grants to Lessor a security interest in the leased vehicle and agrees to execute a financing statement for that purpose.

7. Inspection. Upon delivery of the vehicle, Lessee shall make a prompt inspection and notify Lessor in writing of all defects or nonconformity's. If no notification is received by Lessor within ten (10) days after delivery, it will be conclusively established between the parties that the vehicle was delivered in good condition and was so accepted by Lessee. If requested by Lessor, Lessee shall execute and deliver to Lessor a Certificate of Acceptance in a form satisfactory to Lessor.

SC

8. Inspection by Lessor. Lessor has the right to inspect the leased vehicle at all reasonable times.

9. Warranties.

a. The only warranty applicable to a new leased vehicle is the manufacturer's warranty, the receipt of which is hereby acknowledged by Lessee.

b. On a used vehicle, both the Lessee and the Lessor will agree on any repairs to be made to the vehicle being leased. Any charges incurred for repairs will be deducted from the prior owner's repair reserve.

The warranty set forth in this lease, if any, is the only warranty applicable to the vehicle and is expressly in lieu of any warranties or conditions otherwise implied by law including, but not limited to, implied warranties of merchantability or fitness for a particular purpose. The remedies under this warranty shall be the only remedies available to the Lessee or any other person. Lessor shall not be liable for loss of use of the vehicle, loss of time, inconvenience, or other consequential damages.

10. Care, Repairs and Maintenance. Lessee shall pay all costs required to repair or alter the vehicle or any equipment located on the vehicle, or to make the vehicle conform to any Federal, State or Municipal requirements. Lessee shall furnish at his own expense all fuel, oil, repairs, parts, tires, tubes, batteries, accessories, service, maintenance, and all other items of similar nature necessary for the operation of the vehicle. Lessee shall pay and discharge all liens and obligations attaching to the vehicle created or incurred by Lessee, his drivers, agents or employees, including expenses and attorney's fees.

Lessee agrees to comply with all maintenance procedures established by the 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 shall fail to maintain the Equipment as required by Lessor, Lessor may take possession of the Equipment, perform the maintenance, and charge the cost of maintenance to Lessee.

11. Damage to Equipment. Lessee assumes all risks of loss, theft or destruction of the Equipment.

12. Alteration. Lessee shall not make any alterations, including painting, decals or ornaments, to the Equipment without the written approval of Lessor. If such alteration is made, Lessor may remove such and charge cost of removal to Lessee.

13. Insurance. Lessee, at his expense, shall provide and maintain insurance for fire and extended coverage, comprehensive and collision coverage, in an amount not less than the actual cash value of the Equipment. Said insurance shall not have a deductible in excess of One Thousand Dollars ($1,000.00). Lessor's interest shall be protected by means of an "as their interest may appear" clause. All such policies of insurance shall be written with companies satisfactory with Lessor and expressly providing that the insurance shall not be invalidated as to the Lessor by any act, omission or neglect of Lessee and providing that the insurance will not be canceled without at least thirty (30) days prior written notice to Lessor. Lessee shall furnish copies of policies or certificates of insurance to Lessor as requested by Lessor.

14. Use. The vehicle is leased principally for use in the United States. Lessee shall comply with all Federal, State or Municipal requirements applicable to the use and operation of the vehicle. Lessee shall hold Lessor harmless from any fines and penalties assessed against the vehicle, Lessor or Lessee, and from any and all damage suffered by Lessor arising out of the operation of vehicle, and from all claims asserted by any party, including Lessee's employees and agents arising out of, or in any way connected with, the operation, condition, or use of the vehicle. Lessee shall only lease the Equipment with a trucking company approved by Lessor. In the event Lessee is disqualified by the company to whom the Equipment is leased, or if the equipment is confiscated by any public authority, or if Lessor suffers any damage, because of Lessee's use of the vehicle for an illegal purpose, Lessee shall pay to Lessor the amount of such damage, and Lessor may, at its option, terminate this lease.

