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Proposed Attorneys for the Debtors

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	
ARMADA LEASING, LLC	§	Case No. 17-32498-11
	§	
HIGH COUNTRY TRANSPORTATION, INC.,	§	Case No. 17-32503-11
	§	
	§	[Jointly Administered Under Case No. 17-32498-11]
	§	
Debtors.	§	Chapter 11

DEBTORS' EMERGENCY MOTION, PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a); 363, AND 365, AND BANKRUPTCY RULES 2002, 6004, AND 6006 FOR ENTRY OF AN ORDER: (I) APPROVING NOTICE AND SALE PROCEDURES; (II) AUTHORIZING DEBTORS' SALE OF CERTAIN ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (III) APPROVING ADEQUATE PROTECTION PAYMENTS; AND, (IV) GRANTING RELATED RELIEF

TO THE HONORABLE STACEY G. C. JERNIGAN, U.S. BANKRUPTCY JUDGE:

The above captioned debtors and debtors in possession (collectively, the "Debtors") file this Motion, Pursuant to Bankruptcy Code Sections 105(a); 363; and 365, and Bankruptcy Rules 2002, 6004, and 6006 for Entry of an Order: (I) Approving Notice and Sale Procedures; (II) Authorizing Debtors' Sale of Certain Assets Free and Clear of Liens, Claims, Encumbrances,

and Other Interests; (III) Approving Adequate Protection Payments; and, (IV) Granting Related Relief (the “Motion”), and in support thereof respectfully submits as follows:

I. **JURISDICTION**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(A), (M), (N), and (O) Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory authority for the relief requested herein is §§ 105(a), 363, 1107 and 1108 of Title 11 of the United States Code (the “Bankruptcy Code”), and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

II. **BACKGROUND**

A. The Debtors’ Pre-Petition Operations.

3. The Debtors operate a trucking transportation business headquartered in Dallas, Texas. What started as a single-truck operation, hauling grain from Dove Creek, Colorado to Northern Utah in 1985, has since expanded in size, scope, and geographic reach. The Debtors now provide transportation services to customers throughout the continental United States.

4. The Debtors’ operations include three different divisions utilizing 227 trucks – including leased APU units installed in certain trucks – and 158 trailers (the “Equipment”). High Country Transportation, Inc. (“HCT”), is a Utah corporation, and Armada Leasing, LLC (“Armada”), is a Nevada limited liability company. HCT and Armada are owned by Donald, Shawn and Kirk Crowley. The Debtors employ 25 full time non-driver employees, 79 drivers and have contracts with 63 independent drivers.

5. The Debtors' operations involve three lines of business: (i) Hopperbottom Division (founded in 1985); (ii) Coal Haul Division (founded in 2004); and, (iii) Dry Van Division (founded in 2013). The Debtors' fleet consists of 227 trucks, including 22 trucks for the Hopperbottom Division, 44 trucks for the Coal Haul Division, and 159 trucks for the Dry Van Division. The Hopperbottom Division operates throughout most of the continental U.S. The Coal Haul Division operates in Colorado, New Mexico and Arizona. The Dry Van Division operates throughout the continental United States.

6. The Debtors' Equipment is financed through a combination of installment contracts and leasing agreements (the "Pre-Petition Agreements") with various equipment finance companies, including Daimler Truck Financial, VFS US LLC and affiliates ("Volvo"), Banc of America Leasing & Capital, as assignee for Volvo, Everbank Commercial Finance, as assignee for Volvo, Paccar Financial Corp. and affiliates ("Paccar"), MHC Financial Services, Inc. and affiliates ("MHC"), People's Capital and Leasing Corp. ("People's"), BMO Financial ("BMO"), as assignee for General Electric Capital Corporation, Signature Financial, 1st Source Bank, Delores State Bank, Merchants Capital Resources, Scottrade Bank Equipment Finance, Webster Capital Finance, Financial Pacific Leasing, as assignee for Lease Corporation of America, m2Lease Funds, as assignee of One World Business Finance LLC, Lease Corporation America, One World Business Finance LLC, Chase Auto Finance, and Ford Motor Credit Company, LLC (collectively, the "Secured Lender(s)"). A number of these equipment financing agreements are with Armada, who in turn sub-leases equipment to HCT and various independent contractors.

7. Part of the Debtors' pre-petition restructuring efforts involved a partial exit of the Dry Van Division to discontinue employing company drivers and, instead, focus solely on

contract drivers and a reduction in the Debtors' remaining fleet. To that end, the Debtors have engaged in a pre-petition marketing process to strategically sell various pieces of the Debtors' Equipment and has also negotiated voluntary surrenders of secured collateral to respective Secured Lenders.

8. The Debtors' Chapter 11 Petitions were filed because the Debtors were unsuccessful in finalizing an out of bankruptcy restructure of their lease agreements with Paccar. Post-petition, the Debtors intend to continue their efforts to right-size their fleet through strategic sales and/or voluntary surrenders of collateral.

B. The Bankruptcy Filing.

9. On June 29, 2017 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11, Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court").

10. Pursuant to Bankruptcy Code §§ 1107(a) and 1108, the Debtors are operating their businesses and managing their property as debtors in possession. No trustee or examiner has been appointed in these cases.

III.
RELIEF REQUESTED

11. In furtherance of the Debtors' efforts to right-size their business, the Debtors intend to continue their pre-petition efforts to sale or otherwise voluntarily surrender certain Equipment through a uniform notice and sale process that will minimize the administrative costs associated with these cases. As such, pursuant to Sections 105(a), 363 and 365 of title 11 of the

United States Code (the “Bankruptcy Code”) and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Debtors request entry of an order¹:

- (a) authorizing, but not directing, the Debtors to:
 - (i) sell certain Equipment free and clear of all liens;
 - (ii) return certain tractors and/or trailers to the respective secured lender(s) and reject the lease contract;
- (b) authorizing abbreviated notice and hearing procedures to object to any proposed sale or contract rejection; and,
- (c) authorizing the Debtors to make adequate protection payments to the Secured Lenders.

A. Sale Procedures

12. The Debtors request authority to market for private sale its Equipment according to following noticing procedures. Upon the identification of a buyer for any specific piece or set of Equipment and the Debtors’ agreement to sell such Equipment (a “Proposed Sale”), the Debtors shall file and serve a Notice of Proposed Sale substantially in the form attached hereto as **Exhibit A** and a proposed order approving such sale (a “Sale Order”). Each proposed Sale Order shall, *inter alia*, provide for: (i) the approval of the Proposed Sale to be consummated and the transferee to take the tractor and/or trailer free and clear of any liens, encumbrances, rights or interests; and (ii) that proceeds of a Proposed Sale shall be applied first to pay any applicable Secured Lender claims with any remainder to the Debtors.

13. Parties in interest shall have seven (7) days following the filing of a Notice of Proposed Sale to object to a Proposed Sale or a proposed Sale Order. Upon expiration of seven (7) days following the filing of a Notice of Proposed Sale, if no objection is filed, the Court shall

¹ A proposed form of order approving the relief requested herein is annexed hereto and incorporated herein as Exhibit C (the “Order”).

enter a Sale Order. If an objection is filed, the Court shall set a hearing on the Proposed Sale as soon as is practicable.

B. Voluntary Surrender

14. For Equipment that the Debtors do not wish to continue to utilize in the course of their business and for which they cannot find a willing purchaser at an agreed price, the Debtors request that the automatic stay be modified to permit the Debtors to voluntarily surrender such equipment to the respective Secured Lenders holding security interests in such Equipment (“Voluntary Surrender”). Upon the agreement of the Debtors and a Secured Lender to surrender Equipment, the Debtors shall file a Notice of Proposed Surrender substantially in the form attached hereto as **Exhibit B** and proposed order modifying the automatic stay to permit the Voluntary Surrender (a “Surrender Order”). Each proposed Surrender Order shall, *inter alia*, provide: (i) modification of the automatic stay to permit a Voluntary Surrender; (ii) to the extent applicable, such Voluntary Surrender shall be deemed to constitute a valid rejection of any unexpired lease or executory contract solely as such lease pertains to surrendered Equipment; (iii) an order requiring the Debtors to return the subject Equipment to the Secured Lender to be sold and/or disposed of in a commercially reasonable manner; (iv) waiving the Debtors’ right to any further notice prior to such commercially reasonable sale; and (v) modification/termination of the automatic stay to permit the Secured Lender to sell any surrendered Equipment and apply the proceeds of such sale to the Secured Lender’s claim.