15. Subletting. Lessee shall not sublet the Equipment without the written consent of Lessor.

16. Drivers. Lessee shall not allow the Equipment to be driven by a driver not previously approved by Lessor.

17. Indemnity. Lessee shall indemnify and hold Lessor harmless from any and all claims or actions, including attorney's fees, arising out of Lessee's use or operation of the motor vehicle or Lessee's failure to comply with any of the terms of this lease. Upon written notice by Lessor of the assertion of such a claim, Lessee shall assume full responsibility for the defense thereof. This section shall survive termination of this lease.

18. Operating Proceeds. Lessee grants to lessor the right to collect all proceeds ("Operating Proceeds") from the operation of the Equipment directly from any company the Equipment is leased with. Lessor shall distribute such proceeds as hereinafter provided. Lessee further grants to Lessor the right to obtain from any company the Equipment is leased with, any and all information regarding the operation of the equipment.

19. Excess Mileage Rental Account. During the term of this lease, or any extension thereof, Lessor, out of the Operating Proceeds, shall retain an amount equal to Five Cents ($.05) per mile times the number of paid miles in excess of Two Hundred Thousand Nine Hundred (2,900) paid miles per week as long as the vehicle averages in excess of Two Thousand Nine Hundred (2,900) paid miles per week.

The purpose of this retention is to help insure that in the event Lessee shall return the Equipment to Lessor, or the Equipment shall be totally destroyed, the compensation of the excess mileage retention and the value of the Equipment or the insurance proceeds will equal, as closely as possible, the amount of Lessor's damages.

In the event (i) this Lease shall be terminated prior to the expiration of its initial term, (ii) the option to extend is not exercised by Lessee, or (iii) this lease is terminated during the extension period and before its expiration, the entire excess mileage retention shall become the sole property of Lessor.

In the event Lessee shall purchase the Equipment as herein provided, or sell it to a third party, Lessor shall pay to Lessee an amount equal to the entire excess mileage retention.

SC

In the event of a total loss to the Equipment, and in the event the insurance proceeds together with the excess mileage retention and the unused amount retained as repair reserve are not sufficient to equal the value of the Equipment set forth in Schedule "B", then Lessor shall take the amount retained as a tire replacement reserve an amount sufficient (together with insurance proceeds, the excess mileage retention and the repair reserve) to equal that value, and the balance of the tire replacement reserve shall be paid to Lessee.

22. Interest. Lessor shall pay to Lessee on all amounts retained in reserve accounts as provided herein an amount equal to the average yield on (Ninety-One) 91-day U.S. Treasury Bills on a monthly basis. That average will be computed by adding the yield as of the first Friday of the month to the yield as of the last Friday of the month and dividing by Two (2). Payment of interest shall be made quarterly.

23. Operating Statements. Lessor shall provide with an operating statement of the Equipment of Lessee and Lessee shall pay to Lessor Fifteen Dollars ($15.00) per week for such statement.

24. Order of Payment. At such times as Lessor collects the Operating Proceeds from the company the Equipment is leased with, Lessor shall distribute them in the following order:

i. Lease payment:
ii. Repayment of advances made by Lessor on behalf of Lessee;
iii. Excess mileage retention;
iv. Tire replacement reserve;
v. Repair reserve; and
vi. Balance to Lessee.

In the event there are insufficient funds in the Operating Proceeds to make the lease payment, repay advances by Lessor on behalf of Lessee, maintain the balance required herein for the excess mileage retention, tire replacement reserve, or repair reserve, Lessor shall have the right to repay such amounts and replenish such reserves to the required levels out of future Operating Proceeds.

25. Termination. Any of the following events shall, at the option of Lessor, terminate this Lease:

a. Failure to pay when due any rental or amount required to be paid to Lessor by Lessee;

b. Failure by Lessee to perform any other provision of this lease within five (5) days after Lessor shall have demanded performance;

c. The appointment of a receiver for Lessee's assets;

d. Commencement by or against Lessee of any proceedings in bankruptcy, receivership, or insolvency, or an assignment for the benefit of creditors by Lessee;

e. Failure to make available sufficient funds for the excess mileage retention, tire replacement reserve and repair reserve, as herein provided;

f. Abandonment of the equipment by Lessee or voluntary surrender of equipment by Lessee to Lessor.