15. Parties in interest shall have seven (7) days following the filing of a Notice of Proposed Surrender to object to a Voluntary Surrender or a proposed Surrender Order. Upon expiration of seven (7) days following the filing of a Notice of Proposed Surrender; if no

objection is filed the Court shall enter the Surrender Order. If an objection is filed, the Court shall set a hearing on the Voluntary Surrender as soon as is practicable.

C. Approval of Adequate Protection Payments

16. Until such time as the Debtors' Equipment is either sold in accordance with the Sale Procedures set forth above or voluntarily surrendered, the Debtors propose to use such Equipment in accordance with the Debtors' pre-petition practices. As adequate protection for such use, the Debtors propose to make monthly installment payments in such amount as is provided in the Pre-Petition Agreements ("Monthly Installments"). As further adequate protection, to the extent that any Equipment is sub-leased by a Debtor for an amount exceeding the Monthly Installments (a "Surplus"), such Surplus shall be remitted to the applicable Secured Lender for application against such Secured Lenders' claim.²

**IV.
BASIS FOR REQUESTED RELIEF**

17. Bankruptcy Code section 363(c) provides that a debtor "may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). A Debtors' use of property of the estate is in the ordinary course of business if it is "of the sort commonly undertaken by companies in [the debtor's] industry" and it does not subject a hypothetical creditor "to economic risk of a nature different from those he accepted when he decided to extend credit." *In re Roth Am., Inc.*, 975 F.2d 949, 952–53 (3d Cir. 1992).

² Prior to the Petition Date, the Debtors voluntarily surrendered certain Equipment to the respective Secured Lender(s). Upon approval of this Motion, the Debtors intend to file a Notice of Proposed Surrender as to such

18. Bankruptcy Code section 363(b) authorizes a trustee or debtor-in-possession, after notice and a hearing, to sell, use, or lease property of the estate outside of the ordinary course of business. 11 U.S.C. §§ 363(b)(1), 1107(a). Bankruptcy courts are given a great deal of discretion when deciding whether to authorize a transaction outside the ordinary course of business. Although Bankruptcy Code section 363(b) does not set forth a standard for determining when it is appropriate for a court to authorize a transaction outside the ordinary course of business, bankruptcy courts have required that a transaction pursuant to Bankruptcy Code section 363(b) be based upon some articulated business justification. The Fifth Circuit Court of Appeals in *Continental Airlines* articulated the criteria a bankruptcy court should consider in deciding whether to approve or disapprove the use of estate property under Bankruptcy Code section 363(b):

We also agree with the Second Circuit that implicit in § 363(b) is the further requirement of justifying the proposed transaction. *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983). That is, for the debtor in possession or trustee to satisfy its fiduciary duties to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business...Whether the preferred business justification is sufficient depends on the case. As the Second Circuit held in *Lionel*, the bankruptcy judge should consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of debtor, creditors and equity holders, alike.

See Institutional Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines, Inc.), 780 F.2d 1223, 1226 (5th Cir. 1986) (emphasis added). A debtor's showing of a sound business justification need not be unduly exhaustive; a debtor is "simply required to justify

vehicles. For the avoidance of doubt, the Debtors are not agreeing and do not intend to provide adequate protection payments to the Secured Lenders on account of any Equipment surrendered prior to the Petition Date.

the proposed disposition with sound business reasons....” *In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984).

19. It is generally understood that “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants v. Johns Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). If a valid business justification exists, there is a strong presumption that “the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *In re Global Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003) (*quoting Official Comm. of Subordinate Bondholders v. Integrated Resources, Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992)), appeal dismissed, 3 F.3d 49 (2d. Cir. 1993); *see also Myers v. Martin, (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (court defers to trustee’s judgment with respect to 363(b) transactions “so long as there is a legitimate business justification”). The burden of rebutting this presumption falls to parties opposing the proposed exercise of a debtor’s business judgment. *In re Integrated Res., Inc.*, 147 B.R. at 656.

20. Here, the Debtors have an immediate and pressing need to reduce operating costs and right-size their operations. The relief requested herein will allow the Debtors to do so in an cost-efficient and timely manner. Given the number of Secured Lenders and the size of the Debtors’ Equipment fleet, the proposed procedures are necessary to avoid undue litigation and/or administrative expenses.

V.
NOTICE

21. No trustee, examiner or creditors' committee has been appointed in these Chapter 11 Cases. Notice of this Motion will be provided to: (i) the Office of the United States Trustee; (ii) the holders of the 20 largest unsecured claims against the Debtors; (iii) the Debtors' secured creditors and equipment lessors; and (iv) all other creditors and parties in interest subscribing to the Court's ECF or listed on the attached service list. Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Motion is required.

VI.
EMERGENCY RELIEF REQUESTED

22. Pursuant to Bankruptcy Rule 6003, to the extent that relief is necessary to avoid immediate and irreparable harm, a court may grant relief regarding a motion for use, sale or lease of property. Taken together, the nature of the relief requested herein, the substantial harm to the Debtors' business that would be caused if not allowed to either sell certain assets and/or reject certain lease contracts subject to a streamlined court-approved process, all lead to the conclusion that the relief requested herein is reasonable and necessary under the circumstances. Further, given that any party in interest shall have further notice and opportunity to object prior to entry of a Sale Order or Surrender Order, any prejudice arising from a shortened notice period is minimized.

VII.
REQUEST FOR WAIVER OF BANKRUPTCY RULE 6004(a) AND (h)

23. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements set forth in Bankruptcy Rule 6004(a). The Debtors further seek a waiver of any

stay of an order granting the relief requested herein. Pursuant to Bankruptcy Rule 6004(h), “an order authorizing the use, sale or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As set forth above, the relief requested herein is essential to prevent potentially irreparable damage to the Debtors’ operations, value and ability to reorganize. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h).

IX.
PRAYER FOR RELIEF

WHEREFORE, the Debtors respectfully request entry of an order, in substantially the same form as attached hereto as Exhibit C, granting the relief requested herein and granting such other and further relief as is just and proper.

Respectfully submitted this 19th day of July, 2017.

OKIN ADAMS LLP

By: /s/ Matthew S. Okin

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**PROPOSED ATTORNEYS FOR THE
DEBTORS**

Exhibit A

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Proposed Attorneys for the Debtors

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	
ARMADA LEASING, LLC	§	Case No. 17-32498-11
	§	
HIGH COUNTRY TRANSPORTATION, INC.,	§	Case No. 17-32503-11
	§	
	§	[Jointly Administered Under Case No. 17-32498-11]
	§	
Debtors.	§	Chapter 11

DEBTORS' NOTICE OF PROPOSED SALE

TO THE HONORABLE STACEY G. C. JERNIGAN, U.S. BANKRUPTCY JUDGE:

The above captioned debtors and debtors in possession (collectively, the "Debtors") file this Notice of Proposed Sale (the "Notice"), Pursuant to Bankruptcy Code Sections 105(a); 363; and 365, and Bankruptcy Rules 2002, 6004, and 6006 and this Court's Order [Docket No.____].

Debtors intend to sell the equipment identified on the attached Exhibit A, pursuant to an Order of the Court in substantially the same form as the Proposed Order attached hereto as Exhibit B.¹

If any party has an objection to the consummation of this Sale, an Objection to this Notice must be filed and served on or before the expiration of seven (7) days of the entry of this Notice.

If no Objection is filed and served within this time, the Court may deem this Sale as unopposed and in the best interest of the Debtors, creditors, and the estate, and shall enter an Order authorizing the equipment to be sold free and clear of all liens, rights, interests and encumbrances.