SC

termination of this Lease, or any extension thereof, prior to expiration, Lessee, at his expense, shall return the Equipment to Lessor at Lessor's place of business in Springfield, Missouri, in the same condition as delivered to Lessee, ordinary wear and tear excepted. In the event Lessee fails to return the equipment to Lessors place of business in Springfield, Missouri, Lessee shall be required to reimburse Lessor for all charges necessary to return equipment to Springfield, Missouri. The expense of necessary repairs to the Equipment, including, but not limited to, cracked or broken glass, interior and exterior body repairs, including hoists, and any damage to driveline components caused by Lessee's negligence shall be paid by Lessee and shall not be considered ordinary wear and tear. If such repairs are necessary at the time the Equipment is returned to Lessor, Lessor shall have the right to make those repairs and Lessee shall pay to Lessor the reasonable costs thereof. Lessor shall have the right to offset such amounts against Lessee's final settlement of Operating Proceeds following termination.

Further, in the event (i) this Lease shall be terminated prior to the expiration of its initial term, (ii) the option to extend is not exercised by Lessee, or (iii) this Lease is terminated during the extension period and before its expiration, the excess mileage rental account, repair reserve and tire maintenance reserve shall become the sole property of Lessor as provided in paragraphs 19, 20, and 21 hereof. Lessor shall have the right to replenish those reserve accounts to their required levels as of date of termination from Lessee's final settlement of Operating Proceeds following termination. Additionally, the returnable portion of any deposit placed with a trucking company to which the Equipment is leased, shall be paid directly to Lessor to the extent required to offset amounts owed Lessor by Lessee and to replenish the reserve accounts to their required levels.

26. Expiration of Initial Lease Term and Option Period. In the event Lessee shall elect to return the Equipment to Lessor at the expiration of the initial Lease term or the option period, he shall, at this expense, return the Equipment to Lessor at Lessor's place of business in Springfield, Missouri, in the same condition as delivered to Lessee, ordinary wear and tear excepted. The expense of necessary repairs to the Equipment, including, but not limited to, cracked or broken glass, interior and exterior body repairs, including hoists, and any damage driveline components caused by Lessee's negligence shall be paid by Lessee and shall not be considered ordinary wear and tear. If such repairs are necessary at the time the Equipment is returned to Lessor, Lessor shall have the right to make those repairs and Lessee shall pay to Lessor the reasonable costs thereof. Lessor shall have the right to offset such amounts against Lessee's final settlement of Operating Proceeds following return of the Equipment.

27. Deficiencies. Periodically during the term of this Lease, and extension thereof, there may be insufficient Operating Proceeds to immediately repay Lessor for advances made on behalf of Lessee and charges made to Lessee pursuant to the terms of this Lease. At such time as this Lease, or any extension thereof, shall terminate, Lessor shall have the right to offset against Lessee's Operating Proceeds an amount sufficient to repay Lessor for all such advances made on behalf of Lessee and charges made to Lessee. Lessee shall immediately pay the balance of such advances and charges, if any, to Lessor.

If Lessor incurs any expenses, including a reasonable attorney's fee, in enforcing any of its rights hereunder without having brought any action, proceeding or suit to enforce any such right, or if Lessor shall bring any such right, or if Lessor shall bring any action, proceeding or suit, or shall defend any suit by Lessee, and shall be entitled to judgment, then Lessor may recover from Lessee such reasonable expenses so incurred.

SC

Lessor may assign this Lease Agreement and Equipment and its assignee may also assign same. All rights of Lessor hereunder shall be succeeded to by assignee hereof and said assignee's title to this rental agreement, to rentals herein provided to be paid in and to said property, shall be free from all defenses, setoffs, or counterclaims of any kind or character which Lessee may be entitled to assert against Lessor. Lessee shall not assign any of its rights under this lease without written consent of Lessor.

29. Tax Benefits. Lessee agrees that he shall not be entitled to, nor will he attempt to claim any investment tax credit or depreciation on the Equipment.