¹ If the Proposed Sale has been reduced to a written agreement; the written agreement shall be attached hereto as Exhibit C. Irrespective of the existence of a written agreement, the attached Exhibit A contains the pertinent details of the transaction, including but not limited to, purchase price, equipment description, and identity of any secured party(s) and purchaser(s).

Respectfully submitted this ____ day of ____, 2017.

OKIN ADAMS LLP

By: /s/ Matthew S. Okin

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PROPOSED ATTORNEYS FOR THE DEBTORS

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of ____, 2017, a true and correct copy of the foregoing document was served via the Court's ECF System on all parties requesting notice in this proceeding as well as the parties listed on the attached service list by regular mail.

By: /s/ Matthew S. Okin
Matthew S. Okin

Exhibit B

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Proposed Attorneys for the Debtors

**IN THE UNITED STATES BANKRUPTCY COURT
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In re:	§	
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ARMADA LEASING, LLC	§	Case No. 17-32498-11
	§	
HIGH COUNTRY TRANSPORTATION, INC.,	§	Case No. 17-32503-11
	§	
	§	[Jointly Administered Under Case No. 17-32498-11]
	§	
Debtors.	§	Chapter 11

DEBTORS' NOTICE OF PROPOSED SURRENDER
[Relates to Docket No. __]

TO THE HONORABLE STACEY G. C. JERNIGAN, U.S. BANKRUPTCY JUDGE:

The above captioned debtors and debtors in possession (collectively, the "Debtors") file this Notice of Proposed Surrender (the "Notice"), Pursuant to Bankruptcy Code Sections 105(a); 363; and 365, and Bankruptcy Rules 2002, 6004, and 6006 and this Court's Order [Docket No.____]. Debtors intend to surrender the equipment identified on the attached Exhibit A back to

the secured lender, pursuant to an Order of the Court in substantially the same form as the Proposed Order attached hereto as Exhibit B.¹

If any party has an objection to the Debtors surrendering this equipment back to the secured lender (and rejecting the unexpired lease, if any), an Objection to this Notice must be filed and served on or before the expiration of seven (7) days of the entry of this Notice.

If no Objection is filed and served within this time, the Court shall treat Debtors surrendering said equipment, and rejection of any applicable unexpired lease(s), as unopposed and in the best interest of the Debtors, creditors, and the estate, and shall enter an Order authorizing the relief herein.

¹ If the Proposed Surrender is subject to one or more unexpired leases that the Debtors intend to reject, a copy of the lease(s) shall be attached hereto as Exhibit C. Irrespective of whether an unexpired lease is attached hereto, the attached Exhibit A contains the pertinent details of the surrender, including but not limited to, a description of the equipment, identity of secured party(s) and the amount owed to secured party(s).

Exhibit C

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	
ARMADA LEASING, LLC	§	Case No. 17-32498-11
	§	
HIGH COUNTRY TRANSPORTATION, INC.,	§	Case No. 17-32503-11
	§	
	§	[Jointly Administered Under Case No. 17-32498-11]
	§	
Debtors.	§	Chapter 11

ORDER ON DEBTOR’S MOTION, PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a); 363, AND 365, AND BANKRUPTCY RULES 2002, 6004, AND 6006 FOR ENTRY OF AN ORDER: (I) APPROVING ABBREVIATED NOTICE AND SALE PROCEDURES; (II) AUTHORIZING DEBTORS’ SALE OF CERTAIN ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (III) APPROVING ADEQUATE PROTECTION FOR EQUIPMENT LESSORS; AND, (IV) GRANTING RELATED RELIEF

Upon the Motion (the “Motion”), of High Country Transportation, Inc. and Armada Leasing, LLC in the above-referenced Chapter 11 cases, as debtors and debtors in possession

(collectively, the “Debtors”), for an order (this “Order”) pursuant to sections 363 and 365 of the Bankruptcy Code, and Bankruptcy Rules 6004 and 6006, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to (i) the Office of the United States Trustee; (ii) the holders of the 20 largest unsecured claims against the Debtors; (iii) the Debtors’ secured creditors and equipment lessors; and, (iv) the Internal Revenue Service (collectively, the “Notice Parties”); and due to the urgency of the circumstances surrounding this Motion and the nature of the requested relief; and a hearing having been held to consider the relief requested in the Motion (the “Hearing”); and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, the creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the Court finding that the relief sought would serve judicial economy; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Motion is granted as set forth herein;
2. The Debtors are authorized, but not directed, to sell Equipment¹ free and clear of all liens as set forth herein:
 - a. Upon the Debtors’ entry into an agreement to sell Equipment (a “Proposed Sale”), the Debtors shall file and serve a Notice of Proposed Sale substantially

¹ Capitalized terms not defined herein shall have the meaning set forth in the Motion.

in the form attached hereto as **Exhibit A** and a proposed order approving such sale (a “Sale Order”).

- b. Each proposed Sale Order shall, *inter alia*, provide for: (i) the approval of the Proposed Sale to be consummated and the transferee to take the tractor and/or trailer free and clear of any liens, encumbrances, rights or interests; and (ii) that proceeds of a Proposed Sale shall be applied first to pay any applicable Secured Lender claims with any remainder to the Debtors.
 - c. Parties in interest shall have seven (7) days following the filing of a Notice of Proposed Sale to object to a Proposed Sale or a proposed Sale Order. Upon expiration of seven (7) days following the filing of a Notice of Proposed Sale, if no objection is filed, the Court shall enter a Sale Order. If an objection is filed, the Court shall set a hearing on the Proposed Sale as soon as is practicable.
3. The Debtors are further authorized, but not directed to return Equipment to the respective Secured Lender(s) and, if applicable, reject the any unexpired lease contract(s) associated therewith (“Voluntary Surrender”) as provided herein:
- a. Upon the agreement of the Debtors and a Secured Lender to surrender Equipment, the Debtors shall file a Notice of Proposed Surrender substantially in the form attached hereto as **Exhibit B** and proposed order modifying the automatic stay to permit the Voluntary Surrender (a “Surrender Order”).
 - b. Each proposed Surrender Order shall, *inter alia*, provide: (i) modification of the automatic stay to permit a Voluntary Surrender; (ii) to the extent applicable, such Voluntary Surrender shall be deemed to constitute a valid

rejection of any unexpired lease or executory contract solely as such lease pertains to surrendered Equipment; (iii) an order requiring the Debtors to return the subject Equipment to the Secured Lender to be sold and/or disposed of in a commercially reasonable manner; (iv) waiving the Debtors' right to any further notice prior to such commercially reasonable sale; and (v) modification/termination of the automatic stay to permit the Secured Lender to sell any surrendered Equipment and apply the proceeds of such sale to the Secured Lender's claim.

- c. Parties in interest shall have seven (7) days following the filing of a Notice of Proposed Surrender to object to a Voluntary Surrender or a proposed Surrender Order. Upon expiration of seven (7) days following the filing of a Notice of Proposed Surrender; if no objection is filed the Court shall enter the Surrender Order. If an objection is filed, the Court shall set a hearing on the Voluntary Surrender as soon as is practicable.

4. Until such time as the Debtors' Equipment is either sold in accordance with the Sale Procedures set forth above or voluntarily surrendered, the Debtors are authorized to use Equipment in accordance with the Debtors' pre-petition practices. As adequate protection for such use, the Debtors are authorized to and shall make monthly installment payments to each Secured Lender in such amounts as are provided in the Pre-Petition Agreements ("Monthly Installments"). As further adequate protection, to the extent that any Equipment is sub-leased to a third-party for an amount exceeding the Monthly Installments (a "Surplus"), such Surplus shall be remitted to the applicable Secured Lender for application against such Secured Lenders' claim.

5. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion; and,

6. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

END OF ORDER

Submitted by:

OKIN ADAMS LLP

By: /s/ Matthew S. Okin

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PROPOSED ATTORNEYS FOR THE DEBTORS