30. Cancellation. Lessee shall have the right to cancel this Lease Agreement effective One Hundred and and Four (104) weeks from the date hereof or effective at the end of the next Fifty-Two (52) week period thereafter; provided that Lessee gives Sixty (60) days' prior written notice to Lessor.

31. Notices. All notices provided for herein shall be made by mailing same in the United States Mail, postage prepaid, duly addressed, as follows:

To Lessor: PO BOX 4208
SPRINGFIELD MO 65808

To Lessee: 815 N. Kansas Expwy.
Springfield MO 65802

32. Entire Agreement. This lease constitutes the entire agreement between the parties hereto and may not be modified, amended, altered or changed, except by written agreement executed by both parties.

33. Law Governing Jurisdiction/Venue. Lessee agrees that this contract, regardless of situs of final signature, shall be deemed to be executed in Greene County, Missouri, that it is a Missouri contract, entered into under the laws of the State of Missouri, and, as such, Lessee submits to the service of process pursuant to 506.510 R.S.Mo. Further, in the event legal action is required to enforce the provisions of this contract, Lessee agrees to submit to venue of any cause to be vested in the respective courts of Greene County, Missouri.

34. Binding Effect. This agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first written in this Lease Agreement.

LESSOR:

By: Sam Cope

Sam Cope, Dir., Flatbed Operations

LESSEE: Howard A Jenkins

Howard A. Jenkins

C

SCHEDULE "A"

PURCHASE OPTION SCHEDULE

At the end of 104 weeks $59,600.00

Purchase option price declines $308.00 per each rental payment made thereafter.

The option to purchase the Equipment as granted in this Lease Agreement shall terminate on February 3, 19 98, ("Option Termination Date".) Lessee shall give Lessor written notice of his election to purchase the Equipment at least Thirty (30) days prior to the Option Termination Date, and shall purchase the Equipment no later than the Option Termination Date. In the event Lessee shall fail to give such notice or shall fail to purchase the Equipment on or before the Option Termination Date, then all rights to purchase the Equipment as granted herein shall automatically be terminated.

In the event Lessee shall elect to purchase the Equipment on the Option Termination Date, the purchase option price shall be the lesser of: An amount as computed in accordance with the above schedule and the "appraised value" of the Equipment. The "appraised value" of the Equipment shall be determined by three (3) appraisers appointed as follows: Lessor and Lessee shall each choose one appraiser who shall in turn appoint a third appraiser. Each appraiser shall be a licensed truck dealer, and Lessor and Lessee shall each notify the other of their choice no later than Fifteen (15) days prior to the Option Termination Date.

SCHEDULE "B"

TOTAL LOSS VALUE OF EQUIPMENT

At the end of the first week $82,100.00

Total loss value shall decline $228.00 per each rental payment made thereafter through the 104th payment.

Thereafter the total loss value declines $284.00 per each rental payment made.

JS 44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., and HOWARD JENKINS, MARSHALL JOHNSON, SUSAN JOHNSON, and JERRY VANBOETZELAER

DEFENDANTS

NEW PRIME, INC. d/b/a PRIME INC. and SUCCESS LEASING,

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Greene
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Greene
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Jerry M. (Jay) Kirksey
Douglas, Lynch, Haun & Kirksey
P. O. Box 117, 111 West Broadway
Bolivar, MO 65613

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

(PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.
DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

49 C.F.R. Section 376.12(i) et seq., Unauthorized Deduction of Purchase or Rental Payments and 49 C.F.R. Section 376.12(k) et seq., Unauthorized Deduction of Escrow Funds; 49 U.S.C. s14102, 14704(a)(1) and (2), and 49 C.F.R. Part 376 et seq.

V. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury—Med Malpractice
- ☐ 365 Personal Injury—Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence
- Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes
- ☒ 890 Other Statutory Actions

VI. ORIGIN (PLACE AN x IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION ☐ UNDER F.R.C.P. 23

DEMAND $

Check YES only if demanded in complaint:
JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE
8-14-97

SIGNATURE OF ATTORNEY OF RECORD
J. Kirksey

ORIGINAL

UNITED STATES DISTRICT COURT